

CANADA / JUDGMENT

Nadeau v. The Queen

[1984] 2 SCR 570**COURT**

Supreme Court of Canada

DECIDED

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Nadeau v. The Queen Collection Supreme Court Judgments Date 1984-12-13 Report

[1984] 2 SCR 570 Case number 17596 Judges Dickson, Robert George Brian; Beetz, Jean; Estey, Willard Zebedee; McIntyre, William Rogers; Chouinard, Julien; Lamer, Antonio; Le Dain, Gerald Eric On appeal from Quebec Subjects Criminal law Notes SCC Case Information: 17596 Decision Content Supreme Court of Canada Nadeau v. The Queen, [1984] 2 S.C.R. 570 Date: 1984-12-13 Pierre Nadeau Appellant; and Her Majesty The Queen Respondent. File No.: 17596. 1984: November 21; 1984: December 13. Present: Dickson C.J. and Beetz, Estey, McIntyre, Chouinard, Lamer and Le Dain JJ. ON APPEAL FROM THE COURT OF APPEAL FOR QUEBEC Criminal law—Murder—Charge to jury—Burden of proof—Two versions of events surrounding homicide presented in evidence—Self-defence—Misdirection—New trial ordered—Criminal Code, R.S.C. 1970, c. C-34, s. 613(1)(b)(iii). Appellant was charged with first-degree murder. At trial, two different versions of the circumstances surrounding the homicide were presented in evidence: that of the accused, corroborated by his concubine, and that of the witness for the Crown. The trial judge directed the jury on the rules of law governing self-defence—one of the defences presented by the accused—and told them the standard and the burden of proof on the Crown with regard to establishing the facts which constitute the essential components of the offence, and the standard applicable to any accused with regard to his defence arguments. Appellant was convicted of second-degree murder and the Court of Appeal upheld the conviction. This appeal is to determine whether the trial judge erred in his directions to the jury. Held: The appeal should be allowed and a new trial ordered. The trial judge erred in law on the question of the burden of proof regarding the contradictory versions of the facts in issue. An accused benefits from any reasonable doubt at the outset, not merely if the two versions of the facts are equally consistent with the evidence or valid. Moreover, the jurors are not limited to choosing between the two versions. Even if they do not believe the accused, they cannot accept the other version of the facts unless they are satisfied beyond all reasonable doubt that the events in fact took place in the manner in which the witness for the Crown related them. Otherwise the accused is entitled to the finding of fact more favourable to him provided that it is based on evidence in the record and not mere speculation. Furthermore, the trial judge also erred in law on the question of the burden of proof when

he told the jurors that the accused had to prove his defence of self-defence beyond all reasonable doubt. The accused was entitled to the benefit of any reasonable doubt raised by the evidence respecting this defence. Finally, section 613(1)(b)(iii) of the Criminal Code should not be applied in this case. The Crown did not show that, if it had been directed in accordance with the law, the jury would necessarily have brought in a verdict of guilty. APPEAL from a judgment of the Quebec Court of Appeal[1], dismissing appellant's appeal from his conviction of second-degree murder. Appeal allowed. Michel Proulx and Richard Masson, for the appellant. Robert Lévesque, for the respondent. English version of the judgment of the Court delivered by LAMER J.—In this appeal, the applicable principles of law are well-known and are not in any way at issue. Rather, the question is whether the trial judge erred in law in his directions to the jury, and if so, whether his error was such that a new trial should be held. The Court of Appeal of Quebec considered that it should not. While agreeing with this conclusion, the Crown is asking this Court, if necessary, to apply the provisions of s. 613(1)(b)(iii) of the Criminal Code. Appellant killed a man named Francœur with a rifle shot. He was charged with first-degree murder, and convicted of second-degree murder by a jury in New Carlisle, in the Gaspé area. The incident occurred in the apartment of the accused's concubine, Miss Linda Caissy. One Landry, who said he was present in the apartment when the incident occurred, testified as to the circumstances surrounding the homicide. According to the accused and his concubine, Landry was not there, and they both gave the same version of the events leading to the killing of Francœur, but one which differed from that of Landry. Appellant presented five grounds, each charging that the judge had erred in his directions to the jury. In my opinion, the first ground, having regard to the burden of proof in criminal proceedings, succeeds, and requires that this Court order a new trial; it is therefore unnecessary to deal with the others. For reasons which it is not necessary to elaborate, the judge had a duty, which he discharged, to direct the jurors on the rules of law governing "self-defence". He also had a duty, as in all cases, to inform them of the standard and the burden of proof applicable to the Crown, with regard to establishing the facts which constitute the essential components of the offence, as well as the standard applicable to any accused with regard to his defence arguments, in particular that of self-defence. Appellant argues that he erred in law on these questions when he dealt with the burden of proof regarding the two versions of the incident, and regarding self-defence. The Two Versions After telling them they had to choose between the two versions, the judge explained the jury's task to them as follows: [TRANSLATION] YOU have heard the analysis given of the two (2) versions throughout the day, and I do not intend to repeat it. I will simply say that in deciding how you make your choice, you must have one thing clearly in mind: you must choose the more persuasive, the clearer version, the one which provides a better explanation of the facts, which is more consistent with the other facts established in the evidence. You must keep in mind that, as the accused has the benefit of the doubt on all the evidence, if you come to the conclusion that the two (2) versions are equally consistent with the evidence, are equally valid, you must give - you must accept the version more favourable to the accused. These are the principles on which you must make your choice

