

***R v. Wasserman* Appeal Decision Analysis**

R Hothi

On March 30, 2013, the appellant, in this case, was arrested by the police. The appellant was subject to a lawful traffic stop for improper display of a temporary licence plate where the police conducted a search of his vehicle and found drugs. The appellant was charged with possession of cocaine and ecstasy for the purpose of trafficking and possession of the proceeds of crime. The appellant after his conviction put an application forward asking the evidence to be excluded. The accused alleged the evidence was obtained under an unlawful arrest and an illegal search. The Crown's position was that the search was valid as incident to a lawful arrest. The judge ultimately found that the evidence was obtained reasonably even though there were certain *Charter* violations. This case is an appeal by the accused of the trial judge's decision and he is appealing his convictions for possession of cocaine and ecstasy for the purpose of trafficking and possession of property obtained by crime.

The appeal by Wasserman is focused on whether the search conducted by the police was reasonable and if it wasn't reasonable then the evidence should be excluded. The two issues on this appeal by the appellant are whether the judge erred by not excluding the evidence under section 24(2) of the *Charter* and by refusing to reopen the trial postconviction. Section 24(2) of the *Charter* states that if evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by the *Charter*, the evidence shall be excluded if it is established that, having regard to all circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute. The appeal judge considered these two issues and whether the findings by the trial judge in the original application were correct and if there were any errors made in the arguments they put forward. Ultimately the judge agreed with the original

findings and dismissed the appeal, finding that the arrest and search of the appellant's vehicle were appropriate in the circumstances.

The appeal was dismissed by the judge because they found that the original findings of the trial judge were correct. They agreed with the trial judge's findings that even though the police acted hastily in stopping him and arresting him for what they thought was a stolen vehicle, the officers were still justified in arresting the appellant. The judge ruled that it was appropriate for the police to ask the appellant to exit the vehicle because there was a risk of him fleeing. The trial judge after weighing and balancing the various factors was satisfied that admission of the evidence would not bring the administration of justice into disrepute. The appeal agreed. The appellant judge stated that the trial judge came to a reasoned section 24(2) conclusion and that she considered the proper section 24(2) factors and did not make an unreasonable finding. In sum, the appeal court ultimately concluded that the conclusions the trial judge made in relation to s. 24 (2) of the *Charter* were correct and not unreasonable based on the circumstances surrounding this case.

This appeal showcases the powers the police have in relation to conducting warrantless searches, how the court gives them broader powers to conduct these searches and whether a *Charter* violation will be considered in determining if a search is unreasonable may depend on how the judge feels about the particular case. In this appeal, the judge stated like the trial judge that the appellant's *Charter* rights were violated but the officers still had reasonable and probable grounds to search him. They said the evidence in the vehicle would have been found anyways if they only stopped and searched the vehicle. The appeal also discusses how the *Charter* is interpreted broadly in court proceedings and depends on the evidence and the particular circumstances of the case. In my opinion, this showcases the broad powers the police have and if

the evidence is considered more morally wrong by society the more likely the court is to find the conduct of the police reasonable. I believe that they are more likely to argue that the police had reasonable grounds to search the accused. Here the accused was in possession of cocaine and ecstasy for the purpose of trafficking so the court found that the evidence was not obtained unreasonably and that the conduct of the accused justified the police's behaviour. They said the admission of the evidence would not bring the administration of justice into disrepute because some of the evidence was found hanging off of the appellant when he got out of the car giving the police reasonable and probable grounds to search the vehicle. In short, this appeal demonstrates how courts determine what a reasonable search is and even if there are broad *Charter* violations, they can still be justified by the judge making the decision.

*R v. Wasserman* is an appeal by Wasserman of the dismissal of his application by the trial judge who found that the evidence was obtained reasonably and there were not significant violations of the *Charter* that the evidence should be excluded. The appeal was ultimately dismissed by the judge because they agreed with the findings of the trial judge who concluded that the police had reasonable and probable grounds to conduct the search. This case showcases the deference judges are given to determine whether the conduct of the police is unreasonable in the circumstances. It also showcases the broad powers that the police have when conducting a search and that the more morally wrong a crime is the more likely the court is to find that the search was reasonable. In conclusion, the appeal judge confirmed the findings of the trial judge in the appellant's application, agreed that the violation of *Charter* rights under s 24(2) were not so egregious as to re-open the trial after conviction and to exclude the evidence and that the court has the right to justify certain violations of *Charter* rights.

Sources:

[http://www.manitobacourts.mb.ca/site/assets/files/1036/r\\_v\\_wasserman\\_2020\\_mbca\\_1.pdf](http://www.manitobacourts.mb.ca/site/assets/files/1036/r_v_wasserman_2020_mbca_1.pdf)

R. v. Wasserman, [2020] M.J. No. 37

