



Session 20

Criminal Law 3

Crime scene investigation

By law, the cordoned off area can only be accessed by the police, coroner, forensics and medical staff. The focus of crime scene investigation is to collect physical evidence in a manner that is continuous.

Types of evidence include:

- Fingerprints
- Trace elements (hair, fiber)
- Blood & fluids
- Gunshot residues (primer components, fragments)
- DNA samples

Arrest powers

The challenge of criminal procedure is to maintain a balance between the efficient enforcement of the law and the protection of individual rights based on the discretion that courts have to exclude evidence from a trial when this is illegally or unconstitutionally obtained

ACTIVITY: read case *R v. Brown* (pp274-275) to determine whether Brown was indeed stopped because of racial profiling.

objectively speaking, it is not evident to prove this; note how the defense seeks to prove not that Brown is not at fault but that the arresting officer is.

Arrest powers (cont.)

Arrest, involving the physical taking of a suspect into custody depends on whether the offence is punishable by:

- Indictment: a serious offence prosecuted in a complex manner and carrying severe penalties.
- Summary conviction: a less serious offence prosecuted in an expedient manner and carrying less severe penalties.
- Dual procedure: a hybrid offence where there is the choice of proceeding by indictment or by summary conviction depending on the seriousness of the offence.

Search power

Searches must be explicitly authorized either by statute or common law and only where reasonable grounds exist, with the exception of search incidental to arrest (i.e. search following an arrest to achieve valid evidence).

Appearance in court

The presumption of innocence requires that accused persons should be released as soon as possible - unless there are reasonable grounds that they should be detained.

Appearance in court (cont.)

With summary conviction, hybrid offences or less serious indictable offences, the accused are requested to appear to court by means of

- an appearance notice (i.e. notice to appear for fingerprinting and to attend court),
- a summons (i.e. order issued by justice)
- a recognizance (i.e. promise to appear to court).

With indictable offences, the accused are detained in custody to await judicial interim release (i.e. release pending trial) or bail hearing within 24 hours of detention.

ACTIVITY: read case *R v. Hall* (2004: 282-283) to explain the difference in judgment made by the majority from that of the minority.

- although both claimed that Criminal Code s. 515 (10) constitutionally invalid, the majority held there was no error in the reasoning of the bail judge as this section is inconsistent with the Constitutional Act, 1982, s. 11, (c) and the presumption of innocence;
- the minority the opposite, based on the principle of the presumption of innocence and that Constitutional Act, 1982, s. 11 (c) requires that bail be denied only when it is necessary to promote the proper functioning of the system.