Adrian John Walle (appellant) v. Her Majesty The Queen (respondent) and Criminal Lawyers' Association of Ontario (intervenor)
(34080; 2012 SCC 41; 2012 CSC 41)

Indexed As: R. v. Walle (A.J.)

Supreme Court of Canada
McLachlin, C.J.C., Deschamps, Fish, Rothstein, Cromwell, Moldaver and Karakatsanis, JJ.
July 27, 2012.

Summary:

The accused appealed his conviction for second degree murder. Although the accused admittedly shot and killed the victim, he argued that he lacked the requisite intent for murder and should have been convicted for manslaughter.

The Alberta Court of Appeal, in a judgment reported (2010), 493 A.R. 306; 502 W.A.C. 306, dismissed the appeal. The accused appealed and sought to introduce new evidence on appeal.

The Supreme Court of Canada declined to admit the new evidence, as it could not reasonably be expected to have affected the result at trial. The court dismissed the appeal.

Criminal Law - Topic 113

General principles - Mental disorder - Insanity, automatism, etc. - Intoxication - An accused admittedly shot and killed the victim - The accused had consumed alcohol, but was not impaired - An intervenor argued that if impairment contributed to the accused's action, the common sense inference that a "sane and sober" person intended the reasonable consequences of his actions should "never" be given - The Supreme Court of Canada rejected such a blanket rule respecting the common sense inference whenever an accused might be impaired - The court stated that jurors were admonished that the inference was permissive, not presumptive, and that before acting on it they were to carefully consider the evidence negating the presumption (including alcohol consumption) before acting on it - The court noted that perhaps it would be preferable to refer to the common sense inference in terms of "a person usually knows what the predictable consequences of his or her actions are, and means to bring them about" rather than referring to a "sane and sober person" - Once the jury, or judge alone, was so cautioned, if "there is no evidence that could realistically impact on whether the accused had the requisite mental state at the time of the offence, or if the pertinent evidence does not leave the jury in a state of reasonable doubt about the accused's intent, then the jury [or judge] may properly resort to the common sense inference in deciding whether intent has been proved" - See paragraphs 55 to 68.

Criminal Law - Topic 1263

Murder - General principles - Intention - At the accused' s murder trial, he admitted that he shot and killed the victim, but argued that he "accidentally" pulled the trigger while attempting to scare the victim and two others (i.e., manslaughter) - There was evidence

that the accused had been recently detained in a hospital on a mental health warrant, had developmental delays, had been described by witnesses as looking "blank", had been drinking to a point short of impairment, and was unresponsive to verbal commands - The trial judge rejected the "accidental discharge" theory - The judge found that the accused had the intent to kill where he (1) was familiar with the gun and used it on prior occasions; (2) knew the safety was off; (3) was pointing the gun at the victim's chest when he fired; (4) fired from five feet away; (5) knew the gun was loaded; (6) said to his pursuers "this isn't a BB gun"; and (7) was not impaired, although he had been drinking - The judge applied the "common-sense" inference that a sane and sober person intended the reasonable consequences of his acts and convicted the accused of second degree murder - The Alberta Court of Appeal dismissed the accused's appeal - On further appeal, the accused now argued that the judge failed to consider evidence bearing on his mental state, such as his developmental delays and alcohol consumption, in assessing his awareness of the consequences of shooting the victim (i.e., whether he possessed one of the requisite specific intents for murder) - The Supreme Court of Canada dismissed the appeal - At trial, the accused argued "accidental discharge" and not that he was unaware of the consequences of his actions - In any event, the judge clearly considered all of the relevant evidence touching on the accused's awareness of the consequences of his actions - None of the evidence now suggested by the accused respecting awareness of the consequences was relevant to that issue - The judge did not err in having no doubt that the accused was fully aware of the fatal consequences of shooting the victim - Having rejected "accidental discharge", the judge did not err in resorting to the common sense inference that the accused possessed requisite intent for second degree murder - See paragraphs 40 to 54.

Evidence - Topic 222

Inferences and weight of evidence - Inferences - Inferences of intention from conduct - [See **Criminal Law - Topic 113** and **Criminal Law - Topic 1263**].

