

SUPREME COURT OF NOVA SCOTIA
Citation: R. v. Al-Mansoob, 2013 NSSC 79

Date: 20130206
Docket: Hfx No. 374560A
Registry: Halifax

Between:

Her Majesty the Queen

Appellant

v.

Abdullah Al-Mansoob

Respondent

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Judge: The Honourable Justice Michael J. Wood

Heard: February 6, 2013, in Halifax, Nova Scotia

Written Decision: March 6, 2013

Subject: Criminal Law - Refusal of Breathalyzer Demand -
section 254(5) of the *Criminal Code*

Summary Conviction Appeal - Standard of Review

Summary: The appellant was acquitted of a charge under s. 254(5) of the *Code* on the basis that the trial judge found that the demand was made under the *Motor Vehicle Act* and not the *Code*.

Issue: The basis for the judge's conclusion was the officer's testimony that the appellant's status as a new driver was a factor in his decision to make the demand.

Should the Crown's appeal be granted?

Result: The judge's decision was unreasonable because it did not address the discussions between the officer and the appellant which showed that the demand was being made under the *Code*. In addition, a demand for a breath sample can result in consequences under both the *Code* and the *Motor Vehicle Act* - these are not mutually exclusive.

Appeal allowed and conviction entered.

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