



Case in Brief: ***R. v. McColman***

Judgment of March 23, 2023 | On appeal from the Court of Appeal for Ontario  
Neutral citation: 2023 SCC 8

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***The Supreme Court has restored the conviction of an Ontario man after determining that evidence obtained from an unlawful sobriety stop was nonetheless admissible.***

In the early morning of March 26, 2016, Ontario Provincial Police officers spotted Walker McColman driving an all-terrain vehicle (ATV) out of a convenience store parking lot onto a highway. The officers were on general patrol in a small town on Lake Huron in Ontario and decided to follow the ATV. They caught up to Mr. McColman about a minute later, when he had pulled onto the private driveway of his parents' home. The officers approached Mr. McColman in the driveway and observed obvious signs of impairment. They said Mr. McColman was unable to stand up straight and he smelled strongly of alcohol. Mr. McColman told the officers that he might have had 10 beers that evening. The officers arrested him for impaired driving and brought him to the police station, where he did two breathalyzer tests. Mr. McColman was then charged with impaired driving and operating a motor vehicle with a blood alcohol concentration above the legal limit.

At trial, one of the officers testified they did not see any signs of impairment before stopping Mr. McColman. He explained they were exercising their authority to conduct random sobriety checks under section 48(1) of Ontario's *Highway Traffic Act* (HTA). This section gives the police the authority to randomly stop a motor vehicle and check if the driver is sober. The Ontario Court of Justice convicted Mr. McColman of driving with excess blood alcohol, imposed a \$1,000 fine, and prohibited him from driving for one year.

Mr. McColman appealed. He argued the sobriety stop was illegal under section 48(1) of the HTA because it was conducted on private property. He also said the officers had breached his rights under section 9 of the *Canadian Charter of Rights and Freedoms* to not be arbitrarily detained. As a result, Mr. McColman argued the evidence obtained during the stop should have been excluded from the trial pursuant to section 24(2) of the *Charter*. Section 24(2) requires that evidence obtained in a way that breached the *Charter* rights of an accused be excluded from trial if admitting it would bring the administration of justice into disrepute.

The Ontario Superior Court of Justice agreed with Mr. McColman, set aside his conviction and acquitted him. When the Court of Appeal came to the same conclusion, the Crown appealed to the Supreme Court of Canada.

The Supreme Court has allowed the appeal, set aside the acquittal and restored the conviction.

**While the evidence was obtained by the police during an unlawful stop, it should not have been excluded from trial.**

Writing for a unanimous Court, Chief Justice Wagner and Justice O'Bonsawin determined that the officers did not have the authority under section 48(1) of the HTA to conduct the random sobriety stop in the private driveway. In their opinion, the HTA defined a "driver" as someone who drives or has care or control of a vehicle on a highway. A highway is defined as a "common and public highway, street, avenue [...] intended for or used by the general public". They said Mr. McColman was not a driver for the purpose of section 48(1) because he was not on a highway when the police effected the stop. As such, the stop was unlawful, resulting in the arbitrary detention of Mr. McColman and the violation of his section 9 *Charter* rights.

Yet, due to the nature and importance of the evidence, as well as the seriousness of the offence, the Court considered that admitting the evidence was warranted: "Admission of the evidence in this case would better serve the truth-seeking function of the criminal trial process and would not damage the long-term repute of the justice system". For these reasons, the Court concluded that the evidence obtained by the officers should not have been excluded from the trial.

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**Breakdown of the decision: Unanimous:** Chief Justice [Wagner](#) and Justice [O'Bonsawin](#) set aside the acquittal and restored the conviction entered at trial and the sentence imposed (Justices [Karakatsanis](#), [Côté](#), [Rowe](#), [Martin](#), [Kasirer](#) and [Jamal](#) agreed).

**More information:** [Decision](#) | [Case information](#) | [Webcast of hearing](#)

**Lower court rulings:** Decision (Ontario Court of Justice - unreported) | [First Appeal](#) (Ontario Superior Court of Justice) | [Second Appeal](#) (Court of Appeal of Ontario)

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