

R. v. Grant, 2009 SCC 32 – arbitrary detention

Facts:

Two plainclothes police officers were on patrol in the Danforth area of Toronto. Their primary duty was to visit schools in the area to help create a safer environment and prevent the assaults, robberies, and drug offences that had been happening there. A third officer, Cst. Gomes, was in uniform and driving a marked police car, to provide a visible police presence in the area.

The plainclothes officers saw Donnohue Grant, a young black man, walking down the street. They noted that he seemed to stare at them in an unusual way, and was fidgeting with his coat and pants. They asked Gomes to “have a chat” with Grant to see if there was any reason to be concerned.

Gomes got out of his car and blocked Grant’s path on the sidewalk. He asked Grant to provide his name and address. Grant nervously adjusted his jacket and Gomes asked him to keep his hands in front of him. The two plainclothes officers, who were watching the conversation from their own car, felt Grant was acting suspicious, and decided to stand by. They took up positions behind Gomes and flashed their badges to identify themselves as police officers.

Gomes asked Grant a number of questions, and in response Grant replied that he had been arrested a few years earlier, and that he was carrying a small amount of marijuana and a firearm. The officers arrested and searched Grant, and seized marijuana and a loaded revolver. Grant was advised of his right to counsel.

At trial, Grant claimed the officers had violated his rights under sections 8, 9, and 10 of the *Charter* and argued that the firearm should be excluded from the evidence under section 24(2). The judge did not find any *Charter* breaches, admitted the firearm into evidence, and convicted Grant of several firearm offences. On appeal, the court found that the police had arbitrarily detained Grant, and therefore breached his rights under section 9 of the *Charter*. However, they found that the firearm should still be admitted into evidence. Grant appealed further to the Supreme Court.

The Decision:

The Supreme Court found that the police had violated Grant’s rights under sections 9 and 10 of the *Charter*.

Section 9 of the *Charter* protects people from being detained by the police without any good reason. Police detention may be physical—for example, handcuffing or restraining someone—or it may be psychological. Psychological detention happens when the police make a demand that a person must comply with, or when the police act in a way that gives the impression that the person must comply with a demand. If the Court has to decide whether or not there was a police detention, they will look at the whole set of circumstances and the way the interaction played out. If a

Discussion Questions:

- 1) Do you agree with the Court’s decision to admit the firearm as evidence? Why or why not?
- 2) The Court wrote (at paragraph 32) that if police are unsure whether an individual thinks they are being detained, “it is open to them to inform the subject in unambiguous terms that he or she is under no obligation to answer questions and is free to go.” Do you think this is a good policy? Does it go too far or not far enough?

Relevant Law:

The Canadian Charter of Rights and Freedoms, sections 8, 9, 10, and 24.

Resources:

You can read the entire case at:

<https://www.canlii.org/en/ca/scc/doc/2009/2009scc32/2009scc32.html>

You can find the *Canadian Charter of Rights and Freedoms* at:

<https://laws-lois.justice.gc.ca/eng/const/page-15.html>

reasonable person in the same circumstances would believe they were being detained, the Court will find that there was a detention.

Although the police were acting within their powers when they decided to approach and question Grant, Grant was not under any legal obligation to answer. When Gomes told Grant to keep his hands in front of him, he gave the impression Grant had to obey. This impression was reinforced by the plainclothes officers joining Gomes and standing behind him as backup. A reasonable person in these circumstances would most likely believe they had an obligation to do as the police said, so the Court decided that Grant was psychologically detained.

The Court also found that the police had infringed Grant's right to counsel under section 10 of the *Charter*. At the time of detention, the police must inform a detained person the reasons for their detention, and of their right to speak to a lawyer. The police did not inform Grant of his right to counsel until after they had detained him, searched him, and arrested him. The Court said this was too much of a delay.

Although the Court found the infringement of Grant's *Charter* rights serious, they also felt that the public interest in keeping guns off the streets outweighed it. Since this was an 'uncertain' area of the law at the time, the Court allowed the firearm into evidence. All but one of Grant's charges were upheld.

Relevant Law:

The Canadian Charter of Rights and Freedoms:

8. Everyone has the right to be secure against unreasonable search or seizure.
9. Everyone has the right not to be arbitrarily detained or imprisoned.
10. Everyone has the right on arrest or detention
 - (a) to be informed promptly of the reasons therefor;
 - (b) to retain and instruct counsel without delay and to be informed of that right; and
 - (c) to have the validity of the detention determined by way of habeas corpus and to be released if the detention is not lawful.

24 (1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

(2) Where, in proceedings under subsection (1), a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by this Charter, the evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute.