

R v Feeney, [1997] 2 SCR 13, 1997 CanLII 342 (SCC)

Facts: On June 8, 1991, Frank Boyle was found dead in his home in British Columbia with his truck missing. A witness told police that she saw the appellant, Michael Feeney, alongside Boyle's truck. An officer went to Feeney's trailer but no one answered the door. The officer drew his gun and entered the trailer without a warrant. The officer found Feeney asleep so he shook Feeney's leg and directed him to a well-lit room. The officer noticed bloodstains on Feeney's shirt, and promptly arrested him. Feeney's rights were read to him but he did not have access to a telephone to call a lawyer before being questioned. He was taken to a RCMP detachment where he was unsuccessful in talking to his lawyer so he left a voice message. During the interrogation, Feeney pleaded that "[he] should have a lawyer," but his plea was disregarded. Later Feeney admitted to hitting and stealing from the victim. The police then obtained a search warrant for Feeney's trailer. Feeney was finally able to speak to a lawyer on June 10 between his fingerprinting sessions. He was charged with second-degree murder but appealed the matter, arguing that the police violated various sections of the *Charter*.

Issue: Did the police breach Feeney's s. 10(b) right to immediate counsel?

Ratio: Section 10(b) of the *Charter* states "everyone has the right on arrest or detention... to retain and instruct counsel without delay and to be informed of that right." Feeney should have been informed of his rights at the moment of detention. Under s.10 detention starts once an officer assumes control over the movement of a person by demand or direction which is once the officer touches Feeney's leg and orders him to get out of bed but he failed to give caution to Feeney at that exact moment. S. 10(b) imposes that the police must give a reasonable opportunity to the accused to retain and instruct counsel immediately. Meanwhile, they are

forbidden from obtaining information or evidence from the accused. Furthermore, simply informing the accused of his rights is not sufficient to fulfill duties imposed in s. 10(b) but he must also be given the proper advice and resources to exercise those rights. Feeney was just informed of his rights without being given reasonable opportunity and resources to contact a lawyer and as a result his s. 10(b) rights were violated. The police found their evidence by violating s. 10(b) of the *Charter*. They would not have had grounds for a warrant supporting the second search without the violations. Thus, all evidences that were collected by violating Feeney's rights are inadmissible according to s. 24(2) of the *Charter*.

Held: The conviction was overturned and a new trial was ordered.