



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

Judgment of July 14, 2023 | On appeal from the Court of Appeal for Ontario
Neutral citation: 2023 SCC 19

The Supreme Court orders a new trial due to insufficient jury instructions.

Mr. Ahmed Abdullahi was arrested in June 2013 as a result of an integrated police investigation into the trafficking of illegal firearms in Toronto. A jury convicted him of various firearm offences and one count of participation in the activities of a criminal organization for the purpose of trafficking weapons, contrary to section 467.11 of the *Criminal Code*. This last conviction was the only issue before the Supreme Court of Canada.

Under section 467.11, the Crown must first prove the existence of a “criminal organization”. The *Criminal Code* defines a criminal organization as a group of three or more people, however organized, that facilitates or commits a serious offence for a financial or other benefit. Organized crimes attract greater police powers for certain authorizations and warrants, and harsher sentences than those committed by groups that come together randomly to commit a single offence. In its 2012 judgment in *R. v. Venneri*, the Supreme Court of Canada said that for a criminal organization to be “organized”, it must have “some form of structure and degree of continuity”.

Before members of the jury started their deliberations, the trial judge instructed them on the required elements of the criminal organization offence, including the need to first prove the existence of such an organization. On that element of the offence, the judge read the definition of a criminal organization but did not mention the need to identify a structure and a degree of continuity to qualify a group as such. In the end, the jury found Mr. Abdullahi guilty on all counts, including that of participating in the activities of a criminal organization for the purpose of trafficking weapons.

On appeal, Mr. Abdullahi argued the judge’s instruction to the jury was insufficient because it failed to explain that a criminal organization must have structure and continuity. The majority of the Court of Appeal for Ontario dismissed the appeal and concluded that the jury had been properly instructed. The dissenting judge disagreed and would have ordered a new trial on that count. Mr. Abdullahi appealed the conviction to this Court.

The Supreme Court has allowed the appeal.

The trial judge’s instruction did not sufficiently equip the jury to decide if a criminal organization existed.

Writing for the majority, Justice Rowe first explained that the role of a court of appeal in reviewing a trial judge’s jury instruction is to ensure the jury was properly equipped to decide the case according to the law and the evidence. To equip a jury properly, it needs an accurate and a sufficient understanding of the law.

In this case, the trial judge failed to explain to the jury that a criminal organization is one that by virtue of its structure and continuity poses an enhanced threat to society. Institutional advantages such as consolidating and retaining knowledge, sharing customers and resources, developing specializations, and fostering trust and loyalty distinguish criminal organizations from other groups of individuals acting in concert, where they lack structure and continuity, and do not pose the same enhanced threat to society. Moreover, careful consideration of a group’s structure and continuity is needed to guard against improper reasoning based on shared characteristics, such as ethnicity or neighbourhood, in identifying a criminal organization. As Justice Rowe said, “[w]hile such characteristics may indicate a common social or cultural identity among persons who commit offences, they are irrelevant in identifying the existence of a criminal organization”.

Without such an explanation at trial, Justice Rowe concluded the jury was not sufficiently instructed on the legal standard to apply to the evidence in concluding that a criminal organization existed. For these reasons, he allowed the appeal, set aside the appellant’s conviction for participation in the activities of a criminal organization, and ordered a new trial on that count.

Breakdown of the decision: *Majority:* Justice [Rowe](#) allowed the appeal (Chief Justice [Wagner](#) and Justices [Karakatsanis](#), [Martin](#), [Kasirer](#), [Jamal](#) and [O'Bonsawin](#) agreed) | *Dissenting:* Justice [Côté](#) would have dismissed the appeal.

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

Lower court rulings: [Sentencing decision](#) (Ontario Superior Court of Justice) | [Appeal](#) (Court of Appeal for Ontario)
