



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

Judgment of May 13, 2022 | On appeal from the Court of Appeal of Alberta
Neutral citation: 2022 SCC 18

The Supreme Court restores an Alberta man’s acquittal for attacking a woman while in a state of automatism.

On the night of January 12, 2018, Matthew Winston Brown consumed alcohol and “magic mushrooms” at a party in Calgary, Alberta. The mushrooms contain psilocybin, an illegal drug that can cause hallucinations. Mr. Brown lost his grip on reality, left the party and broke into a nearby home, violently attacking a woman inside. The woman suffered permanent injuries as a result of the attack. When Mr. Brown broke into another house, the couple living there called the police. Mr. Brown said he had no memory of the incidents.

Mr. Brown was charged with aggravated assault, breaking and entering, and mischief to property. He had no previous criminal record and no history of mental illness.

At trial, Mr. Brown pleaded not guilty to the charges of “automatism”. Automatism is when someone claims to have been so intoxicated or impaired that they had lost complete control of themselves.

The Crown argued Mr. Brown could not rely on automatism because section 33.1 of the *Criminal Code* prevents a person from using automatism as a defence for crimes involving assault or interference with the bodily integrity of another person.

Mr. Brown responded that section 33.1 of the *Criminal Code* violates sections 7 and 11(d) of the *Canadian Charter of Rights and Freedoms*. Section 7 guarantees everyone the right to life, liberty and security of the person, whereas section 11(d) guarantees everyone the right to be presumed innocent until proven guilty. The judge agreed with Mr. Brown and acquitted him. The Crown appealed to Alberta’s Court of Appeal, which disagreed and convicted Mr. Brown. He then appealed to the Supreme Court of Canada.

The Supreme Court has restored the acquittal.

The Supreme Court heard this case together with *R. v. Sullivan*, and the judgments are being rendered at the same time.

Section 33.1 of the *Criminal Code* violates sections 7 and 11(d) of the *Charter* and is therefore unconstitutional.

Writing for a unanimous Supreme Court, Justice Nicholas Kasirer said section 33.1 of the *Criminal Code* violates sections 7 and 11(d) of the *Charter* in a way that cannot be justified in a free and democratic society and is unconstitutional. He wrote that section 33.1 violates section 11(d) of the *Charter* because society could interpret someone’s intent to become intoxicated as an intention to commit a violent offence. Section 33.1 also violates section 7 because a person could be convicted without the prosecution having to prove that the action was voluntary or that the person intended to commit the offence.

Convicting someone for how they conducted themselves while in a state of automatism violates principles of fundamental justice. Our criminal justice system is based on the notion of personal responsibility. In Canada, two elements of fundamental justice are required for a person to be found guilty of a crime. They are: a guilty action; and (2) a guilty mind. Neither element is present when a person is in a state of automatism.

Parliament could enact legislation to address violence caused by extreme intoxication.

The Court explained that Parliament could enact new legislation to hold an extremely intoxicated person accountable for a violent crime. The Court emphasized that, “protecting the victims of violent crime – particularly in light of the equality and dignity interests of women and children who are vulnerable to intoxicated sexual and domestic acts – is a pressing and substantial social purpose”.

Breakdown of the decision: *Unanimous*: Justice [Kasirer](#) allowed the appeal (Chief Justice [Wagner](#) and Justices [Moldaver](#), [Karakatsanis](#), [Côté](#), [Brown](#), [Rowe](#), [Martin](#), and [Jamal](#) agreed)

More information (case # 39781): [Decision](#) | [Case information](#) | [Webcast of hearing](#)

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