

SUPREME COURT OF NOVA SCOTIA

Citation: R. v. Boyce, 2004 NSSC 261

Date: 20041216

Docket: S.H. No. 226350

Registry: Halifax, NS

Between:

Shawn Edward Boyce

Appellant

v.

**Her Majesty the Queen, on the information of
Constable Aurele Pelletier**

Respondent

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Judge: The Honourable Associate Chief Justice Michael MacDonald

Heard: November 17, 2004 in Halifax, Nova Scotia

Written Decision: December 16, 2004

Subject: Criminal Law, *Charter* - Section 9 - Arbitrary Detention - *Off Highways Vehicle Act*, R.S.N.S. 1989, c. 5, as amended; Summary Conviction Appeals, Scope of Appellate Review

Summary: On July 19, 2002, at approximately 10:30 p.m. two R.C.M.P. officers were patrolling in a cruiser along Pine Hill Drive in Gaetz Brook, Halifax County. The officers noticed an all-terrain vehicle (“ATV”) traveling along a recreational trail, but heading towards this public street. The ATV was being operated by the Appellant, Mr. Shaun Boyce. The officers, at that time believing that Mr. Boyce was about to drive the ATV illegally along a public street, decided to stop him. They pulled up to and stopped their cruiser in front of the ATV, thereby preventing Mr. Boyce from traveling any further towards the street. The officers then approached Mr. Boyce with the sole purpose of warning him not to travel on the highway. During this brief initial encounter, the officers detected signs of impairment by alcohol. This led to a breathalyzer demand, and Mr. Boyce being subsequently charged under s. 253 of the *Criminal Code*.

The trial was held before Associate Chief Judge Gibson of the Nova Scotia Provincial Court. Mr. Boyce argued that by this initial encounter he was detained. He further argued that because he was ostensibly doing nothing illegal at the time, this detention was arbitrary; thereby leading to a s. 9 *Charter* breach. As such, Mr. Boyce sought to have the conscripted breathalyzer evidence excluded pursuant to s. 24(2) of the *Charter*.

Gibson, A.C.J. found that while the initial encounter amounted to a detention, it was not arbitrary in the circumstances. He found this police action to be justified as part of their common law investigative authority. Consequently, the learned Trial Judge concluded that Mr. Boyce's *Charter* rights were not breached. As a result, he was convicted of "failing the breathalyzer" [s. 253(b)]. The Appellant challenges this finding.

Issue: Did the Trial Judge commit reversible error?

Result: Appeal dismissed. The Trial Judge committed no error. He found that the Appellant's detention was not arbitrary. This was a sound finding in the circumstances of this case.

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