

CANADA / JUDGMENT

R. v. S.H.

2020 SCC 3

COURT

Supreme Court of Canada

DECIDED

19 February 2020

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R. v. S.H. Collection Supreme Court Judgments Date 2020-02-19 Neutral citation 2020 SCC 3
Report

- [2020] 1 SCR 12 Case number 38827 Judges Abella, Rosalie Silberman; Moldaver, Michael J.; Côté, Suzanne; Brown, Russell; Martin, Sheilah On appeal from Ontario Notes SCC Case Information Decision Content SUPREME COURT OF CANADA Citation: R. v. S.H., 2020 SCC 3, [2020] 1 S.C.R. 12 Appeal Heard: February 19, 2020 Judgment Rendered: February 19, 2020 Docket: 38827 Between: S.H. Appellant and Her Majesty The Queen Respondent
- and - Criminal Lawyers' Association (Ontario) Intervener Coram: Abella, Moldaver, Côté, Brown and Martin JJ. Judgment Read By: (paras. 1 to 3) Dissent Read By: (para. 4) Majority: Dissent: Moldaver J. Brown J. Abella, Moldaver and Côté JJ. Brown and Martin JJ. S.H. Appellant v. Her Majesty The Queen Respondent and Criminal Lawyers' Association (Ontario) Intervener Indexed as: R. v. S.H. 2020 SCC 3 File No.: 38827. 2020: February 19. Present: Abella, Moldaver, Côté, Brown and Martin JJ. on appeal from the court of appeal for ontario Criminal law — Evidence — Admissibility — Curative proviso — Accused convicted of drug offences at trial — Majority of Court of Appeal holding that trial judge's error in relying on wrong legislative provision to admit evidence of data extracted from cell phone and possible errors in allowing Crown to reopen case by recalling police officer and in admitting statement by accused without voluntariness voir dire did not affect outcome of trial — Majority of Court of Appeal concluding that Crown's case overwhelming and applying curative proviso to sustain convictions — Convictions upheld. Cases Cited By Brown J. (dissenting) R. v. Khan, 2001 SCC 86, [2001] 3 S.C.R. 823. APPEAL from a judgment of the Ontario Court of Appeal (Simmons, Tulloch and Brown JJ.A.), 2019 ONCA 669, 377 C.C.C. (3d) 335, 442 D.L.R. (4th) 184, [2019] O.J. No. 4438 (QL), 2019 CarswellOnt 14110 (WL Can.), affirming the convictions of the accused for possession of cocaine for the purpose of trafficking, possession of oxycodone, production of marijuana, and possession of marijuana for the purpose of trafficking. Appeal dismissed, Brown and Martin JJ. dissenting. Alice Barton and Michael Dineen, for the appellant. Jennifer Conroy and François Lacasse, for the respondent. Nader R. Hasan and Taufiq Hashmani, for the intervener. The judgment of Abella, Moldaver and Côté JJ. was delivered orally by

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- [1] Moldaver J. — A majority of the Court is of the view that the evidence adduced by the Crown after the re-opening was essentially confirmatory of the evidence that had already been adduced by the Crown showing that the appellant had constructive possession of the drugs in question. We agree with the majority of the Court of Appeal that the evidence led prior to the re-opening was overwhelming.
- [2] In these circumstances, we are satisfied that the Court of Appeal did not err in applying the curative proviso to sustain the convictions.
- [3] Accordingly, we would dismiss the appeal. The reasons of Brown and Martin JJ. were delivered orally by
- [4] Brown J. (dissenting) — We would allow the appeal and order a new trial. In our view, the trial judge's error in allowing the Crown to split its case led to an unfair trial, which miscarriage of justice cannot be cured: *R. v. Khan*, 2001 SCC 86, [2001] 3 S.C.R. 823, at para. 27. Judgment accordingly. Solicitors for the appellant: Dawe & Dineen, Toronto. Solicitor for the respondent: Public Prosecution Service of Canada, Toronto. Solicitors for the intervener: Stockwoods, Toronto.
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