

CANADA / JUDGMENT

R. v. Doonanco

2020 SCC 2

COURT

Supreme Court of Canada

DECIDED

18 February 2020

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[2020] 1 SCR 9 Case number 38577 Judges Wagner, Richard; Abella, Rosalie Silberman; Moldaver, Michael J.; Karakatsanis, Andromache; Côté, Suzanne; Brown, Russell; Rowe, Malcolm; Martin, Sheilah; Kasirer, Nicholas On appeal from Alberta Notes SCC Case Information Decision Content SUPREME COURT OF CANADA Citation: R. v. Doonanco, 2020 SCC 2, [2020] 1 S.C.R. 9 Appeal Heard: February 18, 2020 Judgment Rendered: February 18, 2020 Docket: 38577 Between: Deborah Lee Doonanco Appellant and Her Majesty The Queen Respondent Coram: Wagner C.J. and Abella, Moldaver, Karakatsanis, Côté, Brown, Rowe, Martin and Kasirer JJ. Unanimous Judgment Read By: (paras. 1 to 5) Moldaver J. Deborah Lee Doonanco Appellant v. Her Majesty The Queen Respondent Indexed as: R. v. Doonanco 2020 SCC 2 File No.: 38577. 2020: February 18. Present: Wagner C.J. and Abella, Moldaver, Karakatsanis, Côté, Brown, Rowe, Martin and Kasirer JJ. on appeal from the court of appeal for alberta Criminal law — Evidence — Expert evidence — Disclosure — Crown seeking to lead rebuttal expert evidence at trial but failing to disclose expert report prior to testimony of defence's expert — Trial judge allowing testimony of Crown's expert but restricting scope of evidence — Accused convicted by jury of second degree murder, indecently interfering with human remains and arson — Court of Appeal upholding convictions — Crown's late disclosure of expert report and failure to cross-examine defence expert on contents of report interfered with accused's ability to know case to meet and make full answer and defence — Trial judge's remedial ruling not capable of undoing prejudice caused — New trial ordered. Statutes and Regulations Cited Criminal Code, R.S.C. 1985, c. C-46, s. 686(1) (a)(iii). APPEAL from a judgment of the Alberta Court of Appeal (Watson, Bielby and Wakeling JJ.A.), 2019 ABCA 118, 432 C.R.R. (2d) 270, [2019] 7 W.W.R. 430, 373 C.C.C. (3d) 275, 87 Alta. L.R. (6th) 221, [2019] A.J. No. 395 (QL), 2019 CarswellAlta 619 (WL Can.), affirming the convictions of the accused for second degree murder, indecently interfering with human remains and arson. Appeal allowed. Brian A. Beresh, Q.C., for the appellant. Joanne Dartana and Cheryl A. Schlecker, for the respondent. The judgment of the Court was delivered orally by

- [1] Moldaver J. — We are all of the view that the appeal must be allowed and a new trial ordered on all counts. The Crown’s failure to disclose Dr. Glancy’s report before Dr. Walker completed her testimony, when considered together with the Crown’s failure to cross-examine Dr. Walker on the contents of that report, interfered with Ms. Doonanco’s ability to know the case she had to meet and make full answer and defence. To that extent, we agree with the reasons of Justice Bielby, dissenting in the Court of Appeal.
- [2] With respect, however, unlike Justice Bielby, we are not persuaded that the trial judge’s remedial ruling was capable of undoing the prejudice caused to Ms. Doonanco by the manner in which the Crown proceeded. In the circumstances, precluding Dr. Glancy from testifying was, in our view, the only way of preserving Ms. Doonanco’s right to a fair trial.
- [3] The net effect of Dr. Glancy’s evidence was to call into question Dr. Walker’s competence and the reliability of her expert testimony by showing that she failed to consider, much less explain, a number of factors that Dr. Glancy found to be atypical of the battered woman’s syndrome — factors which undermined Dr. Walker’s conclusion that Ms. Doonanco was suffering from this syndrome when she killed her domestic partner.
- [4] Because Dr. Glancy’s report was not disclosed to the defence before Dr. Walker completed her testimony, and because the factors that Dr. Glancy relied upon to characterize Ms. Doonanco’s case as atypical were never put to Dr. Walker by the Crown in cross-examination, the defence was not able to respond to Dr. Glancy’s critiques. This rendered Ms. Doonanco’s trial unfair, resulting in a miscarriage of justice (see Criminal Code , R.S.C. 1985, c. C-46, s. 686(1) (a)(iii)).
- [5] Accordingly, the appeal is allowed, the convictions are set aside, and a new trial is ordered on all counts. Judgment accordingly. Solicitors for the appellant: Beresh Law, Edmonton. Solicitor for the respondent: Attorney General of Alberta, Edmonton.

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