

PROVINCIAL COURT OF NOVA SCOTIA

Citation: R. v. Hiscoe, 2011 NSPC 84

Date: 20111117

Docket: 2215503

Registry: Kentville

Between:

Her Majesty the Queen

v.

Jamie Scott Hiscoe

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Judge: The Honourable Judge Alan T. Tufts

Heard: June 1 & October 3, 2011 in Kentville, Nova Scotia

Subject: s. 8 *Charter* unreasonable search and seizure; cell phone contents obtained incident to arrest and subsequent download of cell phone data. The police did not obtain a warrant to extract the contents of the phone.

Summary: Police arrested the accused for possession for the purpose of trafficking in cocaine. The accused's cell or "smart" phone was seized and the arresting officer made a cursory observation of the text messages on the phone. Later the same evening he wrote out the contents of the messages he saw earlier while another officer read them to him.

Approximately one month later the phone was sent to the RCMP Forensic Crime Lab and the complete contents of the phone's data was downloaded – a so-called "data dump".

Issue:

What is the scope of the police authority to seize and search incident to arrest in the context of a seizure and search of a cell or smart phone? Was the accused's phone lawfully seized? Did the police have authority to:

- a. Do a cursory examination of the accused's cellphone at the scene,
- b. Again, examine the accused's cellphone later on the day of the arrest to record in writing the contents of the phone observed earlier, and
- c. To do a complete download of the contents of the cellphone – the so-called “data dump” a month after the arrest?

Result:

The phone was lawfully seized. Examination of the smartphone at the arrest scene to view the recent text messages and the subsequent transcribing of those messages later that same day were justified in this case to be within the lawful scope of the police authority to search incident to the arrest of the accused. Those searches did not violate the accused's s. 8 *Charter* rights.

However, that the complete content download or “data dump” of the cell phone is beyond the scope of a search incident to arrest and the police did not have the legal authority to conduct such a search. That search violated the accused's s.8 *Charter* rights. The evidence from the content download is excluded from evidence pursuant to s. 24(2) of the *Charter*.

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