

**SUPREME COURT OF CANADA**

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| **Citation:** R. *v.* Mohamed, 2014 SCC 63, [2014] 3 S.C.R. 280 | **Date:** 20141010  **Docket:** 35644 |

**Between:**

**Samir Mohamed**

Appellant

and

**Her Majesty The Queen**

Respondent

**Coram:** Abella, Rothstein, Cromwell, Moldaver and Karakatsanis JJ.

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| **Reasons for Judgment:**  (paras. 1 to 4) | Cromwell J. (Abella, Rothstein, Moldaver and Karakatsanis JJ. concurring) |

r. *v.* mohamed, 2014 SCC 63, [2014] 3 S.C.R. 280

Samir Mohamed Appellant

v.

Her Majesty The Queen Respondent

**Indexed as: R. *v.*** Mohamed

2014 SCC 63

File No.: 35644.

2014: October 10.

Present: Abella, Rothstein, Cromwell, Moldaver and Karakatsanis JJ.

on appeal from the court of appeal for alberta

*Criminal law* ― *Charter of rights* ― *Search and seizure* ― *Right to counsel* ― *Remedy* ― *Trial judge failing to consider whether s. 8 breached in addition to s. 10(b)* ― *Independent s. 8 breach would not have changed s. 24(2) analysis* ― *Canadian Charter of Rights and Freedoms, ss. 8, 10(b), 24(2).*

**Statutes and Regulations Cited**

*Canadian Charter of Rights and Freedoms*, ss. 8, 10(*b*), 24(2).

APPEAL from a judgment of the Alberta Court of Appeal (Berger and McDonald JJ.A. and Hughes J. (*ad hoc*)), 2013 ABCA 406, 90 Alta. L.R. (5th) 354, 295 C.R.R. (2d) 233, 566 A.R. 58, 597 W.A.C. 58, [2014] 3 W.W.R. 250, [2013] A.J. No. 1261 (QL), 2013 CarswellAlta 2311, affirming the accused’s convictions for drugs and firearms offences. Appeal dismissed.

Shawn Beaver and *Alexandra Seaman*, for the appellant.

James C. Martin and Louise M. Proulx, for the respondent.

The judgment of the Court was delivered orally by

1. Cromwell J. ― This appeal as of right comes to us on the dissent of Berger J.A. in the Alberta Court of Appeal. The question is whether the trial judge’s failure to identify a s. 8 breach in addition to the admitted breach of s. 10(*b*) justifies considering the trial judge’s s. 24(2) analysis afresh on appeal.
2. In our view it does not. Assuming, without deciding, that there was a s. 8 breach on these facts, it is clear that the trial judge conducted her s. 24(2) analysis on the basis that the s. 10(*b*) breach resulted in the appellant producing the joint and lump of marihuana. As she put it, “While [the police officer] gave evidence that she would have arrested Mr. Mohamed if he had not got out of the car at her request, and I have found that she had grounds to do so, it is not a certainty that the exhibits of marihuana would have been discovered otherwise. The production of the joint and the lump of marihuana were clearly as a result of [the officer’s] prompting of Mr. Mohamed” (A.R., vol. I, p. 57 (emphasis added)). It is thus clear that the trial judge’s s. 24(2) analysis would not have been different had she found an independent s. 8 breach.
3. In light of that conclusion, our view is that there is no basis to interfere on appeal with the trial judge’s weighing of the various factors under the s. 24(2) analysis.
4. The appeal is dismissed.

Judgment accordingly.

Solicitors for the appellant: Beaver, Leebody, Frank & Simic, Edmonton.

Solicitor for the respondent: Public Prosecution Service of Canada, Calgary.