Practice - Topic 9031

Appeals - Evidence on appeal - Admission of "new evidence" or "fresh evidence" - At the accused' s murder trial, he admitted that he shot and killed the victim, but argued that he "accidentally" pulled the trigger while attempting to scare the victim and two others (i.e., manslaughter) - There was evidence that the accused had been recently detained in a hospital on a mental health warrant, had developmental delays, had been described by witnesses as looking "blank", had been drinking to a point short of impairment, and was unresponsive to verbal commands - The trial judge rejected the "accidental discharge" theory and applied the "common-sense" inference that a sane and sober person intended the reasonable consequences of his acts and convicted the accused of second degree murder - The Alberta Court of Appeal dismissed the accused's appeal - On further appeal, the accused now argued that the judge failed to consider evidence bearing on his mental state, such as his developmental delays and alcohol consumption, in assessing his awareness of the consequences of shooting the victim (i.e., whether he possessed one of the requisite specific intents for murder) - The accused sought to introduce new evidence on the appeal (forensic psychiatric evidence that was available at trial and inexplicably not called until the sentencing hearing) - The Supreme Court of Canada declined to admit

the new evidence - The court stated that it would have admitted the evidence, notwithstanding the egregious non-compliance with the due diligence requirement, if the evidence could have been reasonably expected to have affected the result at trial - None of the evidence, offered to raise a doubt as to the accused's awareness of the consequences of shooting the victim in the chest at point-blank range, suggested that the accused lacked such awareness - Accordingly, none of the "new" evidence could have raised a reasonable doubt as to whether the accused voluntarily shot the victim or whether he possessed the requisite intent for murder - See paragraphs 69 to 90.

Practice - Topic 9095

Appeals - Supreme Court of Canada - Hearing of fresh evidence - [See **Practice - Topic 9031**].

Cases Noticed:

R. v. Morin, [1992] 3 S.C.R. 286; 142 N.R. 141; 131 A.R. 81; 25 W.A.C. 81, refd to. [para. 46].

R. v. J.M.H., [2011] 3 S.C.R. 197; 421 N.R. 76; 283 O.A.C. 379; 2011 SCC 45, refd to. [para. 46].

R. v. Daley - see R. v. W.J.D.

R. v. W.J.D., [2007] 3 S.C.R. 523; 369 N.R. 225; 302 Sask.R. 4; 411 W.A.C. 4; 2007 SCC 53, refd to. [para. 58].

R. v. Seymour (J.), [1996] 2 S.C.R. 252; 197 N.R. 81; 76 B.C.A.C. 1; 125 W.A.C. 1, refd to. [para. 61].

R. v. Palmer, [1980] 1 S.C.R. 759; 30 N.R. 181, refd to. [para. 75].

Authors and Works Noticed:

Canadian Judicial Council, Model Jury Instructions, 229.a (2012) (online: http://www.cjc-ccm.gc.ca/english/lawyers_en.asp?selMenu=lawyers_modeljuryinstruction_en.asp), para. 6 [para. 64].

Counsel:

Karen B. Molle and Jennifer Ruttan, for the appellant;
Jolaine Antonio and Kyra M. Kondro, for the respondent;
Michael W. Lacy and Bradley Greenshields, for the intervenor.

Solicitors of Record:

Karen B. Molle, Calgary, Alberta, for the appellant;
Attorney General of Alberta, Calgary, Alberta, for the respondent;
Lacy Wilkinson, Toronto, Ontario, for the intervenor.

This appeal was heard on April 13, 2012, before McLachlin, C.J.C., Deschamps, Fish, Rothstein, Cromwell, Moldaver and Karakatsanis, JJ., of the Supreme Court of Canada.

On July 27, 2012, Moldaver, J., delivered the following judgment in both official languages for the Court.

Appeal dismissed.

