

## Summary

Mr. Turcotte found 3 dead bodies in the rural ranch he lived in, and went to the nearest RCMP detachment. Once there, he requested that a car be sent to the ranch, but remained silent to the majority of the constables' questions, only answering basic questions like his name. The constables, upon finding the 3 dead bodies, charged Turcotte with second-degree murder. However, he was eventually acquitted in the SCC largely on the basis that, since the right to remain silent is within the Charter, one cannot and should not be charged for exercising their Charter-protected rights.

## Significance

What's the precedence this case set?

- Silence isn't admissible as post-offence conduct (how a reasonable person would act after committing a crime), because accepting it as evidence for guilt would render the right to remain silent, protected by s. 11(c), powerless
- Post-offence conduct is conduct after a crime that produces circumstantial evidence - the person's conduct is probative of guilt. Silence in response to police interrogation can't be used as post-offence conduct because an inference of guilt cannot be made from someone exercising their Charter-protected rights. Moreover, the precedent that would be set if silence were to be admissible as evidence would encourage civilians to answer all police questioning, contrary to s. 11(c) and the rights police officers read those they are about to arrest in s.10(a)

Challenges of applying the precedent

- In cases in which the evidence of silence is admitted as evidence, the jury has to pay special attention to the limitations conclusions from the silence can be made. The jury has to be instructed on the exact purpose the evidence was admitted for, the inferences that cannot be derived from silence, how silence as evidence for guilt is limited, and the dangers of relying on silence as evidence.

"You have the right to remain silent" has become ubiquitous with the procedures of arrest, even for somebody not well versed in the law. That statement was created and is said, in various forms conveying the same principle, because of landmark cases like *Miranda v. Arizona* in the US. Canada adopted a similar approach to ensure that citizens are arrested lawfully, and that has been included in the Charter as s.10(a). However, the specifics of arresting someone and genuinely granting citizens the right to remain silent rather than simply claiming they have the right to remain silent was only resolved through landmark cases such as *R v. Turcotte* [2005].

Mr. Turcotte found 3 dead bodies in the rural ranch he lived in, and went to an RCMP detachment. He requested that a car be sent to the ranch, but remained silent through the constables' questioning, only answering questions about basic details like his name and birthday. The constables, upon finding the 3 dead bodies, charged Turcotte with second degree murder, but he was acquitted in the SCC, largely on the basis that the right to remain silent is effectively protected by the Charter.

*R v. Turcotte* grappled with silence being admissible as post-offence conduct, which would provide circumstantial evidence of guilt. However, the right to being silent is protected

by the Charter in s.11(c) and citizens are not mandated to speak to or cooperate with the police. Thus, citizens are within their legal rights to remain silent in response to police questioning and being silent during police questioning cannot be considered as post-offence conduct. Furthermore, allowing the exercise of the Charter-protected right to silence to be admissible as evidence for guilt defeats the purpose of the right being included in the Charter, and by extension challenges the rule of law, and the equality of rights within the Charter. The precedent of silence in response to police questioning being post-offence conduct would have far-reaching effects and encourage citizens to answer all police questioning, and in doing so, may lead to citizens incriminating themselves in an attempt to absolve themselves, leading to more wrongful convictions.

A subsequent case that grappled with the right to silence, *R v. Singh*, had to address the challenges of civilians having the right to silence. Specifically, *R v. Singh* explored whether persistent police questioning despite Singh's repeated statements expressing his wish to remain silent was justified. Although the right to silence can be reasonably defended from *R v. Turcotte*, *R v. Singh* establishes a limit on the amount of power the right to silence can have. Evidenced by *R v. Singh*, imposing a requirement that police may not question a detainee who states that they wish to remain silent would impede effective investigation of crime, and grant the detainee too much protection under their right to silence. Moreover, the requirement may prevent the police from using legitimate means of persuasion to obtain a statement from the detainee. Thus, the right of silence was limited by this case as to not grant civilians too much power.

*R v. Turcotte* has made significant advancements in establishing the power of the Charter-protected right to remain silent, exploring how being silent during police questioning cannot be used against the detainee as post-offence conduct, and the dangerous ramifications of dismissing this right. However, significant challenges to the right to remain silent still exist, specifically regarding its limitations, which requires cases like *R v. Singh* and future cases to address these challenges.