

Didier Buzizi (appellant) v. Her Majesty the Queen (respondent)
(34899; 2013 SCC 27; 2013 CSC 27)

Indexed As: R. v. Buzizi (D.)

Supreme Court of Canada
LeBel, Fish, Moldaver, Karakatsanis and Wagner, JJ.
May 10, 2013.

Summary:

The accused was convicted of second degree murder. He appealed.

The Quebec Court of Appeal, Bich, J.A., dissenting, dismissed his appeal. The accused appealed as of right.

The Supreme Court of Canada, LeBel and Wagner, JJ., dissenting, allowed the appeal and ordered a new trial.

Criminal Law - Topic 1289

Murder - Provocation - Evidence and proof - The accused was convicted of second degree murder - The accused appealed, arguing that the trial judge had erred in not putting the defence of provocation to the jury - The Quebec Court of Appeal, Bich, J.A., dissenting, dismissed the appeal - The accused appealed - The Supreme Court of Canada allowed the appeal and ordered a new trial - The defence of provocation comprised an objective and a subjective element - To the extent that the evidence adduced before the trial judge was "reasonably capable of supporting the inferences necessary to make out the defence", the trial judge was bound to put the defence of provocation to the jury - All three Court of Appeal justices agreed that the evidence was sufficient respecting the objective element - However, only Bich, J.A., considered the evidence to be equally capable of supporting the subjective element - The court agreed with Bich, J.A., that it was open to a properly instructed jury to resolve this dispute in the accused's favour - See paragraphs 1 to 18.

Criminal Law - Topic 1289

Murder - Provocation - Evidence and proof - The Supreme Court of Canada rejected the position that an appellate court had to defer to a trial judge in determining whether a defence had an air of reality - The court stated that "... the applicable standard of review in this regard is correctness. It follows ... that the trial judge is not at all in the 'best position' to determine whether a defence has an air of reality, since that is a question of law: '... the interpretation of a legal standard (the elements of the defence) and the determination of whether there is an air of reality to a defence constitute questions of law, reviewable on a standard of correctness'" - See paragraph 15.

Criminal Law - Topic 4386

Procedure - Charge or directions - Jury or judge alone - Judge's duty to determine if defence available on evidence - [See both **Criminal Law - Topic 1289**].

Criminal Law - Topic 4860

Appeals - Indictable offences - Grounds of appeal - Question of law or question of law alone - [See second **Criminal Law - Topic 1289**].

Criminal Law - Topic 4944

Appeals - Indictable offences - New trials - When available - General - [See first **Criminal Law - Topic 1289**].

Cases Noticed:

- R. v. Tran (T.K.), [2010] 3 S.C.R. 350; 409 N.R. 1; 493 A.R. 123; 502 W.A.C. 123; 2010 SCC 58, refd to. [para. 7].
R. v. Gill (R.) (2009), 246 O.A.C. 390; 241 C.C.C.(3d) 1; 2009 ONCA 124; 241 C.C.C. (3d) 1, refd to. [paras. 11, 55].
R. v. Cinous (J.), [2002] 2 S.C.R. 3; 285 N.R. 1; 2002 SCC 29, refd to. [paras. 16, 63].
R. v. Pintar (J.) (1996), 93 O.A.C. 172; 110 C.C.C.(3d) 402 (C.A.), refd to. [para. 28].
R. v. Graveline (R.), [2006] 1 S.C.R. 609; 347 N.R. 268; 2006 SCC 16, refd to. [para. 29].
R. v. Tripodi, [1955] S.C.R. 438, refd to. [para. 36].
R. v. Olbey, [1980] 1 S.C.R. 1008; 30 N.R. 152, refd to. [para. 54].
R. v. Faid, [1983] 1 S.C.R. 265; 46 N.R. 461, refd to. [para. 56].

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Thierry Nadon and Mario Longpré, for the respondent.

Solicitors of Record:

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Poursuites criminelles et pénales du Québec, Montreal, Quebec, for the respondent.

This appeal was heard on March 27, 2013, by LeBel, Fish, Moldaver, Karakatsanis and Wagner, JJ., of the Supreme Court of Canada. On May 10, 2013, the court delivered the following reasons for judgment, in both official languages, which included the following opinions:

Fish, J. (Moldaver and Karakatsanis, JJ., concurring) - see paragraphs 1 to 18;
Wagner, J., dissenting (LeBel, J., concurring) - see paragraphs 19 to 67.

Appeal allowed;
new trial ordered.

Editor: Jana A. Andersen

Criminal Law - Topic 4386

Procedure - Charge or directions - Jury or judge alone - Judge's duty to determine if defence available on evidence - The accused was convicted of second degree murder - The accused appealed, arguing that the trial judge had erred in not putting the defence of provocation to the jury - The Quebec Court of Appeal, Bich, J.A., dissenting, dismissed the appeal - The accused appealed - The Supreme Court of Canada allowed the appeal and ordered a new trial - The defence of provocation comprised an objective and a subjective element - To the extent that the evidence adduced before the trial judge was "reasonably capable of supporting the inferences necessary to make out the defence", the trial judge was bound to put the defence of provocation to the jury - All three Court of Appeal justices agreed that the evidence was sufficient respecting the objective element - However, only Bich, J.A., considered the evidence to be equally capable of supporting the subjective element - The court agreed with Bich, J.A., that it was open to a properly instructed jury to resolve this dispute in the accused's favour - See paragraphs 1 to 18.

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