



SUPREME COURT OF CANADA

CITATION: R. v. Doxtator, 2022
SCC 40

APPEAL HEARD: November 9, 2022
JUDGMENT RENDERED: November
9, 2022
DOCKET: 40063

BETWEEN:

His Majesty The King
Appellant

and

Richard Doxtator
Respondent

CORAM: Karakatsanis, Côté, Brown, Rowe and Kasirer JJ.

JUDGMENT READ

BY: Kasirer J.
(paras. 1 to 2)

MAJORITY: Côté, Brown and Kasirer JJ.

DISSENT: Karakatsanis and Rowe JJ.

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His Majesty The King

Appellant

v.

Richard Doxtator

Respondent

Indexed as: R. v. Doxtator

2022 SCC 40

File No.: 40063.

2022: November 9.

Present: Karakatsanis, Côté, Brown, Rowe and Kasirer JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Criminal law — Charge to jury — Included offences — Accused and co-accused convicted of first degree murder by jury — Accused appealing conviction on basis that failure of

trial judge to leave included offences with jury with respect to co-accused undermined his defence and tainted verdict — Majority of Court of Appeal holding that trial judge should have left included offences with jury in case of co-accused and that failure to do so narrowed jury instructions in case of accused and weakened his position — Majority setting aside conviction and ordering new trial — Dissenting judge finding that trial judge's error did not negatively impact accused's charge as trial judge told jury to consider each accused separately and to consider accused before co-accused — Conviction restored.

Cases Cited

Referred to: *R. v. Corbett*, [1988] 1 S.C.R. 670.

APPEAL from a judgment of the Ontario Court of Appeal (MacPherson, Roberts and Miller JJ.A.), **2022 ONCA 155**, 161 O.R. (3d) 81, 78 C.R. (7th) 298, [2022] O.J. No. 794 (QL), 2022 CarswellOnt 1966 (WL), setting aside the conviction of the accused for first degree murder and ordering a new trial. Appeal allowed, Karakatsanis and Rowe JJ. dissenting.

Andreea Baiasu, for the appellant.

James Lockyer and *Jessica Zita*, for the respondent.

The judgment of the Court was delivered orally by

[1] KASIRER J. — A majority of the Court would allow the appeal. The trial judge's instructions for Mr. Doxtator properly left with the jury the reasonably available verdicts. As MacPherson J.A., dissenting, correctly observed in the Court of Appeal, the trial judge explicitly instructed the jury to consider Mr. Doxtator's case separately from that of the co-accused. Nothing in the record on appeal permits this Court to depart from the assumption that juries generally follow explicit instructions: see *R. v. Corbett*, [1988] 1 S.C.R. 670, at pp. 692-93. This is sufficient for the appeal to be allowed, to set aside the order for a new trial for the respondent Richard Doxtator and to restore his conviction for first degree murder.

[2] Justices Karakatsanis and Rowe, dissenting, would dismiss the appeal substantially for the reasons of Roberts J.A. in the Court of Appeal.

Judgment accordingly.

Solicitor for the appellant: Ministry of the Attorney General, Crown Law Office — Criminal, Toronto.

Solicitors for the respondent: Lockyer Zaduk Zeeh, Toronto.