



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

Judgment of December 1, 2023 | On appeal from the Court of Appeal of Alberta  
Neutral citation: 2023 SCC 30

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***The Supreme Court declines to exclude evidence obtained in breach of an accused's rights in a drug trafficking case.***

This case is about whether police conduct after an initial traffic stop breached the accused's rights under the *Canadian Charter of Rights and Freedoms*, and if so, whether the evidence collected as a result of that police conduct should be excluded from trial.

In February 2017, Mr. George Zacharias was pulled over for a traffic stop on a highway near Banff, Alberta, because he was driving a truck with a burnt-out light and illegally tinted windows. The police officer made several observations during the stop that made him suspicious Mr. Zacharias was transporting drugs. These observations led the police officer to detain him for the purpose of asking more questions. This is known as "investigative detention". The police officer also called for a sniffer dog and placed Mr. Zacharias in a police car until the dog arrived. The sniffer dog signaled that drugs were present. The police officer concluded he had reasonable and probable grounds to arrest Mr. Zacharias for possession of a controlled substance and did so. It was the first of three arrests.

The police then searched Mr. Zacharias' truck and discovered a large quantity of cannabis and cash. Mr. Zacharias was re-arrested for possession for the purpose of trafficking, handcuffed and driven to a police detachment. He was then searched and arrested a third time for possession of proceeds of crime over \$5,000.

At trial, Mr. Zacharias alleged the police had breached his rights under the *Charter* during the investigation, namely his right under section 8 to not be subjected to unreasonable search or seizure, and his right under section 9 to not be arbitrarily detained. He argued that the drug evidence seized by the police should be excluded from trial under section 24(2) of the *Charter*. This section says that evidence obtained in a way that breached the rights of an accused may be excluded from trial if admitting it would bring the administration of justice into disrepute. To determine whether the evidence in question should be excluded, a court will look at three indicators: (1) the seriousness of the state conduct in breach of the *Charter*; (2) the impact of the breach on the accused; and (3) society's interest in adjudicating the matter on its merits.

The trial judge found the police breached Mr. Zacharias' rights under sections 8 and 9 of the *Charter* in conducting a sniffer search and investigative detention, but held that the evidence should not be excluded under section 24(2). He was ultimately convicted of possession of 101.5 pounds of marijuana for the purpose of trafficking. On appeal before the Court of Appeal of Alberta, Mr. Zacharias argued the trial judge failed to consider whether the police's conduct after these initial violations also breached the *Charter*. The majority of judges dismissed his appeal. One judge disagreed and would have excluded the evidence.

The Supreme Court has dismissed the appeal.

**The additional *Charter* breaches did not warrant exclusion of the evidence.**

Three of the five judges agreed that the additional consequential breaches did not raise the seriousness of the state conduct at issue (the first indicator of the section 24(2) analysis). On balance, the evidence should not be excluded from the trial under section 24(2). Mr. Zacharias' conviction is therefore upheld.

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**Breakdown of the decision: Reasons by:** Justices [Rowe](#) and [O'Bonsawin](#) dismissed the appeal | **Concurring:** Justice [Côté](#) agreed with Justices Rowe and O'Bonsawin on the disposition, but disagreed with the proposition that the state cannot rely on unlawfully obtained evidence to satisfy the reasonable and probable grounds requirement for arrest. | **Dissenting:** Justices [Martin](#) and [Kasirer](#) would have allowed the appeal, ordered the exclusion of evidence, set aside the appellant's conviction and entered an acquittal.

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

**Lower court rulings:** [Decision](#) (Court of Queen's Bench of Alberta - unreported) | [Appeal](#) (Court of Appeal of Alberta)

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