

R. v. Loewen, [2011] 2 S.C.R. 167

Facts:

Derek Loewen was pulled over for speeding. The officer smelled freshly burned marijuana coming from inside the vehicle and found \$5,410, mainly in \$20 bills, in Loewen's pocket. The officer arrested Loewen for possession of a controlled substance. The officer searched the vehicle and found 100 grams of crack cocaine. Loewen was convicted at trial. The Court of Appeal upheld the conviction. One of the judges of the Court of Appeal dissented and would not have admitted the crack cocaine evidence.

The Decision:

The Supreme Court of Canada agreed with the trial judge and the majority of the Court of Appeal.

The issue was whether the arrest and search of the vehicle violated *The Charter of Rights and Freedoms*. If the arrest was unlawful, then Loewen's detention violated section 9 of *The Charter*. The search therefore would not have been incidental to the arrest and would violate section 8 of *The Charter*.

The trial judge decided that the arrest was lawful. Section 495(1)(a) of *The Criminal Code* allows an officer to arrest an individual whom he believes, on reasonable grounds, has committed an indictable offence. Possession of marijuana is an indictable offence if someone has more than 30 grams in their possession. The judge decided that the smell of burnt marijuana and the \$5,410 in Loewen's pocket, mostly \$20's, suggested that he was involved in the drug trade. Therefore, the arrest was lawful. The arrest did not violate section 9. The search was therefore incidental to the arrest and did not violate section 8.

Discussion Questions

Do you agree with the trial judge, the majority of the Court of Appeal and the Supreme Court of Canada that the police officer had reasonable grounds to arrest Loewen based on the smell and the cash in his pocket, or do you agree with the dissenting judge? Why?

What is the difference between an indictable offence and a summary conviction offence?

If there had been a violation of sections 8 and 9 of the Charter, do you think the cocaine evidence should still have been admitted under section 24(2) of *The Charter*? Why or why not?

Relevant Law

Criminal Code of Canada

Arrest without warrant by peace officer

495. (1) A peace officer may arrest without warrant

(a) a person who has committed an indictable offence or who, on reasonable grounds, he believes has committed or is about to commit an indictable offence;

(b) a person whom he finds committing a criminal offence; or

(c) a person in respect of whom he has reasonable grounds to believe that a warrant of arrest or committal, in any form set out in Part XXVIII in relation thereto, is in force within the territorial jurisdiction in which the person is found.

Limitation

(2) A peace officer shall not arrest a person without warrant for

(a) an indictable offence mentioned in section 553,

(b) an offence for which the person may be prosecuted by indictment or for which he is punishable on summary conviction, or

(c) an offence punishable on summary conviction,

in any case where

(d) he believes on reasonable grounds that the public interest, having regard to all the circumstances including the need to

(i) establish the identity of the person,

(ii) secure or preserve evidence of or relating to the offence, or

(iii) prevent the continuation or repetition of the offence or the commission of another offence,

may be satisfied without so arresting the person, and

(e) he has no reasonable grounds to believe that, if he does not so arrest the person, the person will fail to attend court in order to be dealt with according to law.

Consequences of arrest without warrant

(3) Notwithstanding subsection (2), a peace officer acting under subsection (1) is deemed to be acting lawfully and in the execution of his duty for the purposes of

(a) any proceedings under this or any other Act of Parliament; and

(b) any other proceedings, unless in any such proceedings it is alleged and established by the person making the allegation that the peace officer did not comply with the requirements of subsection (2).

Charter of Rights and Freedoms

Search or seizure

8. Everyone has the right to be secure against unreasonable search or seizure.

Detention or imprisonment

9. Everyone has the right not to be arbitrarily detained or imprisoned.

Exclusion of evidence bringing administration of justice into disrepute

24. (2) Where, in proceedings under subsection (1), a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by this Charter, the evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute.

Resources

You can read the entire case at:

<http://canlii.org/en/ca/scc/doc/2011/2011scc21/2011scc21.html>

You can find the *Charter of Rights and Freedoms*, and *The Criminal Code* at:

<http://laws.justice.gc.ca/eng/>