



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

Judgment of May 31, 2019 | On appeal from the Court of Appeal for Ontario  
Neutral citation: 2019 SCC 34

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***Evidence found on a young racialized man who was detained by police without reasonable suspicion can't be used against him in court, the Supreme Court has ruled.***

One evening in 2012, Mr. Le and four friends were hanging out in a backyard talking. Three police officers saw them. The officers hadn't been called there for any specific reason. They didn't have a warrant. They had just been told that this was a "problem address" for drug dealing and that a wanted suspect sometimes hung out there. They didn't see the men doing anything wrong. Even so, the officers came into the yard without asking permission. They questioned the men, told one of them to keep his hands visible, and asked for ID.

Mr. Le said he didn't have ID with him. The officer asked what was in the bag he was carrying. At that point, Mr. Le ran away. He was arrested and found to have a gun, drugs, and cash. He was charged with ten crimes related to these items.

At his trial, Mr. Le said the items found on him couldn't be used as evidence against him. He said the police breached his rights under the *Canadian Charter of Rights and Freedoms*. The *Charter* is part of Canada's Constitution. Section 9 says that "everyone has the right not to be arbitrarily detained or imprisoned." This means that police can't detain people, or put them in jail, without a legal reason. Section 24(2) says that evidence taken by breaching someone's rights can't be used if it "would bring the administration of justice into disrepute." That means it can't be used if admitting it could make people lose faith in the justice system and the laws meant to protect them.

Everyone agreed that the police had no legal authority to make Mr. Le and his friends answer questions, follow directions, or show ID. Everyone agreed that Mr. Le was detained at some point. The question was exactly when, and whether there was a legal reason for it.

The trial judge said Mr. Le wasn't detained until he was asked about his bag. He said the detention was legal because the officers had reasonable suspicion of a crime by that point (they thought Mr. Le might have a gun). He found Mr. Le guilty. A majority of the Court of Appeal agreed.

The majority at the Supreme Court said the detention was illegal. It said the police actions were so shocking that the items they found by detaining Mr. Le couldn't be used against him in court.

The majority said someone is "detained" when an ordinary person in the same situation would think that they weren't free to leave and had to comply with police demands. Mr. Le was a member of a racialized community in a low-income area. Members of racial minorities and people living in low-income areas often have more negative police contacts than other people do. An ordinary person stopped by the police many times before would think they had to do what the police said. The majority said Mr. Le was detained as soon as the officers entered the backyard.

The majority noted that the officers came in without warning and without any reasonable suspicion of a crime. (Someone just *saying* that drug dealing was happening wasn't enough.) Since they didn't have reasonable suspicion, what they did was illegal. The majority said this was exactly the kind of thing the *Charter* was meant to protect people from.

The police got the evidence against Mr. Le by walking into a backyard and detaining him without a legal reason. If this were allowed, the majority said, people would lose faith in the justice system. Police have to follow the *Charter* in all neighbourhoods and for all people, no matter what their racial background or income. This helps people trust the law and the police, and makes our communities safer. The majority said the evidence the police found on Mr. Le couldn't be used against him. It entered not-guilty verdicts for the charges. This result wasn't because the *Charter* doesn't care about violence, drugs, or community safety. It was because the illegal police actions were so serious.

This case came to the Supreme Court as an appeal "as of right." That means there is an automatic right to appeal. The person doesn't need the Court's permission. The right is automatic in criminal cases when a Court of Appeal judge dissents (disagrees) on a point of law, as happened here.

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**Breakdown of the decision:** *Majority:* Justices Russell [Brown](#) and Sheilah [Martin](#) allowed the appeal (Justice [Karakatsanis](#) agreed) | *Dissenting:* Justice Michael [Moldaver](#) said the trial judge's findings about how the police acted should stand, and since their actions weren't serious and there was a strong public interest in prosecuting the charges, he would have dismissed the appeal (Chief Justice [Wagner](#) agreed)

**More information (case # 37971):** [Decision](#) | [Case information](#) | [Webcast of hearing](#)

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