



**SUPREME COURT OF CANADA**

**CITATION:** R. v. Ali, 2022 SCC 1

**APPEAL HEARD:** January 14, 2022  
**JUDGMENT RENDERED:** January 14,  
2022  
**DOCKET:** 39590

**BETWEEN:**

**Yasin Mahad Ali**  
Appellant

and

**Her Majesty The Queen**  
Respondent

**CORAM:** Moldaver, Côté, Brown, Rowe and Jamal JJ.

**JUDGMENT READ BY:** Moldaver J.  
(paras. 1 to 5)

**CONCURRENCE READ BY:** Côté J.  
(paras. 6 to 17)

**MAJORITY:** Moldaver, Brown, Rowe and Jamal JJ.

**CONCURRENCE:** Côté J.

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**Yasin Mahad Ali**

*Appellant*

v.

**Her Majesty The Queen**

*Respondent*

**Indexed as: R. v. Ali**

**2022 SCC 1**

File No.: 39590.

2022: January 14.

Present: Moldaver, Côté, Brown, Rowe and Jamal JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR ALBERTA

*Constitutional law — Charter of Rights — Search and seizure — Search incident to arrest — Strip search of accused resulting in seizure of cocaine — Trial judge finding that strip search justified and admitting evidence found during search — Accused convicted of possession of cocaine for purpose of trafficking — Court of Appeal holding that there was sufficient evidence to justify trial judge’s finding that there were reasonable and probable grounds for strip search and affirming conviction — Conviction upheld.*

## Cases Cited

By Moldaver J.

**Applied:** *R. v. Golden*, 2001 SCC 83, [2001] 3 S.C.R. 679.

By Côté J.

**Applied:** *R. v. Golden*, 2001 SCC 83, [2001] 3 S.C.R. 679; *R. v. Grant*, 2009 SCC 32, [2009] 2 S.C.R. 353; **referred to:** *R. v. Spencer*, 2014 SCC 43, [2014] 2 S.C.R. 212.

## Statutes and Regulations Cited

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

APPEAL from a judgment of the Alberta Court of Appeal (Paperny, Slatter and Veldhuis JJ.A.), 2020 ABCA 344, 17 Alta. L.R. (7th) 26, 394 C.C.C. (3d) 358, [2020] A.J. No. 1005 (QL), 2020 CarswellAlta 1746 (WL Can.), affirming the conviction of the accused for possession of cocaine for the purpose of trafficking. Appeal dismissed.

*Wade Hlady*, for the appellant.

*Monique Dion*, for the respondent.

The judgment of Moldaver, Brown, Rowe and Jamal JJ. was delivered orally by

[1] MOLDAVER J. — Mr. Ali appeals as of right to this Court. A majority of the Alberta Court of Appeal affirmed his conviction for possession of cocaine for the purpose of trafficking. They found that the trial judge did not err in determining that the police’s strip search of Mr. Ali, incident to his lawful arrest, complied with s. 8 of the *Canadian Charter of Rights and Freedoms* in accordance with the principles governing strip searches set out by this Court in *R. v. Golden*, 2001 SCC 83, [2001] 3 S.C.R. 679.

[2] A majority of this Court agrees with the conclusion of the majority of the Court of Appeal and would dismiss the appeal. Where a strip search is conducted as an incident to a person’s lawful arrest, there must be reasonable and probable grounds justifying the strip search, in addition to reasonable and probable grounds justifying the arrest (see *Golden*, at para. 99). These grounds are met for the strip search where there is some evidence suggesting the possibility of concealment of weapons or other evidence related to the reason for the arrest (see *Golden*, at paras. 94 and 111).

[3] Like the majority of the Court of Appeal, we are satisfied that there were reasonable and probable grounds justifying the strip search: the police had confidential source information that their target was in possession of a large quantity of cocaine and that he kept most of his drugs on his person; Mr. Ali was found next to a table with drugs, other than cocaine, and with items consistent with drug trafficking, including a scale, money, and a ringing cell phone; Mr. Ali’s pants were partially down as he was being arrested; and one of the officers reported seeing Mr. Ali reaching towards the back of his pants. Viewed in its totality, this was clearly some evidence suggesting the possibility that Mr. Ali had concealed drugs, particularly cocaine, in and around the area of his buttocks.

