



SUPREME COURT OF CANADA

CITATION: R. v. Brunelle, 2022 SCC
5

APPEAL HEARD: March 15, 2022
JUDGMENT RENDERED: March 15,
2022
DOCKET: 39701

BETWEEN:

Her Majesty The Queen
Appellant

and

Daniel Brunelle
Respondent

OFFICIAL ENGLISH TRANSLATION

CORAM: Wagner C.J. and Moldaver, Karakatsanis, Côté, Brown, Rowe, Martin, Kasirer and Jamal JJ.

UNANIMOUS Wagner C.J.
JUDGMENT READ
BY:
(paras. 1 to 11)

COUNSEL:

Nicolas Abran and Alexandre Dubois, for the appellant.
Marie-Hélène Giroux, for the respondent.

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Her Majesty The Queen

Appellant

v.

Daniel Brunelle

Respondent

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File No.: 39701.

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Present: Wagner C.J. and Moldaver, Karakatsanis, Côté, Brown, Rowe, Martin, Kasirer and Jamal JJ.

ON APPEAL FROM THE COURT OF APPEAL OF QUEBEC

Criminal law — Appeals — Unreasonable verdict — Evidence — Trial judge finding that accused did not act in self-defence when he stabbed complainant during altercation following

collision between their vehicles — Accused convicted of aggravated assault, assault with weapon and possession of weapon for purpose dangerous to public peace — Majority of Court of Appeal setting aside guilty verdicts and ordering new trial on ground that trial judge drew improper inference from evidence in analyzing second criterion for self-defence — Dissenting judge concluding that trial judge's finding was supported by evidence and involved no palpable and overriding error — Convictions restored.

Cases Cited

Referred to: *R. v. Khill*, 2021 SCC 37; *R. v. Beaudry*, 2007 SCC 5, [2007] 1 S.C.R. 190; *R. v. Sinclair*, 2011 SCC 40, [2011] 3 S.C.R. 3; *R. v. R.P.*, 2012 SCC 22, [2012] 1 S.C.R. 746; *R. v. Burke*, [1996] 1 S.C.R. 474; *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235; *R. v. Gagnon*, 2006 SCC 17, [2006] 1 S.C.R. 621.

Statutes and Regulations Cited

Criminal Code, R.S.C. 1985, c. C-46, s. 34.

APPEAL from a judgment of the Quebec Court of Appeal (Bélanger, Baudouin and Bachand JJ.A.), 2021 QCCA 783, [2021] AZ-51765162, [2021] J.Q. n° 4921 (QL), 2021 CarswellQue 6132 (WL Can.), setting aside the convictions of the accused for aggravated assault, assault with a weapon and possession of a weapon for a purpose dangerous to the public peace and ordering a new trial. Appeal allowed.

Nicolas Abran and Alexandre Dubois, for the appellant.

Marie-Hélène Giroux, for the respondent.

English version of the judgment of the Court delivered orally by

[1] THE CHIEF JUSTICE — The Crown appeals as of right from a decision of the Quebec Court of Appeal. It argues that the majority overstepped its appellate role by reassessing the evidence without identifying any error in the trial judge’s reasoning.

[2] The accused claims that he acted in self-defence pursuant to s. 34 of the *Criminal Code*, R.S.C. 1985, c. C-46. As this Court recently noted in *R. v. Khill*, 2021 SCC 37, three components must be present for this defence to be successful: (1) the catalyst; (2) the motive; and (3) the response (para. 51).

[3] The trial judge rejected the theory of self-defence. In her view, the second criterion for this defence was not met. She did not believe that the accused had used force to defend or protect himself from the use or threat of force. In light of her assessment of the evidence, she found rather that the accused had acted out of vengeance. She therefore convicted him of aggravated assault, assault with a weapon and possession of a weapon for a purpose dangerous to the public peace.

[4] The majority of the Court of Appeal allowed the accused’s appeal, set aside the guilty verdicts and ordered a new trial on the ground that the trial judge had erred in analyzing the second criterion for self-defence.

[5] Bachand J.A., dissenting, would instead have dismissed the appeal. Noting that the trial judge's finding was supported by the evidence, he concluded that it was reasonable and entitled to deference.

[6] We are all of the view that the majority of the Court of Appeal erred in intervening in this case, and we agree in part with the reasons of Bachand J.A.

[7] When a verdict is reached by a judge sitting alone, there are two bases on which a court of appeal may be justified in intervening because the verdict is unreasonable: (1) where the verdict cannot be supported by the evidence; or (2) where the verdict is vitiated by illogical or irrational reasoning (*R. v. Beaudry*, 2007 SCC 5, [2007] 1 S.C.R. 190; *R. v. Sinclair*, 2011 SCC 40, [2011] 3 S.C.R. 3).

[8] While the unreasonableness of a verdict is a question of law, the assessment of credibility is a question of fact (*R. v. R.P.*, 2012 SCC 22, [2012] 1 S.C.R. 746, at para. 10). A trial judge's assessment of the credibility of witnesses may be rejected only where it "cannot be supported on any reasonable view of the evidence" (*R. v. Burke*, [1996] 1 S.C.R. 474, at para. 7). As Bachand J.A. correctly pointed out, the question in this case was therefore not [TRANSLATION] "whether the finding that the [accused] acted out of vengeance was the only one reasonably open to the judge in light of the evidence adduced", but rather "whether that finding is sufficiently supported by the evidence and involves no palpable and overriding error" (para. 58, citing *Beaudry*). Bachand J.A. completed his remarks by noting that the trial judge could find beyond a reasonable doubt that the respondent had acted out of vengeance and not for the purpose of defending himself.

[9] We are all of the view that the majority of the Court of Appeal failed to consider the trial judge's privileged position in assessing the evidence (see *Beaudry*, at para. 62). The majority faulted the trial judge for failing to consider certain evidence, but it did so without clearly identifying a palpable and overriding error in her analysis. However, "[t]he mere fact that the trial judge did not discuss a certain point or certain evidence in depth is not sufficient grounds for appellate interference" (*Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235, at para. 72). The majority could not simply substitute its opinion for that of the trial judge with respect to the assessment of the credibility of witnesses (*R. v. Gagnon*, 2006 SCC 17, [2006] 1 S.C.R. 621, at para. 23). In the absence of a reviewable error, it should have shown deference.

[10] Nor could the majority of the Court of Appeal assert that the trial judge's finding on the second criterion for self-defence was [TRANSLATION] "vitiating by faulty underlying reasoning" (para. 54). A verdict may be considered unreasonable where it is based on illogical or irrational reasoning, such as where the trial judge makes a finding that is essential to the verdict but incompatible with evidence that is uncontradicted and not rejected by the judge (*Beaudry*, at para. 98; *Sinclair*, at para. 21). Here, the inference drawn by the trial judge from the evidence was not incompatible with the evidence adduced. On the contrary, her approach was coherent and supported by evidence that was neither contradicted nor rejected. There were no grounds for intervention.

[11] For these reasons, we are all of the view that the appeal should be allowed, the guilty verdicts entered by the Court of Québec restored, and the respondent Daniel Brunelle ordered to report to prison authorities within 72 hours of this judgment.

Judgment accordingly.

Solicitor for the appellant: Director of Criminal and Penal Prosecutions, Saint-Jérôme.

Solicitors for the respondent: Marie-Hélène Giroux Avocats Inc., Montréal.