

Matthew Leslie Maybin and Timothy Andrew Maybin (appellants) v. Her Majesty The Queen
(respondent) and Attorney General of Ontario (intervener)
(34011; 2012 SCC 24; 2012 CSC 24)

Indexed As: R. v. Maybin (M.L.) et al.

Supreme Court of Canada
LeBel, Fish, Abella, Rothstein, Cromwell, Moldaver and Karakatsanis, JJ.
May 18, 2012.

Summary:

Brophy was at a pub, standing beside a pool table talking, when he moved one or two of the pool balls. The pool-players, brothers Matthew and Timothy Maybin, repeatedly punched him in the face and head. Timothy struck a blow that rendered Brophy unconscious. The pub's bouncer, Gains, arrived on the scene within seconds. Gains punched Brophy in the head, and carried him outside, leaving him on his back. Brophy died later that afternoon. Medical cause of death was bleeding in the brain. The Maybin brothers and Gains were charged with manslaughter.

The British Columbia Supreme Court, in a decision reported at [2008] B.C.T.C. Uned. C97, acquitted all three. The trial judge concluded that the Maybin brothers and Gains, acting independently, committed separate assaults causing bodily harm. The trial judge also found that he was unable to determine whether any or all of them had caused Brophy's death. The Crown appealed, alleging that the trial judge erred in law in analyzing the issue of causation; for that reason, there had to be a new trial.

The British Columbia Court of Appeal, Finch, C.J.B.C., dissenting, in a decision reported at 295 B.C.A.C. 298; 501 W.A.C. 298, allowed the appeal of the acquittal of the Maybin brothers and ordered a new trial. Had the trial judge correctly applied the law as it related to causation, he could have concluded that the brothers caused Brophy bodily harm in a situation where it was not unforeseeable that further non-trivial harm would be caused by the actions of others. The court dismissed the appeal of the acquittal of Gains. The Maybin brothers appealed.

The Supreme Court of Canada dismissed the appeal. The court agreed with the majority of the Court of Appeal that in the circumstances of this case, it was open to the trial judge to find that the Maybin brothers caused the death.

Criminal Law - Topic 1312

Manslaughter - Causation - This appeal raised the question of when an intervening act by another person severed the causal connection between the accused's act and the victim's death, thereby absolving the accused of legal responsibility for manslaughter - The Supreme Court of Canada stated that "[t]he causal link between an accused's actions and the victim's death is not always obvious in homicide cases. In cases involving multiple causes of death or intervening causes between an accused's action and the victim's death, determining causation is more challenging. An accused's unlawful actions need not be the only cause of death, or even the direct cause of death; the court must determine if the

accused's actions are a significant contributing cause of death." - See paragraphs 1 and 2.

Criminal Law - Topic 1312

Manslaughter - Causation - The Supreme Court of Canada stated that "Courts have used a number of analytical approaches to determine when an intervening act absolves the accused of legal responsibility for manslaughter. These approaches grapple with the issue of the moral connection between the accused's acts and the death; they acknowledge that an intervening act that is reasonably foreseeable to the accused may well not break the chain of causation, and that an independent and intentional act by a third party may in some cases make it unfair to hold the accused responsible. In my view, these approaches may be useful tools depending upon the factual context. However, the analysis must focus on first principles and recognize that these tools do not alter the standard of causation or substitute new tests. The dangerous and unlawful acts of the accused must be a significant contributing cause of the victim's death" - See paragraph 60.

Criminal Law - Topic 1312

Manslaughter - Causation - In a bar, the appellants (Timothy and Matthew Maybin) repeatedly punched the victim in the face and head - Timothy struck a blow that rendered the victim unconscious - Arriving on the scene within seconds, a bar bouncer then struck the victim in the head - The medical evidence was inconclusive about which blows caused death - The trial judge acquitted the appellants and the bouncer - At issue was whether the trial judge could have concluded that the appellants caused the death in fact; and if so, whether the subsequent assault by another person constituted an intervening act that nonetheless broke the chain of legal causation - The Supreme Court of Canada agreed with the majority of the Court of Appeal that "based upon the trial judge's findings of fact, it was open to him to conclude that the general nature of the intervening act and the accompanying risk of harm were reasonably foreseeable; and that the act was in direct response to the appellants' unlawful actions. The judge could have concluded that the bouncer's assault did not necessarily constitute an intervening act that severed the link between Timothy and Matthew Maybins' conduct and the victim's death, such that it would absolve them of moral and legal responsibility. The trial judge could have found that the appellants' actions remained a significant contributing cause of the death" - See paragraph 61.

Cases Noticed:

- R. v. Smithers, [1978] 1 S.C.R. 506; 15 N.R. 287, appld. [para. 5].
- R. v. Nette (D.M.), [2001] 3 S.C.R. 488; 277 N.R. 301; 158 B.C.A.C. 98; 258 W.A.C. 98; 2001 SCC 78, appld. [para. 5].
- R. v. Tower (T.J.) (2008), 261 N.S.R.(2d) 135; 835 A.P.R. 135; 76 W.C.B.(2d) 685; 2008 NSCA 3, reld to. [para. 23].
- R. v. Shilon (M.) (2006), 240 C.C.C.(3d) 401 (Ont. C.A.), reld to. [paras. 26, 35, 48].
- R. v. Pagett (1983), 76 Cr. App. Rep. 279 (C.A.), reld to. [para. 27].
- R. v. Smith, [1959] 2 Q.B. 35 (Cts. Martial App. Ct.), reld to. [paras. 27, 47].
- R. v. Sinclair (T.) (2009), 240 Man.R.(2d) 135; 456 W.A.C. 135; 2009 MBCA 71, reld to. [para. 31].
- R. v. Hallett, [1969] S.A.S.R. 141 (Aust. S.C. in banco), reld to. [paras. 31, 47].

R. v. Hughes (B.B.) (2011), 305 B.C.A.C. 112; 515 W.A.C. 112; 2011 BCCA 220, refd to. [para. 35].

R. v. Creighton, [1993] 3 S.C.R. 3; 157 N.R. 1; 65 O.A.C. 321, refd to. [para. 36].

R. v. Cribbin (J.) (1994), 69 O.A.C. 366; 17 O.R.(3d) 548; 89 C.C.C.(3d) 67 (C.A.), refd to. [para. 36, footnote 3].

Authors and Works Noticed:

Williams, Glanville L., *Finis for Novus Actus?* (1989), 48 Cambridge L.J. 391, p. 392 [para. 51].

Williams, Glanville L., *Textbook of Criminal Law* (2nd Ed. 1983), p. 389 [para. 35].

Yeo, Stanley, *Blamable Causation* (2000), 24 Crim. L.J. 144, p. 151 [para. 24].

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Lucy Cecchetto, for the intervener.

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Attorney General of Ontario, Toronto, Ontario, for the intervener.

This appeal was heard on December 15, 2011, before LeBel, Fish, Abella, Rothstein, Cromwell, Moldaver and Karakatsanis, JJ., of the Supreme Court of Canada. The judgment of the Court was delivered by Karakatsanis, J., on May 18, 2012.

Appeal dismissed.

Editor: E. Joanne Oley