

IN THE PROVINCIAL COURT OF NOVA SCOTIA

Citation: R. v. Dymond, 2004 NSPC 49

Date: 20040525

Docket: 1285904, 1285905

Registry: Kentville

Between:

Her Majesty the Queen

v.

Roger Dymond

LIBRARY HEADING

Judge: The Honourable Judge Alan T. Tufts

Heard: March 3, 2004, at Kentville, Nova Scotia

(Oral) Decision: May 25, 2004

Subject: **254(5) Criminal Code, Refuse Breathalyzer
252(1) Criminal Code, Leaving scene of accident
Lawful arrest; Reasonable and probable grounds for
breathalyzer demand; contact counsel of choice;
admissible statements; identification of accused in
court**

Summary: **Automobile registered to defendant seen colliding with
parked car. Driver left on foot heard running from
area. When constable attended defendant's residence
defendant called on telephone from a store location
nearby. Footprints from accident led in direction of the
store where defendant found.**

**When police arrive at location defendant is seen
entering an automobile in the parking area as**

passenger. Defendant confronted and placed under arrest. Defendant searched and boot taken for comparison with footprints.

Defendant request to contact counsel of choice not fulfilled. Duty counsel contacted and spoke with defendant. Refusal to provide sample by defendant.

Inculpatory statement made by defendant to police.

Defendant not identified in court by crown witnesses. No defence evidence called.

Issue:

Was the arrest lawful; were there reasonable and probable grounds to give breathalyzer demand; was right to counsel breached and was statement made to police admissible.

Result:

No reasonable and probable grounds to give breathalyzer demand. No objective connection other than vehicle registration and the defendant's proximity to accident scene to connect defendant to accident. Refusal of improper demand not an offence and acquitted on s. 254 charge.

Defendant's right to counsel of choice breached. Police did not make every reasonable effort to allow defendant to contact counsel of choice. Charter violation does not result in the exclusion of any evidence, as police appear to have acted in good faith.

Factual finding that conversation between officer and defendant occurred before defendant spoke to counsel renders statement inadmissible.

Discernable facts and knowledge held by arresting officer do not constitute reasonable and probable grounds for arrest, but satisfied articulable cause existed to detain for investigative purposes. Subsequent search of defendant results in keys being admissible but boot inadmissible. Based on remaining admissible

**evidence unable to find beyond reasonable doubt
defendant was driver of subject vehicle and acquitted of
s. 252(1) charge.**

**Not necessary to make finding regarding issue of
identification of defendant in court.**

***THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION.
QUOTES MUST BE FROM THE DECISION, NOT THIS LIBRARY SHEET.***