

TOP FIVE 2022

Each year at OJEN's Toronto Summer Law Institute, a leading jurist identifies five cases (or in this year's resource, six cases) that are of significance in the educational setting. The 2022 cases were selected and discussed by Mr. Justice Lorne Sossin, then of the Ontario Superior Court of Justice and currently of the Court of Appeal for Ontario. This summary, based on these comments and observations, is appropriate for discussion and debate in the classroom setting.

R v. Stairs, 2022 SCC 11

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<https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/19298/index.do>

Facts

A 911 call was placed after someone observed a man driving and hitting a woman who was sitting in the passenger seat of the car. The police arrived at the location of the car, which was empty and parked in the driveway of a house. The police ran the license plate number and learned that the car was registered to a Matthew Stairs' father but that it was also driven by Matthew who had a history of violence. Police knocked on the house and loudly announced their presence. Police entered the house despite the fact that no one had answered the door. When the police were inside the house, they observed a woman, who had fresh injuries on her face, come up a flight of stairs from the basement. They also observed a man in the basement who walked past the stairs and locked himself in the laundry room. The man was later identified as Matthew Stairs and was arrested shortly after he had gone into the laundry room.

After the police had arrested Mr. Stairs, they conducted a visual clearing search of the basement living room. When one of the officers walked behind a couch in the basement living room, they located a clear container and a plastic container which contained methamphetamine. In addition to being charged with assault and breach of probation, Mr. Stairs was also charged with possession for the purpose of trafficking.

Procedural History

The trial judge at the Ontario Superior Court of Justice convicted Mr. Stairs of all the charges he was facing and found no breach of Mr. Stairs' section 8 *Charter* rights (right against unreasonable search and seizure) because they determined the search had been lawfully conducted, incident to Mr. Stairs' arrest.⁵ Mr. Stairs appealed the conviction of the drug charges alone, arguing that the drugs were wrongly

⁵ "Incident to arrest" means within a reasonable time after an arrest.



admitted as evidence and that the test for searches incident to arrest inside of homes had to be modified given the heightened privacy concerns inside of a person's home.

The Ontario Court of Appeal dismissed the appeal, finding that the search had not breached section 8; however, one judge dissented and would have allowed the appeal. The lone dissenting judge at the Court of Appeal found that when police engage in a safety search of a home which is incident to a lawful arrest, they must have reasonable grounds to believe that there is an imminent threat to public or to police safety, which the dissenting judge found the police did not have in this case.

Issue

The main issue that arose in this case was:

1. Whether the search of the basement living room incident to arrest was unreasonable, contrary to section 8 of the *Charter*.

Decision

The Majority of the Supreme Court decided that the common law standard for searches incident to arrest in homes had to be modified. In a 5-4 decision the majority dismissed the appeal of Mr. Stairs because in applying the new modified test, they found no violation of his section 8 *Charter* rights.

Ratio

Searches conducted incident to arrest within a home, where the area searched is outside the physical control of the arrested person, require the higher standard of reasonable grounds to suspect that there is a safety risk to the police, the accused, or to the public which would be addressed by the search.

Reasons

Wagner C.J. and Moldaver, Rowe, Kasirer and Jamal JJ (Majority)

The majority rejected the standard of reasonable belief in imminent harm which was proposed by Mr. Stairs. The police only require some reasonable basis to conduct a search incident to arrest as opposed to the higher threshold of "reasonable and probable grounds". The common law standard for searches that are incident to arrest have been established through past case law and require the following:

- (1.) The individual being searched has been lawfully arrested;
- (2.) The search is truly incidental to the arrest in the sense that it is for a valid law enforcement purpose connected to the arrest (a-c, below); and
 - a. police and public safety
 - b. preventing the destruction of evidence

- c. discovering evidence that may be used at trial

(3.) The search is conducted reasonably

The Majority stated that an individual's home gives somebody a higher expectation of privacy, and that means that a change to the common law standard for searches incident to arrest in homes is necessary. Given the heightened privacy interest inside of a home, the majority modified the standard for search incident to arrest "where the police search areas of the home outside the arrested person's physical control":

- The police must have reason to suspect that there is a safety risk to the police, the accused, or the public which would be addressed by a search; and
- The search must be conducted in a reasonable manner, tailored to the heightened privacy interests in a home.

When somebody is arrested inside of a home and a search is conducted, the search is conducted of the "surrounding area of the arrest" which encompasses two separate categories:

- a. the area within the physical control of the person arrested at the time of arrest; and
- b. areas outside the physical control of that person, but which are part of the

surrounding area because they are sufficiently proximate to the arrest.

The police need to be able to show that a search of the areas outside the physical control of the arrested person will further the objective of police and public safety, including the safety of the accused.

In Mr. Stairs' case, the search was conducted in an area that was outside the physical control of Mr. Stairs.

The majority determined that the police did in fact meet this standard, and their search was lawful. Part of the court's reasoning was that the police only visually scanned the area of the basement living room following the arrest to ensure there were no safety concerns.

Dissent

Karakatsanis, Brown and Martin JJ

In the dissent delivered by Justice Karakatsanis, they decided that the standard of reasonable basis was too low to conduct a search of a home incident to arrest. They also refused to adopt the distinction made by the majority of areas of a house that are inside or outside an arrested person's physical control. Instead, they decided that the standard should be that of reasonable suspicion of an imminent threat to police or public safety. In the case of Mr. Stairs, the dissenting judges found

there was no reasonable suspicion to conclude that there was a safety risk after Mr. Stairs had been arrested, only a general uncertainty about the presence of weapons or other people. Consequently, they found the search and seizure infringed section 8 and that the evidence (drugs) seized should have been excluded from evidence.

Concurring reasons of Cote J

Justice Cote agreed with the dissenting judges about the standard of reasonable suspicion for searches incident to arrest within a home. However, unlike the dissent, Cote J said that the evidence should nonetheless not be excluded because its admittance would not bring the administration of justice into disrepute.

One thing every judge at the Supreme Court agreed on was this: a person's home demands a greater expectation of privacy under the law. Police can search a home for safety reasons, but only if the search is conducted in a reasonable manner and takes into account this heightened expectation of privacy.

Discussion

1. What does "incident to arrest" mean?
2. What are the main differences between the legal standards applied by the majority and the dissent, respectively?
3. Do you agree with the majority that there was a safety risk in this case, or with the minority, who said there was no safety risk after Mr. Stairs had been arrested?
4. The majority clarified a new standard for searches in homes, but decided in this case that the police had still met that standard. What factors in the officers' actions might have changed this if things had gone differently?
5. Why do you think there is a higher standard for privacy inside one's home? Do you think this standard affects different people in different ways?