

IN THE PROVINCIAL COURT OF NOVA SCOTIA

Citation: R. v. Millett, 2004 NSPC 57

Date: 20040616

Docket: 1372597

Registry: Kentville

Between:

Her Majesty the Queen

v.

Daniel Lee Millett

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Judge: The Honourable Judge Alan T. Tufts

Heard: May 11 & 19, 2004 in Kentville, Nova Scotia

Subject: **Section 7(1) Controlled Drugs and Substances Act
Admissibility of evidence as a result of search of
accused's property**

Summary: **Police were asked to intervene in a neighbourhood dispute involving the accused. Police officer attended property to speak about the dispute matter. No one was home at the time the officer attended. The officer went to the garage door and looked in the window and then went around the front and side of the garage and was able to see the remainder of the property. The accused was not present.**

From this vantage point the officer could see a small frame covered with plastic in the garden and testified he could see leaves against the plastic which he believed were the leaves of a marihuana plant.

The officer obtained a search warrant and there is no challenge about the validity of the search warrant other

than to determine if the accused's Charter rights were violated by the police entrance into his property.

Issue: Were the accused's s. 8 charter rights violated when the RCMP constable travelled onto the accused's property beyond knocking on the accused's door.

If the accused's Charter rights were violated should the evidence be excluded.

Result: Found that the RCMP constable was trespassing and searching and therefore violated the accused's s. 8 Charter rights.

**Search rendered warrantless and unreasonable.
Consideration of remedy leads to exclusion of evidence.**

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