Editor: Steven C. McMinniman

Evidence - Topic 222

Inferences and weight of evidence - Inferences - Inferences of intention from conduct - An accused admittedly shot and killed the victim - The accused had consumed alcohol, but was not impaired - An intervenor argued that if impairment contributed to the accused's action, the common sense inference that a "sane and sober" person intended the reasonable consequences of his actions should "never" be given - The Supreme Court of Canada rejected such a blanket rule respecting the common sense inference whenever an accused might be impaired - The court stated that jurors were admonished that the inference was permissive, not presumptive, and that before acting on it they were to carefully consider the evidence negating the presumption (including alcohol consumption) before acting on it - The court noted that perhaps it would be preferable to refer to the common sense inference in terms of "a person usually knows what the predictable consequences of his or her actions are, and means to bring them about" rather than referring to a "sane and sober person" - Once the jury, or judge alone, was so cautioned, if "there is no evidence that could realistically impact on whether the accused had the requisite mental state at the time of the offence, or if the pertinent evidence does not leave the jury in a state of reasonable doubt about the accused's intent, then the jury [or judge] may properly resort to the common sense inference in deciding whether intent has been proved" - See paragraphs 55 to 68.

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Inferences and weight of evidence - Inferences - Inferences of intention from conduct - At the accused' s murder trial, he admitted that he shot and killed the victim, but argued that he "accidentally" pulled the trigger while attempting to scare the victim and two others (i.e., manslaughter) - There was evidence that the accused had been recently detained in a hospital on a mental health warrant, had developmental delays, had been described by witnesses as looking "blank", had been drinking to a point short of impairment, and was unresponsive to verbal commands - The trial judge rejected the "accidental discharge" theory - The judge found that the accused had the intent to kill where he (1) was familiar with the gun and used it on prior occasions; (2) knew the safety was off; (3) was pointing the gun at the victim's chest when he fired; (4) fired from five feet away; (5) knew the gun was loaded; (6) said to his pursuers "this isn't a BB gun"; and (7) was not impaired, although he had been drinking - The judge applied the "common-sense" inference that a sane and sober person intended the reasonable consequences of his acts and convicted the accused of second degree murder - The Alberta Court of Appeal dismissed the accused's appeal - On further appeal, the accused now argued that the judge failed to consider evidence bearing on his mental state, such as his developmental delays and alcohol consumption, in assessing his awareness of the consequences of shooting the victim (i.e., whether he possessed one of the requisite specific intents for murder) - The Supreme Court of Canada dismissed the appeal - At trial, the accused argued "accidental discharge" and not that he was unaware of the consequences of his actions - In any event, the judge clearly considered all of the relevant evidence touching on the accused's

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Practice - Topic 9095

Appeals - Supreme Court of Canada - Hearing of fresh evidence - At the accused' s murder trial, he admitted that he shot and killed the victim, but argued that he "accidentally" pulled the trigger while attempting to scare the victim and two others (i.e., manslaughter) - There was evidence that the accused had been recently detained in a hospital on a mental health warrant, had developmental delays, had been described by witnesses as looking "blank", had been drinking to a point short of impairment, and was unresponsive to verbal commands - The trial judge rejected the "accidental discharge" theory and applied the "common-sense" inference that a sane and sober person intended the reasonable consequences of his acts and convicted the accused of second degree murder - The Alberta Court of Appeal dismissed the accused's appeal - On further appeal, the accused now argued that the judge failed to consider evidence bearing on his mental state, such as his developmental delays and alcohol consumption, in assessing his awareness of the consequences of shooting the victim (i.e., whether he possessed one of the requisite specific intents for murder) - The accused sought to introduce new evidence on the appeal (forensic psychiatric evidence that was available at trial and inexplicably not called until the sentencing hearing) - The Supreme Court of Canada declined to admit the new evidence - The court stated that it would have admitted the evidence, notwithstanding the egregious non-compliance with the due diligence requirement, if the evidence could have been reasonably expected to have affected the result at trial - None of the evidence, offered to raise a doubt as to the accused's awareness of the consequences of shooting the victim in the chest at point-blank range, suggested that the accused lacked such awareness - Accordingly, none of the "new" evidence could have raised a reasonable doubt as to whether the accused voluntarily shot the victim or whether he possessed the requisite intent for murder - See paragraphs 69 to 90.