

IN THE PROVINCIAL COURT OF NOVA SCOTIA

Citation: R. v. Tingley, 2005 NSPC 17

Date: 20050509

Docket: 1305118, 1305119

Registry: Kentville

Between:

Her Majesty the Queen

v.

Timothy Nicholas Tingley

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Judge: The Honourable Judge Alan T. Tufts

Heard: June 10, 2004; Feb. 2, 2005; Feb. 28, 2005;
in Kentville, Nova Scotia

Written release date: **May 19, 2005**

Subject: s. 253(a) and 253(b) Criminal Code
s. 258(1)(g) Criminal Code
s. 25 Interpretation Act
s. 258(1)(c) and (d.1) Criminal Code

Summary: The defendant was stopped at 3:15 a.m. He was taken to the police station at 3:20 a.m. and read the screening device demand. The screening device was administered at 3:36 a.m. and the defendant registered a fail. The breathalyser demand was given and the defendant provided two samples at 4:22 a.m. and 4:42 a.m. and analysed at 100 milligrams of alcohol in 100 millilitres of blood each time.

At the roadside the investigating officer, noticed the

defendant exhibited signs of moderate impairment. There was a part bottle of liquor found in the car. The defendant was not taken directly to the police station as the officer drove the female passenger home before going to the police station

The defence challenges the presumption of accuracy as contained in s. 258(1)(g) and s. 25 of the **Interpretation Act** and to some extent the presumption of identity which is contained in s. 258(1)(c) of the **Criminal Code**.

The accused testified as to a drinking scenario to provide “evidence to the contrary” and there was expert opinion testimony offered at trial by a toxicologist to extrapolate readings for the material times.

Issue: Whether the court is entitled to consider the breath test results as disclosed in the Certificate of Analysis and whether the presumption has been displaced by “evidence to the contrary”.

Result: **The breath results are admissible evidence (although not conclusive as to their accuracy) to determine if there is sufficient “evidence to the contrary” to raise a reasonable doubt regarding the accuracy of the breath test result disclosed in the certificate; R. v. Suttie [2004] O.J. No. 3345 relied on.**

The defendant's testimony regarding a drinking scenario is not credible and is rejected. It does not constitute evidence to the contrary sufficient to displace the presumption in s. 25 of the Interpretation Act. The presumption of accuracy applies and the presumption of identity applies.

Found guilty with respect to the 253(b) offence.