

SUPREME COURT OF NOVA SCOTIA

Citation: *R. v. LaFosse*, 2010 NSSC 240

Date: 20100624

Docket: Hfx No. 318185A

Registry: Halifax

Between:

Justin Guy MacLeod LaFosse

Appellant

v.

Her Majesty The Queen

Respondent

LIBRARY HEADING

Judge: The Honourable Justice M. Heather Robertson

Heard: February 10, 2010, in Halifax, Nova Scotia

Decision: June 24, 2010

Subject: Appeal of a conviction for operating a motor vehicle with an illegal blood alcohol s. 253(b) *C.C.C.*

Summary: At trial, the police officer failed to testify as to his subjective belief that the appellant had operated the motor vehicle while his ability to do so was impaired by alcohol resulting in a s. 8 *Charter* violation.

Section 10(b) *Charter* violation caused, when the police officer failed to fully convey the appellant's right to immediately exercise his right to counsel at the police station, when provided with a private room and telephone in circumstances where the appellant was under a misapprehension that Legal Aid could be later available to him at trial if he qualified for free legal assistance and did not understand that duty counsel was immediately available. While the police officer had at the scene

read from a card in his note book and provided information on the appellant's right to counsel and available telephone numbers, he failed to repeat this informational component at the police station, in the three to five minutes that passed before the appellant merely agreed to provide a breath sample, having failed to reach counsel by phone.

Issue: Whether ss.8 or 10(b) *Charter* violations occurred. Could they be cured by s. 24(2) of the *Charter*, as provision of a breath sample was minimally unintrusive and where no intentional infringing conduct and where the certificate met the tests for admission? *R. v. Grant* [209] S.C.J. No. 32.

Result: Although *Charter* breaches of ss. 8 and 10(b) did occur, the certificate was reliable and crucial evidence pursuant to s. 258 *C.C.C.* and was properly admitted into evidence by the trial judge. Conviction stands. Appeal dismissed.

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