

CANADA / JUDGMENT

Harper (Down) v. The Queen

[1980] 2 SCR 366

COURT

Supreme Court of Canada

DECIDED

8 December 1980

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Harper (Down) v. The Queen Collection Supreme Court Judgments Date 1980-12-08 Report

[1980] 2 SCR 366 Judges Laskin, Bora; Ritchie, Roland Almon; Dickson, Robert George Brian; Estey, Willard Zebedee; McIntyre, William Rogers; Chouinard, Julien; Lamer, Antonio On appeal from Manitoba Subjects Criminal law Decision Content Supreme Court of Canada Harper (Down) v. The Queen, [1980] 2 S.C.R. 366 Date: 1980-12-08 Katie Harper also known as Katie Down Appellant; and Her Majesty The Queen Respondent. 1980: December 8. Present: Laskin C.J. and Ritchie, Dickson, Estey, McIntyre, Chouinard and Lamer JJ. ON APPEAL FROM THE COURT OF APPEAL FOR MANITOBA Criminal law—Murder conviction—Failure to hold voir dire on crucial statement allegedly made by accused to police officer—New trial ordered—Non-applicability of s. 613(1)(b)(iii) of the Criminal Code. APPEAL from a judgment of the Court of Appeal for Manitoba[1], dismissing, by a majority, the appellant's appeal against her conviction of first degree murder. Appeal allowed. H.E. Wolch and H. Leonoff, for the appellant. J.G. Dangerfield, Q.C., and S.J. Whitley, for the respondent. The judgment of the Court was delivered orally by THE CHIEF JUSTICE—We are all of the opinion that, in the circumstances of this case, there should be a new trial for failure to hold a voir dire on a statement allegedly made by the accused to a police officer which, admittedly, related to a crucial point in the trial and could well have made the difference between first and second degree murder. We reaffirm the judgment of this Court in Erven v. The Queen[2]. This is not a case for applying s. 613(1)(b)(iii) of the Criminal Code. It becomes unnecessary, therefore, to deal with the second point raised by the appellant respecting the introduction of new evidence. In the result, the appeal is allowed, the judgment of the Manitoba Court of Appeal is set aside, and the conviction is quashed and a new trial is directed. Judgment accordingly. Solicitors for the appellant: Wolch, Pinx, Scur-field, Martin & Wyant, Winnipeg. Solicitor for the respondent: The Attorney General for Manitoba, Winnipeg.

[1] (1980), 2 Man. R. (2d) 153.

[2] [1979] 1 S.C.R. 926.

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