

SUPREME COURT OF NOVA SCOTIA

Citation: R. v. Sears, 2010 NSSC 160

Date: 20100422

Docket: Cr Amh No. 321751

Registry: Amherst

Between:

Floyd William Sears

Appellant

and

Her Majesty the Queen

By Her Attorney General of Nova Scotia

Respondent

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Judge: The Honourable Justice Gerald R. P. Moir

Heard: April 8, 2010

Subject: Refusal to provide sample of breath; screening device; reasonable excuse; ss. 254(2) and (5) of *Criminal Code*.

Summary: Accused's excuse for refusal was that he was a correctional worker, the detaining officer told him that he would be placed in the lock-up if he failed the breathalyzer, and he feared attack by other detainees. In rejecting the reasonableness of this excuse, the judge commented at length on the accused's failure to explain his fear to the detaining officer. On appeal, it was argued that a detainee does not have to communicate his excuse to the police.

Issues: Whether the accused had established reasonable excuse?

Result:

Appeal dismissed. A close reading of the summary conviction court's reasons revealed that the judge did not hold that excuses must generally be communicated to the police, but that it was unreasonable for the accused to harbour the fear without discussing the risks with the detaining officer, the very person who could have eliminated or diminished the perceived risk.

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