

CRIME AND PUBLIC POLICY: PRACTICE TEST

Read the case *R v L.B.*, 2007 ONCA 596 (CanLII), available at <https://www.canlii.org/en/on/onca/doc/2007/2007onca596/2007onca596.pdf>

Focus on the facts, trial judge decision, and conclusion.

Analyze this case in light of the models of criminal justice, theories, concepts, discussions, and class activities that we did in class. Follow the format and requirements extensively explained in class. A material that is on the course website or course outline but that was not actually discussed in class may not be used. Don't do any outside research. Don't include articles, cases, or any other materials that were not discussed in class.

You are not permitted to consult with anyone about the case or its analysis. You should be able to do very well on this test without doing any outside research. Do not ask me questions about the test, once the review class has ended. As a matter of fairness, I do not want to give answers to some students that others do not have the benefit (or detriment) of hearing. You will simply have to use your own judgment about how to handle any possible difficulties, which you have discovered once the time for asking questions has passed.

Submission: You need to hand in this evaluation personally on November 20, 2017 at 7 pm IN CLASS. There are no other submission dates or places.

FACTS OF THE CASE

The accused youth was charged with possession of a loaded restricted firearm and other offences. He and another young man aroused the suspicion of two police officers. The two young men, F and LB, were seated apart, yet appeared to be "together" as they looked at each other and LB spoke to F. F was seated partly on the railing at the bottom of stairs leading to the school and LB was near the top of the stairway, within school grounds. The accused could see each other but not the area in which the other was seated. It reminded the officers of how police

officers would set up to find someone, giving each a view of a different area but still able to see each other. When the police officers approached the youths, LB, who police had noted was carrying a knapsack, stood up and, taking the initiative, walked directly up to one of the officers. The officers had planned for each of them to talk to one of the accused and to prevent them from talking to each other. The officer asked for his name and date of birth with the intention of running a CPIC check. Meanwhile, the other officer noticed that LB was no longer carrying the knapsack. The officer went to the area where LB had been sitting and started to look around. He noted that LB now appeared fidgety and was looking around, although he had appeared confident when he initially approached the officers. The officer found the bag and asked whose it was. LB said, "I don't know", and the other youth did not respond. The officer treated the bag as abandoned property and opened it. Inside, he found school work with LB's name on it and a loaded .22 calibre handgun. Neither accused testified on the Charter voir dire.

TRIAL JUDGE DECISION

The trial judge found that the accused was detained when he was asked for identification, that the detention was arbitrary and violated s. 9 of the Canadian Charter of Rights and Freedoms, that the police violated the accused's s. 10(b) Charter rights by not informing him of his right to counsel before asking him about ownership of the bag, and that the search of the bag violated the accused's rights under s. 8 of the Charter. The evidence of the gun and LB's statement that the bag wasn't his was excluded under s. 24(2) of the Charter and the accused was acquitted.

COURT OF APPEAL DECISION

The seminal issue at trial, and now on appeal, is whether the respondent was detained when, in response to a question from a police officer, he denied ownership of a knapsack in which his school work was found, along with a loaded .22 calibre handgun. Applying the law, as he perceived it, to the uncontradicted evidence of two police officers who testified on a voir dire about their involvement with the respondent and the circumstances leading to the discovery of the gun, the trial judge found that the respondent was detained prior to being questioned about the ownership of the knapsack. That finding was central to the outcome of the case. It took the trial judge down an analytical path that required him to consider how, if at all, the police had breached the respondent's Charter rights from the point at which he was detained to the discovery

of the gun. That analysis proved fatal to the Crown's case. The trial judge found that from the point of detention to the finding of the gun, the police violated the respondent's Charter rights in three separate ways. 2007 ONCA 596 (CanLII). First, he found that the police had no legal justification to detain the respondent and his detention was therefore arbitrary in contravention of s. 9 of the Charter. Second, he found that the police failed to inform the respondent of his right to counsel under s. 10(b) of the Charter before questioning him about the ownership of the knapsack. Third, he found that the police had no lawful authority to search the knapsack and in doing so, they breached the respondent's privacy rights under s. 8 of the Charter. The trial judge next turned to s. 24(2) of the Charter and made two pertinent findings. First, he found that the gun would not have been discovered had the police not violated the respondent's privacy rights. Second, he found that the administration of justice would be brought into disrepute if the court were to turn a blind eye to police conduct "that breaches fundamental constitutional rights" and threatens "the very fabric of our society". Accordingly, the trial judge excluded the gun from evidence under s. 24(2). For reasons that follow, I am respectfully of the view that the learned trial judge came to the wrong conclusion on the issue of detention. Regrettably, that error skewed his entire analysis. Had the trial judge applied the correct legal principles to the uncontradicted facts, he would have found that the respondent was not detained when he was questioned about the ownership of the knapsack, nor indeed, at any time prior to arrest; likewise, he would have found no Charter breaches. It follows that the gun should have been admitted into evidence. Accordingly, I would allow the appeal and set aside the acquittals.