

Supreme Court Decision: R. v. Le, 2019 SCC 34

Media Coverage

1. [Supreme Court sides with Toronto man over detention in race-tinged case](#) (May 31, 2019)
2. [Supreme Court blasts arrest of racialized man, overturns his gun and drug convictions](#) (May 31, 2019)
3. [Supreme Court says Toronto police breached Charter in minority search case](#) (May 31, 2019)

Facts of the Case

At approximately 10:40 p.m. on May 25, 2012, five young men (one Asian, four Black), were hanging out in the backyard in the townhouse which was the residence of one of the youth present in the backyard. They were doing nothing wrong, just hanging out and talking. The townhouse was in the Atkinson Housing Co-Op Housing community (just south of Kensington Market). Among the young men was the 20-year-old appellant (Mr. Le, who is Asian) and his host, Mr. Dixon (one of the four Black youth). While their hanging out, three Toronto police officers, Csts. Teatero, Reid and O'Toole, show up, enter the backyard and begin asking the youth questions and including making requests for them to provide their identification.

Cst. O'Toole asked Mr. Le what he had in his bag. Mr. Le responded to Cst. O'Toole's questioning by turning and running away. Two of the three officers ran after the Mr. Le and were able to tackle him to the ground nearby. As Cst. O'Toole tackled the Appellant, he noted that the Appellant's bag was open a few inches. Cst. O'Toole put his hand on the bag and realized it contained a gun. The police seized the bag and the gun. During a pat down search, Cst. Reid found cash in Mr. Le's pockets. After his arrest, the police seized 13 grams of crack cocaine on the Appellant's person.

Issue

Did the police breach Mr. Le and the other Black youths' Charter rights by entering (without consent, warning or a warrant) into the backyard, questioning them and extracting their personal identification?

Outcome

The majority (three judges; note that two judges wrote a minority opinion) found that the police did indeed violate the individuals' Charter rights. As a result, the Court decided to throw out the evidence found (gun, drugs, money), and acquit Mr. Le.

Quotes from the Decision of Interest to CABR

The impact of the over-policing of racial minorities and the carding of individuals within those communities without any reasonable suspicion of criminal activity is more than an

inconvenience. Carding takes a toll on a person's physical and mental health. It impacts their ability to pursue employment and education opportunities (Tulloch Report, at p. 42). Such a practice contributes to the continuing social exclusion of racial minorities, encourages a loss of trust in the fairness of our criminal justice system, and perpetuates criminalization. para 95.

We do not hesitate to find that, even without these most recent reports, we have arrived at a place where the research now shows disproportionate policing of racialized and low-income communities (see D. M. Tanovich, "Applying the Racial Profiling Correspondence Test" (2017), 64 C.L.Q. 359). Indeed, it is in this larger social context that the police entry into the backyard and questioning of Mr. Le and his friends must be approached. It was another example of a common and shared experience of racialized young men: being frequently targeted, stopped, and subjected to pointed and familiar questions. The documented history of the relations between police and racialized communities would have had an impact on the perceptions of a reasonable person in the shoes of the accused. When three officers entered a small, private backyard, without warrant, consent, or warning, late at night, to ask questions of five racialized young men in a Toronto housing co-operative, these young men would have felt compelled to remain, answer and comply. Para. 97.

Requiring the police to comply with the Charter in all neighbourhoods and to respect the rights of all people upholds the rule of law, promotes public confidence in the police, and provides safer communities. The police will not be demoralized by this decision: they, better than anyone, understand that with extensive powers come great responsibilities. para 165.

What Does This Case Mean?

This decision affirms that there is not a two-tier system of Charter-protected privacy rights in our country. Police, therefore, will be considered to have engaged in an arbitrary detention (in violation of s. 9 of the Charter), if, without a valid reason, warrant or consent, they engage in carding by entering on to the private property of a resident in a racialized, high-crime, low-income neighbourhood while the resident is doing nothing illegal or suspicious.

It also affirms that where the police obtain incriminating evidence from an individual in these circumstances, the Court should order that this evidence be excluded because the police obtained the evidence through a violation of the individual's rights. In other words, the case indicates that evidence obtained through the violation of individuals' right to be free from arbitrary detention, cannot be accepted by the court, because accepting such tainted evidence would significantly harm the reputation of the courts and court process in the eyes and minds of the general Canadian public. Because of this, the SCC in this case excluded the incriminating evidence found on the accused, set aside the individual's conviction at lower levels of court, and acquitted the individual of the charges laid against him.

The decision does not mean that carding is now illegal. However, given the unusually strong language the court uses to expose the disproportionately negative impact that carding, racial profiling and targeted neighbourhood policing has on racialized

communities, it will be much much more difficult for police services in Toronto and across Canada to justify or excuse carding, street checks or other blanketing of Black and otherwise racialized communities in the interest of ‘public safety’.

Toronto Action Plan Connections

16.1 Review communication strategies with communities of African descent about the ongoing elimination of carding as a policing practice

- We should ask TPS what they plan to do to ensure they’re operating in ways consistent with the decision.

16.2 Review the decision not to destroy the previously collected carding data

- The court has said that carding impacts individuals’ pursuit of educational and employment opportunities. This gives a basis for arguing for the destruction of the data.

16.4 Review police and community training, including Community Crisis Response Programs, to include use of force issues

- This decision should impact how officers interact with communities in low-income, social housing communities

16.7 Communicate to the Province the need for improvements to policing and the justice system to better serve and protect people of African descent

- Following up on the advocacy the PAC did on the OHRC report (which is also quoted in this Supreme Court case, we could get the PAC to release another press statement given that this case originates out of Toronto, in a low-income, high crime neighbourhood and involves 4 Black youth

17.2 Review and overhaul the Professional Standards for discipline at the Toronto Police Service

- We should ensure that the professional standards unit of the TPS incorporates this decision in its analysis for determining when to lay a charge against an officer
- We should also raise the question of whether the officers involved are going to be disciplined

18.1 Work with community partners to build a coordinated strategy to advance police accountability and community capacity to respond to policing and the justice system, including translation, expansion, and dissemination of “know your rights” information

- This case is now a textbook case that should inform all our ‘know your rights’ education initiatives

18.2 Use an Anti-Black Racism Analysis to develop and implement alternative models of policing that focus on community engagement

- Now that the court has exposed the racially discriminatory impacts of carding in such clear language we can use the decision to push the TPS to explore more equitable ways of doing ‘community engagement’.