[4] We would not give effect to Mr. Ali's argument that a hearsay error arose because the officer who requested the strip search, Cst. Darroch, testified that he was told by another officer, Cst. Odorski, that Mr. Ali was reaching towards the back of his pants, and Cst. Odorski did not refer to this in his testimony at trial. Mr. Ali now concedes that Cst. Darroch's testimony was not inadmissible hearsay because it was not entered for the truth of its contents; the question, he maintains, was whether Cst. Darroch could reasonably rely on the information from Cst. Odorski as a factor in deciding whether he had reasonable and probable grounds to request the strip search. Defence counsel chose not to cross-examine either officer about this information. It stood uncontradicted. This tactical choice undermines Mr. Ali's submission that it was unreasonable for Cst. Darroch to rely on Cst. Odorski's information.

[5] For these reasons, we would dismiss the appeal.

The following are the reasons delivered orally by

[6] CÔTÉ J. — I agree with the majority's disposition of the appeal, but for different reasons.

[7] In my view, the respondent Crown failed to discharge its burden of establishing the legal basis for the strip search of Mr. Ali in accordance with the principles set out by this Court in *Golden*. As such, I find that Mr. Ali's s. 8 *Charter* rights were violated, substantially for the reasons of Veldhuis J.A., at paras. 27-61.

[8]           However, I part ways with Veldhuis J.A. with respect to the proper remedy. Relying on *Golden*, at paras. 118-19, Mr. Ali argues that this Court should substitute an acquittal because conducting an analysis under s. 24(2) of the *Charter* would be a mere theoretical exercise.

[9]           I disagree. As in *Golden*, I acknowledge that Mr. Ali has already served his custodial sentence. Nevertheless, he remains subject to restrictions to his liberty, including a firearms prohibition and a DNA order. As such, determining whether the evidence ought to be admitted will have tangible consequences, both for Mr. Ali and for the public.

[10]          Moreover, the facts of this case are plainly distinguishable from *Golden*. The strip search in *Golden* was coercive and forceful, conducted in a public area without authorization from a senior officer, and may have jeopardized the accused's health and safety. The search of Mr. Ali has none of these characteristics. It is undisputed that it was conducted in a reasonable manner. In my view, it is worthwhile to assess whether admitting evidence obtained as a result of the *Charter* breach would do further damage to the repute of the justice system.

[11]          I further acknowledge that, as the courts below found no breach of s. 8 in this case, they did not consider whether the evidence should be excluded under s. 24(2). However, I accept the Crown's submission that the record before this Court is sufficient to determine whether the admission of the evidence would bring the administration of justice into disrepute. Therefore, I see no utility in sending the matter back for redetermination. In these circumstances, it is open to this Court to conduct its own first-instance s. 24(2) analysis (*R. v. Spencer*, 2014 SCC 43, [2014] 2 S.C.R. 212, at para. 75).

[12] Applying the three lines of inquiry from *R. v. Grant*, 2009 SCC 32, [2009] 2 S.C.R. 353, I would not exclude the evidence.

[13] First, the seriousness of the police conduct in this case was at the lowest end of the spectrum. Cst. Darroch believed in good faith that he had the requisite grounds to strip search Mr. Ali. He relayed his grounds to his superior officer, who authorized the search at the police station. I see no basis to suggest that the police wilfully disregarded Mr. Ali's *Charter* rights. This factor favours admission.

[14] Second, the impact of the strip search on Mr. Ali's privacy interests, while serious, was somewhat attenuated by the reasonable manner in which it was conducted. At trial, counsel for Mr. Ali noted the search was "as humane as possible given the circumstances" (trial transcript, A.R., at p. 173). In my view, this factor tips only moderately in favour of exclusion.

[15] The final *Grant* inquiry strongly favours admission. Mr. Ali was in possession of 65 grams of crack cocaine. The Crown would have no case without this evidence. There is a strong societal interest in adjudicating this case on its merits.

[16] On balance, I conclude that excluding the evidence would bring the administration of justice into disrepute. To be clear, I would emphatically re-affirm the principles arising from *Golden* and the high threshold the Crown must meet to justify a warrantless strip search. However, while the Crown failed to meet that threshold in this case, the conduct of the police did not undermine the integrity of the justice system. Therefore, I would not exclude the evidence.



[17] For the foregoing reasons, I would dismiss the appeal and affirm the conviction.

*Judgment accordingly.*

*Solicitors for the appellant: Hlady Law Office, Lethbridge.*

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