

R. v. Suberu, 2009 SCC 33 – detention and right to counsel

Facts:

On June 13, 2003, Constable Roughley received a call about a man trying to use a stolen credit card at an Ontario liquor store. An officer who was already at the scene radioed Roughley to say there were two male suspects. Roughley arrived on the scene and saw the other officer speaking to a cashier and one male customer. As he entered, Musibau Suberu walked out of the store past Roughley and said something like “It was him, not me, I guess I can go.”

Roughley, said “wait, I need to talk to you”, and followed Suberu out of the store and to a minivan. A short conversation followed. Suberu was sitting in the driver’s seat and Roughley was standing beside the door. From this conversation, Roughley learned that the other man in the store was Suberu’s friend, who had asked Suberu to drive him. Roughley then received another radio call with the license plate number of a van that had been used in another liquor store purchase involving a stolen credit card earlier that day. The license plate number matched the license plate of the van Suberu was sitting in. Roughley noticed liquor store bags in the back seat, and decided he had grounds to arrest Suberu for fraud.

Roughley arrested Suberu and advised him of the reason. Before he could tell Suberu about his right to counsel, Suberu made several other statements, along the lines of “if [my friend] admits it was him, can I go?” After a short conversation, Roughley told Suberu to “just listen” and was able to read him his rights.

At trial, Suberu argued that the evidence seized when he was arrested should be excluded from evidence, because he was not informed of his right to counsel at the time of detention. Suberu argued that Roughley had detained him at the point he told him to wait. The trial judge disagreed and convicted Suberu. The Court of Appeal found that Roughley had detained Suberu by telling him to wait. Roughley should have informed Suberu of his right to counsel at that point, but, there was only a very brief delay, which was allowed. They upheld the conviction. Suberu appealed to the Supreme Court.

The Decision:

The Court found that there was no detention, and upheld Suberu’s conviction.

Section 10 of the *Canadian Charter of Rights and Freedoms* says that when arresting or detaining someone, the police must inform the person of the reasons for the arrest or detention. The police must also inform the person of their right to speak to a lawyer, without delay.

A person is under police detention when they are either physically restrained by the police, or they have a legal obligation to comply with a police demand. A person can also be detained if they are put in a position

Discussion Questions:

- 1) This decision was released on the same day as *R. v. Grant*, 2009 SCC 32. Do you think these cases were decided in the same way, or do you notice any differences in the justices’ reasoning?
- 2) Do you agree with the court that it was unreasonable for Suberu to think he was being detained? What do you think Constable Roughley would have had to do for the Court to decide that there was a detention?

Relevant Law:

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

Resources:

You can read the entire case at:

<https://www.canlii.org/en/ca/scc/doc/2009/2009scc33/2009scc33.html>

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

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

where a reasonable person would believe they have a legal obligation to comply with the police, even if they actually do not.

In order to do their job, the police must be able to make inquiries and investigate matters. Roughley testified that this was why he approached Suberu, and that until he was radioed with the license plate number that matched the van Suberu was sitting in, he did not believe he had grounds to detain or arrest Suberu. When Roughley told Suberu to wait and followed him to the van, he did not consider Suberu to be under any legal obligation to comply. Suberu could have ignored Roughley's questions, or even driven away. Roughley did not try to obstruct Suberu's path, and Suberu did not say at any point that he didn't want to speak to Roughley. In all the circumstances, there appeared to be no detention. Since there was no detention, Roughley was not obligated to inform Suberu of his right to counsel at this point.

The Court went on to consider the meaning of "without delay" in section 10(b) of the *Charter*. They concluded that the only logical meaning is "immediately." When the police make a detention, they must inform the subject of their *Charter* rights immediately.

Relevant Law:

The Canadian Charter of Rights and Freedoms:

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.