

**SUPREME COURT OF CANADA**

|  |  |
| --- | --- |
| **Citation:** R. *v.* Davis, 2014 SCC 4, [2014] 1 S.C.R. 78 | **Date:** 20140117**Docket:** 35327 |

**Between:**

**Percy Walter Davis**

Appellant

and

**Her Majesty The Queen**

Respondent

**Coram:** LeBel, Rothstein, Moldaver, Karakatsanis and Wagner JJ.

|  |  |
| --- | --- |
| **Reasons for Judgment:**(para. 1) | LeBel J. (Rothstein, Moldaver, Karakatsanis and Wagner JJ. concurring)  |

R. *v*. Davis, 2014 SCC 14, [2014] 1 S.C.R. 78

Percy Walter Davis Appellant

v.

Her Majesty The Queen Respondent

**Indexed as: R. *v.*** Davis

2014 SCC 4

File No.: 35327.

2014: January 17.

Present: LeBel, Rothstein, Moldaver, Karakatsanis and Wagner JJ.

on appeal from the court of appeal for alberta

 *Criminal law — Appeals — Powers of Court of Appeal — Application of curative proviso — Trial judge’s error in allocating burden of proof may have tainted evaluation of evidence of whether excessive force used by police officer — Curative proviso not applicable — Criminal Code, R.S.C. 1985, c. C-46, s. 686(1)(b)(iii).*

**Statutes and Regulations Cited**

*Criminal Code*, R.S.C. 1985, c. C-46, s. 686(1)(*b*)(iii).

 APPEAL from a judgment of the Alberta Court of Appeal (Fraser C.J. and O’Brien and McDonald JJ.A.), 2013 ABCA 15, 75 Alta. L.R. (5th) 386, 542 A.R. 100, 566 W.A.C. 100, 275 C.R.R. (2d) 266, 100 C.R. (6th) 175, 295 C.C.C. (3d) 508, [2013] 5 W.W.R. 423, [2013] A.J. No. 20 (QL), 2013 CarswellAlta 78, affirming the accused’s conviction for possession of a weapon for a purpose dangerous to the public peace, assault of a peace officer and assault with a weapon entered by Crighton J. Appeal allowed.

 Peter J. Royal, Q.C., and Kathryn A. Quinlan, for the appellant.

 Troy L. Couillard, for the respondent.

 The judgment of the Court was delivered orally by

[1] LeBel J. — The Crown has conceded and we agree with the Alberta Court of Appeal that the trial judge made an error in allocating the burden of proof. But we agree with Fraser C.J., in dissent, that this error may have tainted the evaluation of the evidence as to whether excessive force had been used by a police officer. In the circumstances of this case, the proviso of s. 686(1)(*b*)(iii) of the *Criminal Code*, R.S.C. 1985, c. C-46, could not apply. For these reasons, the appeal is allowed and the appellant’s conviction is quashed. As the parties have requested in such an event, a new trial is ordered on the same charges.

 *Judgment accordingly.*

 Solicitors for the appellant: Royal Teskey, Edmonton.

 Solicitor for the respondent: Attorney General of Alberta, Edmonton.