

CANADA / JUDGMENT

R. v. Zazulak

[1994] 2 SCR 5**COURT**

Supreme Court of Canada

DECIDED

4 May 1994

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R. v. Zazulak Collection Supreme Court Judgments Date 1994-05-04 Report

[1994] 2 SCR 5 Case number 23713 Judges Lamer, Antonio; La Forest, Gérard V.; Sopinka, John; Cory, Peter deCarteret; McLachlin, Beverley; Iacobucci, Frank; Major, John C. On appeal from Alberta Subjects Criminal law Notes SCC Case Information: 23713 Decision Content R. v. Zazulak, [1994] 2 S.C.R. 5 Donald Anton Zazulak Appellant v. Her Majesty The Queen Respondent Indexed as: R. v. Zazulak File No.: 23713. 1994: May 4. Present: Lamer C.J. and La Forest, Sopinka, Cory, McLachlin, Iacobucci and Major JJ. on appeal from the court of appeal for alberta Criminal law -- Perjury -- Recantation -- Finding at trial of intention by accused to mislead court and of other falsehoods -- Retraction of earlier false testimony within same hearing -- Recantation of perjury not a defence to completed offence. APPEAL from a judgment of the Alberta Court of Appeal (1993), 145 A.R. 31, 55 W.A.C. 31, 12 Alta. L.R. (3d) 125, 84 C.C.C. (3d) 303, [1993] 8 W.W.R. 614, allowing an appeal from acquittal by Wachowich J. Appeal dismissed. C. D. Evans, Q.C., and P. C. Fagan, for the appellant. William G. Pinckney, for the respondent. The judgment of the Court was delivered orally by Major J. -- The appellant raised two principal grounds of appeal:

- (1) Initially the appellant submitted that the Alberta Court of Appeal erred in holding that the Crown's appeal involved a question of law. We do not agree that there was an error of law. The substance of this ground of appeal is whether as a matter of law there can be a recantation of perjury within the same hearing, the effect of which would be to nullify the prior finding of the completed offence. This in our opinion is a question of law.
- (2) The second ground is that recantation of perjury can provide a defence. In our opinion the finding of fact by the trial judge, with which we cannot interfere, that the accused intended initially to mislead the Court, coupled with the other findings of falsehood under oath, results in a conclusion that at that point the offence was complete. A later recantation under the circumstances of this case would not, as a matter of logic, negate an earlier intention to mislead. Compelling evidence dealing with the good but misguided motive of the accused should, as stated by the Court of Appeal, undoubtedly count positively in his favour towards sentence. We therefore agree with the conclusion of the Alberta Court of Appeal and the appeal is dismissed. Judgment accordingly. Solicitors for the appellant: Evans, Bascom,

Calgary. Solicitor for the respondent: The Alberta Department of Justice, Edmonton.

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