



Case in Brief: ***R. v. Tim***

Judgment of April 14, 2022 | On appeal from the Court of Appeal of Alberta
Neutral citation: 2022 SCC 12

The Supreme Court upholds an Alberta man’s conviction for drug and firearm offences despite a police error.

On October 8, 2016, Sokha Tim hit a road sign on a busy street in Calgary, Alberta and kept driving. When police found him about one kilometre away, the officer asked to see his driver’s license, vehicle registration and proof of insurance. While Mr. Tim searched for the documents, the officer saw him try to hide a zip-lock bag containing a single yellow pill. The officer correctly identified the pill as gabapentin, a prescription drug, but mistakenly believed it was a controlled substance. After the officer arrested Mr. Tim, he and another officer searched him and his car, and found illegal drugs, ammunition and a loaded handgun.

Mr. Tim was charged with drug and firearm offences. At trial, he said the police had no basis to arrest or search him because the officer was mistaken about the legal status of gabapentin. As a result, he argued the police had violated his rights under sections 8 and 9 of the *Canadian Charter of Rights and Freedoms (Charter)*. Section 8 of the *Charter* protects people from “unreasonable search or seizure” and section 9 protects people from “arbitrary detention”. The trial judge dismissed his arguments and admitted the evidence.

Convicted on all charges, Mr. Tim appealed to Alberta’s Court of Appeal, which found no violation of his *Charter* rights. He then appealed to the Supreme Court of Canada.

The Supreme Court has dismissed the appeal.

Mr. Tim’s *Charter* rights were violated, but the evidence could be admitted nonetheless.

Writing for a majority of the judges of the Supreme Court, Justice Mahmud Jamal said police violated Mr. Tim’s section 9 *Charter* right by arresting him based on a mistake about the legal status of gabapentin. “Allowing the police to arrest based on what they believe the law is — rather than based on what the law actually is — would dramatically expand police powers at the expense of civil liberties”, he wrote. Justice Jamal also said because Mr. Tim’s arrest was unlawful, the searches of him and his car that followed also violated his section 8 *Charter* right.

When evidence is obtained in a manner that violates an accused’s *Charter* rights, courts must conduct an analysis to determine if the evidence could still be admitted, or whether its admission would harm or “bring the administration of justice into disrepute”. In this case, Justice Jamal said the violations were less serious and only moderately impacted Mr. Tim’s *Charter*-protected interests. On the other hand, the evidence was reliable and essential to the prosecution of serious offences. Weighing these considerations, Justice Jamal said the evidence could be admitted. As a result, the Court has upheld Mr. Tim’s convictions.

The *Canadian Charter of Rights and Freedoms*

The *Charter* is part of Canada’s Constitution and protects various rights and freedoms. It came into force 40 years ago, on April 17, 1982. Since that time, Canadian courts have decided a wide range of legal questions where they interpret and apply the *Charter*. In criminal cases such as this one, the *Charter* helps clarify police powers in relation to the rights of the accused.

Breakdown of the decision: **Majority:** Justice [Jamal](#) dismissed the appeal, holding that despite violations of sections 8 and 9 of the *Charter* the evidence should be admitted and the convictions upheld (Chief Justice [Wagner](#) and Justices [Moldaver](#), [Côté](#), [Rowe](#) and [Kasirer](#) agreed) | **Dissenting:** Justice [Brown](#) would have allowed the appeal, excluded the evidence and substituted acquittals on all charges.

More information (case # 39525): [Decision](#) | [Case information](#) | [Webcast of hearing](#)

Lower court rulings: judgment (Court of Queen’s Bench of Alberta – unreported) | [appeal](#) (Court of Appeal of Alberta)