

Compressing an argument: getting to the point

Not recommended!

23. Canada submits that although the police gathered the evidence contrary to s. 8 of the Charter, the evidence was properly admitted under s. 24(2) of the Charter. In *R. v. Collins*, the Supreme Court held that a three-fold test must be followed in order to assess whether evidence that has been obtained in a manner that violates the Charter should be excluded. Under that test, the Court looks at whether the admission of the evidence would affect trial fairness. The Court also looks at whether the Charter violation was serious. Finally the Court looks at whether the admission of the evidence in all of the circumstances of the case would bring the administration of justice into disrepute.

(case)

24. Courts have held that trial fairness is affected by whether the evidence is real evidence that exists without the participation of the accused or whether it has been conscripted from the accused.

(case)

(case)

(case)

25. Courts have held that the more serious the Charter violation, the more likely the evidence will be excluded.

(case)

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(case)

26. Finally, Courts have held that the seriousness of the offence with which the accused has been charged is a relevant factor tending to favour the admission of the evidence into the proceeding.

(case)

(case)

(case)

27. The accused submits that the admission of the evidence would affect trial evidence because the napkin that the accused used to blow his nose and that was used to obtain the DNA results was conscripted from him.

28. The accused submits that the Charter violation in this case – forcibly taking the napkin from the accused's hands – is a serious one.

29. The accused also submits that the alleged offence, manslaughter, is not as serious as first degree murder and there have been manslaughter cases where evidence has been excluded under s. 24(2).

30. The Crown submits that the evidence is real evidence. The accused was not told to blow his nose so it was not conscripted from him. The accused was in the process of throwing the used napkin into the waste basket (*i.e.*, abandoning it) and so the napkin is more properly characterized as real evidence.

31. The Crown submits that the Charter breach was not serious. The Crown merely intercepted the napkin while the accused was in the process of throwing it away. This is far from a seizure from someone who was unwilling to part with possession.

32. Finally, the Crown submits that the administration of justice would be brought into disrepute if this evidence were excluded, as this was a cruel killing of a 70 year old man.

33. Therefore, the Crown submits that the evidence should have been admitted into the proceedings.

Recommended:

23. Canada submits that although the police gathered the evidence contrary to s. 8 of the Charter, the evidence was properly admitted under s. 24(2) of the Charter, following the three-fold test in *R. v. Collins*:

- *Will admission affect trial fairness?* The accused submits that trial fairness is affected because the napkin was conscripted from the accused and was not pre-existing, real fairness. This is an incorrect characterization of the napkin. The accused was not told to blow his nose so it was not conscripted from him. The accused was in the process of throwing the used napkin into the waste basket (*i.e.*, abandoning it) and so the napkin is more properly characterized as real evidence.

(case)

- *Was the Charter violation serious?* The accused submits that the napkin was forcibly taken from his hand. This is incorrect. The police merely intercepted the napkin while the accused was in the process of throwing it away. This is far from a seizure from someone who was unwilling to part with possession.

(case)

- *Effects on the administration of justice?* The accused submits that this is just a manslaughter case, not a murder case, so exclusion would not bring the administration of justice into disrepute. The Crown disagrees. This was a cruel killing of a 70 year old man.

(case)