

**SUPREME COURT OF CANADA**

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| **Citation:** R. *v.* Omar, 2019 SCC 32, [2019] 2 S.C.R. 576 |  | **Appeal Heard:** May 22, 2019  **Judgment Rendered:** May 22, 2019  **Docket:** 38461 |

**Between:**

**Her Majesty The Queen**

Appellant

and

**Omar Muhammad Omar**

Respondent

- and -

**Criminal Lawyers’ Association (Ontario)**

Intervener

**Coram:** Wagner C.J. and Moldaver, Karakatsanis, Côté, Brown, Rowe and Martin JJ.

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| **Reasons for Judgment:**  (paras. 1 to 3) | Brown J. (Wagner C.J. and Moldaver, Karakatsanis, Côté, Rowe and Martin JJ. concurring) |

R*.* *v.* Omar, 2019 SCC 32, [2019] 2 S.C.R. 576

Her Majesty The Queen Appellant

v.

Omar Muhammad Omar Respondent

and

Criminal Lawyers’ Association (Ontario) Intervener

**Indexed as:** R. ***v.*** Omar

2019 SCC 32

File No.: 38461.

2019: May 22.

Present: Wagner C.J. and Moldaver, Karakatsanis, Côté, Brown, Rowe and Martin JJ.

on appeal from the court of appeal for ontario

*Constitutional law — Charter of Rights — Remedy — Exclusion of evidence* — *Seriousness of Charter-infringing state conduct* — *Accused found in possession of loaded handgun, ammunition and cocaine when stopped by police while walking along a street late at night —* *Trial judge finding that several of accused’s* *constitutional rights infringed by police but declining to exclude evidence and convicting accused of various firearms offences and possession of cocaine for the purpose of trafficking — Majority of Court of Appeal holding that trial judge committed reversible error in assessing seriousness of Charter-infringing police conduct — Majority excluding evidence and entering acquittals — Dissenting judge holding that there was no error in trial judge’s* *assessment of seriousness of state conduct that would justify appellate intervention — Convictions restored — Canadian Charter of Rights and Freedoms, s. 24(2).*

**Statutes and Regulations Cited**

*Canadian Charter of Rights and Freedoms*, s. 24(1), (2).

APPEAL from a judgment of the Ontario Court of Appeal (Sharpe, Brown and Paciocco JJ.A.), 2018 ONCA 975, 144 O.R. (3d) 1, 369 C.C.C. (3d) 544, 435 D.L.R. (4th) 273, [2018] O.J. No. 6346 (QL), 2018 CarswellOnt 20344 (WL Can.), setting aside the convictions of the accused, excluding the evidence and entering acquittals. Appeal allowed, Karakatsanis, Brown and Martin JJ. dissenting.

Karen Papadopoulos and Justin Reid, for the appellant.

Catriona Verner and Patricia Brown, for the respondent.

Faisal Mirza and Kate Robertson, for the intervener.

The judgment of the Court was delivered orally by

[1] Brown J. — A majority of this Court would allow the appeal, substantially for the reasons of Brown J.A. at the Court of Appeal. The majority adds this. It may be that consideration should be given to the availability, under s. 24(1) of the *Canadian Charter of Rights and Freedoms*, of remedies other than exclusion of evidence when dealing with s. 24(2), but the majority would leave this question for another day.

[2] Justices Karakatsanis, Brown and Martin dissent, substantially for the reasons of Sharpe J.A. at the Court of Appeal. The dissenters add this. It may be that consideration should be given to whether the police should caution persons that they stop and question that such persons need not remain or answer questions, but the dissenters would leave this for another day.

[3] The appeal is allowed and the convictions are restored.

*Judgment accordingly.*

Solicitor for the appellant: Attorney General of Ontario, Toronto.

Solicitors for the respondent: Lockyer Campbell Posner, Toronto; Law Office of Patricia Brown, Windsor.

Solicitors for the intervener: Faisal Mirza Professional Corporation, Mississauga; Markson Law Professional Corporation, Toronto.