between the two (2) versions. (Emphasis added.) With respect, this direction is in error. The accused benefits from any reasonable doubt at the outset, not merely if “the two (2) versions are equally consistent with the evidence, are equally valid”. Moreover the jury does not have to choose between two versions. It is not because they would not believe the accused that they would then have to agree with Landry’s version. The jurors cannot accept his version, or any part of it, unless they are satisfied beyond all reasonable doubt, having regard to all the evidence, that the events took place in this manner; otherwise, the accused is entitled, unless a fact has been established beyond a reasonable doubt, to the finding of fact the most favourable to him, provided of course that it is based on evidence in the record and not mere speculation.

Self-Defence The judge told the jurors more than once that the accused had the benefit of a reasonable doubt at all times, and that the Crown had a duty to prove each of the component parts of the crime. Dealing with self-defence, he told them: [TRANSLATION] I should tell you that here too, on self-defence, as on all the other defences which he may present, the accused is entitled to the benefit of the doubt in the event you are undecided whether any one component of the crime has been established. Further, he said: [TRANSLATION] In the event you conclude that the version of Nadeau and that of Linda Caissy should be accepted, you must examine self-defence: if you accept self-defence, you may bring in a verdict of acquittal. In the event you conclude that self-defence was not established beyond all doubt, then you must examine the evidence to determine whether, at the time he fired this shot in the particular circumstances of the case, the accused could have formed—was capable of forming the specific intent of murder. (Emphasis added.) Although the jury requested and received further directions on other aspects of the law applicable in the circumstances, this direction was the final one given by the judge on self-defence. With respect, it is in error. Any reasonable doubt as regards his being in self-defence raised by the evidence enures to the accused, and he certainly does not have to show beyond all reasonable doubt that he was placed in a position of self-defence. In all fairness to the judge, I assume he meant to tell the jurors that, if they were satisfied beyond all reasonable doubt that the accused was not in a position of self-defence, they should not thereupon immediately conclude that he was guilty, but should consider whether he “was capable of forming the specific intent of murder”. I feel certain that this is what the judge intended and thought he was telling the jury, since the judge in question is one of experience and great ability. Unfortunately, this is not what he said, and I can only conclude that the jurors could have been given the wrong impression as to the burdens of proof; particularly with regard to the preliminary choice which they could make, and might even have been required to make, of “the more persuasive ... version”. The Crown suggested that this Court apply s. 613(1)(b)(iii). I have read the evidence in the record, and I am of the opinion that the Crown did not show the Court that, if it had been properly instructed in law, the jury would necessarily have brought in a verdict of second-degree murder, as it did. I would allow the appeal, set aside the judgment of the Court of Appeal dismissing the appeal, and order a new trial on a charge of second-degree murder. Appeal allowed. Solicitors for the appellant: Proulx, Barot, Masson, Montréal. Solicitor for the respondent: Robert Lévesque, New Carlisle.

[1] Que. C.A., No. 200-10-000136-81, March 11, 1983.

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