

## R. v. Brown, 2022 SCC 18 – automatism

### Facts:

Matthew Brown went to a friend's house party. He drank several alcoholic drinks and had several portions of magic mushrooms throughout the night. Around 3:45 a.m., Brown took off his clothes and left the house, naked and barefoot.

Around 4:00 a.m., Janet Hamnett was woken up in her nearby house by a loud noise. She went to investigate and was attacked by Brown, screaming at the top of his lungs. He beat Hamnett with a broken broom handle, leaving her with cuts and broken bones, before heading back out onto the street.

Around 5:00 a.m., Brown threw a heavy object through the window of another nearby home. The residents called police, who arrived and found him naked on the floor of the bathroom. He was whispering and appeared confused. He later said he did not remember being at either of the two homes. He was charged with two counts of breaking and entering, one count of aggravated assault, and one count of mischief over \$5,000. Brown had no previous criminal record and no history of mental illness.

Brown claimed the defence of automatism—that he was so intoxicated by drugs that his actions were involuntary and he did not have the intent to commit the offences. The Crown said that section 33.1 of the *Criminal Code* did not allow automatism to be used as a defence when the intoxication was self-induced. Brown said that section 33.1 violated sections 7 and 11(d) of the *Canadian Charter of Rights and Freedoms*. The *voir dire* judge agreed with Brown, and ruled that section 33.1 was unconstitutional. Brown was allowed to use the automatism defence and was later acquitted at trial.

The Alberta Court of Appeal found that section 33.1 was not unconstitutional, or if it was, that it could be saved under section 1 of the *Charter*. They overturned the acquittal and entered a conviction for the aggravated assault charge. Brown appealed to the Supreme Court of Canada.

### The Decision:

The Supreme Court reversed the Court of Appeal's decision, restored Brown's acquittal, and declared section 33.1 unconstitutional.

Section 33.1 of the *Criminal Code* says that a person cannot use automatism as a defence to an assault, if the intoxication that caused the state of automatism was self-induced. Under this section, any defendant who had willingly consumed drugs or alcohol would not be able to claim the automatism defence. The Court found that the wording of this section was clear, and should be taken to mean exactly what it said.

The Court found that the wording of section 33.1 meant that any intention

### Discussion Questions:

1) Do you agree that automatism should be an available defence for people who have willingly intoxicated themselves? Why or why not?

### Relevant Law:

*The Criminal Code of Canada*, section 33.1

*The Canadian Charter of Rights and Freedoms*, sections 1, 7, and 11(d)

### Resources:

You can read the entire case at:

<https://canlii.ca/t/jp648>

You can find the *Criminal Code of Canada* at:

<https://laws-lois.justice.gc.ca/eng/acts/c-46/>

You can find the *Charter* at:

<https://laws-lois.justice.gc.ca/eng/const/page-12.html>

to become intoxicated on any substance would be enough to prevent a person from claiming an automatism defence. This meant that there was no difference between someone who consumed a dangerous illegal drug (such as methamphetamines), a less dangerous legal drug (such as alcohol), or a prescribed drug (like a painkiller). The possibility of becoming intoxicated and hurting someone may be reasonably foreseeable for some substances, but not for all substances. In some cases, even relatively harmless substances, or substances that a person has been prescribed by a doctor, can cause unexpected reactions that might lead to involuntary behaviour. The wording of section 33.1 did not take this into account.

Section 7 of the *Charter* says that people can only be deprived of their freedom in keeping with the principles of fundamental justice. This includes the idea that a person needs to have *mens rea* (intent) to be found guilty of a criminal offence. Also, they must have committed the offence voluntarily. Section 33.1 had the potential to send someone to jail for an act they did not mean to commit and that they did involuntarily. The Court found that this was a breach of section 7 of the *Charter*.

Section 11(d) of the *Charter* says that a person is presumed innocent until all the elements of an offence have been proven beyond a reasonable doubt. The Court found that section 33.1 substituted proof of self-induced intoxication for proof of the actual offence, and this was another breach of the *Charter*.

Once they found that section 33.1 breached the *Charter*, the Court turned to section 1 to see if it could be justified. They found that the purpose of section 33.1 was to protect victims of intoxicated violence, and to hold the people who committed this type of violence accountable. The Court found that these goals were important enough to warrant *Charter* breaches, and that section 33.1 was rationally connected to these goals. However, they found that section 33.1 went much further than it needed to in trying to achieve those goals. The Court found that the benefits of section 33.1 did not outweigh the serious concerns and risk of wrongful convictions. The Court found that section 33.1 could not be saved under section 1 of the *Charter*. The Court declared section 33.1 of no force and effect and restored Brown's acquittal.

## Relevant Law:

### *The Criminal Code of Canada:*

*(Note: because of the holding in this case, this section of the Code is no longer in effect.)*

**33.1 (1)** It is not a defence to an offence referred to in subsection (3) that the accused, by reason of self-induced intoxication, lacked the general intent or the voluntariness required to commit the offence, where the accused departed markedly from the standard of care as described in subsection (2).

**(2)** For the purposes of this section, a person departs markedly from the standard of reasonable care generally recognized in Canadian

society and is thereby criminally at fault where the person, while in a state of self-induced intoxication that renders the person unaware of, or incapable of consciously controlling, their behaviour, voluntarily or involuntarily interferes or threatens to interfere with the bodily integrity of another person.

**(3)** This section applies in respect of an offence under this Act or any other Act of Parliament that includes as an element an assault or any other interference or threat of interference by a person with the bodily integrity of another person.

***The Canadian Charter of Rights and Freedoms:***

**1.** The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

**7.** Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

**11.** Any person charged with an offence has the right

[...]

**(d)** to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal; [...]