SUPREME COURT OF CANADA

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Case in Brief: *R. v. Tessier*

Judgment of October 14, 2022 | On appeal from the Court of Appeal of Alberta
Neutral citation: 2022 SCC 35

The Supreme Court restores an Alberta man's murder conviction after finding his statements to police were admissible as evidence at trial.

In 2007, police in Alberta questioned Russell Tessier in connection with the murder of his friend, whose body had been found in a ditch by a rural road near the town of Carstairs. Officers interviewed Mr. Tessier twice at the police station without placing him under arrest. They did not advise him that he could choose not to speak to police and that what he said could be used as evidence in court (this is known as a caution). In 2015, police charged Mr. Tessier with first degree murder after his DNA was matched to a cigarette butt found near the crime scene.

At trial, the Crown tried to introduce evidence from the 2007 police interview with Mr. Tessier. Under the confessions rule, statements with police are generally considered voluntary – and therefore admissible as evidence – if the person had a functioning mind at the time and made the statements without being threatened or tricked by police.

Mr. Tessier claimed his statements were involuntary. He alleged that he had been psychologically detained by police, which triggered rights that apply to people who are detained or arrested. For instance, section 10(b) of the *Canadian Charter of Rights and Freedoms* provides that "everyone has the right on arrest or detention to retain and instruct counsel without delay and to be informed of that right".

The trial judge determined that Mr. Tessier had a functioning mind and made the statements without being threatened or tricked by police. The judge also determined that Mr. Tessier had not been detained when he spoke with police. As a result, the statements were voluntary and admissible as evidence at trial. The jury eventually convicted Mr. Tessier of first degree murder. Mr. Tessier appealed his conviction to Alberta's Court of Appeal, arguing that his statements to police should not have been admitted at trial. The Court of Appeal found errors in the trial judge's analysis about whether the statements were voluntary and it ordered a new trial. The Crown then appealed to the Supreme Court of Canada.

The Supreme Court has allowed the Crown's appeal and restored Mr. Tessier's conviction for first degree murder.

The statements were voluntary.

Writing for a majority of the judges, Justice Nicholas Kasirer found that despite the absence of a caution, Mr. Tessier's 2007 statements to police were voluntary under the confessions rule and therefore admissible as evidence at trial. The majority wrote that Mr. Tessier had an operating mind at the time of his interviews, had exercised "a free or meaningful choice" to speak with police and "was not unfairly denied his right to silence". Given that there was a reasonable basis to consider Mr. Tessier a suspect at the time of questioning, the absence of a caution could mean his statements were involuntary. However, the Crown discharged its burden by proving that the absence of a caution was without consequence and that the statements were, beyond a reasonable doubt and in view of the context as a whole, voluntary. The majority also rejected Mr. Tessier's arguments that he had been psychologically detained, which means the *Charter* rights that apply to people detained or under arrest were not applicable.

Breakdown of the decision: ***Majority*****:** Justice Kasirer allowed the appeal (Chief Justice Wagner and Justices Moldaver, Karakatsanis, Côté, Rowe and Jamal agreed) | ***Dissenting:*** Justices Brown and Martin would have dismissed the appeal, finding the statements involuntary

More information (case #39350): Decision | Case information | Webcast of hearing

Lower court rulings: judgment (Court of Queen's Bench of Alberta – unreported) | appeal (Court of Appeal of Alberta)
