

D.J.W. (appellant) v. Her Majesty the Queen (respondent)
(34623; 2012 SCC 63; 2012 CSC 63)

Indexed As: R. v. D.J.W.

Supreme Court of Canada

LeBel, Fish, Rothstein, Cromwell, Moldaver, Karakatsanis and Wagner, JJ.

November 16, 2012.

Summary:

The accused attempted to circumcise his four-year-old son on the kitchen floor of his home. He was charged with one count each of criminal negligence causing bodily harm (Criminal Code, s. 221), aggravated assault (s. 268(2)) and assault using a weapon (s. 267(a)).

The British Columbia Supreme Court, in a decision reported at [2009] B.C.T.C. Uned. 1397, convicted the accused of criminal negligence causing bodily harm and acquitted him of the other two counts. The Crown appealed both acquittals and the accused appealed the conviction.

The British Columbia Court of Appeal, in a decision reported at 314 B.C.A.C. 209; 534 W.A.C. 209, allowed the Crown's appeal. The court applied the Kienapple principles, and entered a stay of the conviction for criminal negligence, conditional upon the conviction for aggravated assault. The court dismissed the accused's appeal and remitted the matter of sentencing to the Supreme Court for reconsideration. The accused sought leave to appeal.

The Supreme Court of Canada, in a decision reported at [2012] N.R. TBEd. Motion 169, granted leave to appeal.

The Supreme Court of Canada dismissed the appeal.

Editor's Note: Certain names in the following case have been initialized or the case otherwise edited to prevent the disclosure of identities where required by law, publication ban, Maritime Law Book's editorial policy or otherwise.

Criminal Law - Topic 1225

Criminal negligence - General (incl. what constitutes) - The accused attempted to circumcise his four-year-old son (D.J.) on the kitchen floor of his home - He was charged with criminal negligence causing bodily harm, aggravated assault and assault using a weapon - The trial judge convicted the accused of criminal negligence causing bodily harm and acquitted him of the other two counts - The Crown appealed both acquittals and the accused appealed his conviction for criminal negligence - The British Columbia Court of Appeal, *inter alia*, dismissed the accused's appeal - The trial judge had no doubt that the accused was aware of the risks arising from the conduct he planned to, and did engage in - The accused's reliance on the modified objective test therefore could not prevail - The Supreme Court of Canada dismissed a further appeal by the accused - The court agreed with the Court of Appeal that all the elements of the charges against the accused had been established.

Criminal Law - Topic 1226

Offences against person and reputation - Criminal negligence - Intention or mens rea - [See **Criminal Law - Topic 1225**].

Criminal Law - Topic 1415

Offences against person and reputation - Assaults - Aggravated assault - The accused attempted to circumcise his four-year-old son (D.J.) on the kitchen floor of his home - He was charged with criminal negligence causing bodily harm, aggravated assault and assault using a weapon - The trial judge convicted the accused of criminal negligence causing bodily harm and acquitted him of the other two counts - The Crown appealed both acquittals and the accused appealed the conviction - The British Columbia Court of Appeal held, *inter alia*, that the trial judge erred in not finding the accused guilty of aggravated assault - Dr. Afshar's evidence, which the trial judge referred to, was that if he had not completed the circumcision, D.J.'s penis would have had a very abnormal appearance - The trial judge found that it was necessary to hospitalize D.J. in order to remove the black tar-like Wonder Dust that the accused had applied to D.J.'s penis and to properly circumcise D.J. so as to prevent any disfigurement and possible functional impairment - The necessary element of harm required to establish the offence of aggravated assault was made out if the accused's actions disfigured the complainant - It was clear that the accused's actions disfigured D.J. and, as the trial judge found, that disfigurement required surgery and a general anaesthetic to correct - The Supreme Court of Canada dismissed a further appeal by the accused - The court agreed with the Court of Appeal that all the elements of the charges against the accused had been established.

Criminal Law - Topic 1416

Offences against person and reputation - Assaults - Assault with a weapon - The accused attempted to circumcise his four-year-old son on the kitchen floor of his home - He was charged with one count each of criminal negligence causing bodily harm, aggravated assault and assault using a weapon - The trial judge convicted the accused of criminal negligence causing bodily harm and acquitted him of the other two counts - The Crown appealed both acquittals and the accused appealed the conviction - The British Columbia Court of Appeal dismissed the accused's appeal - The court, *inter alia*, allowed the Crown's appeal on the charge of assault with a weapon - The accused could not avail himself of the protection of s. 45 of the Criminal Code (performance of a surgical operation) where the trial judge found that he did not perform the attempted circumcision with reasonable care and skill and it was not reasonable for him to have undertaken the procedure - As the judge's conclusions that the accused's actions were criminally negligent and his conduct caused bodily harm to D.J. were not disturbed, then all of the elements of the charge of assault with a weapon were proved - The Supreme Court of Canada dismissed a further appeal by the accused - The court agreed with the Court of Appeal that all the elements of the charges against the accused had been established.

Counsel:

[None disclosed].

Solicitors of Record:

[None disclosed].

This appeal was heard by LeBel, Fish, Rothstein, Cromwell, Moldaver, Karakatsanis and Wagner, JJ., of the Supreme Court of Canada, on November 16, 2012. On the same date, LeBel, J., delivered the following oral decision for the court in both official languages.

Appeal dismissed.

Editor: Jana A. Andersen

Criminal Law - Topic 1226

Offences against person and reputation - Criminal negligence - Intention or mens rea - The accused attempted to circumcise his four-year-old son (D.J.) on the kitchen floor of his home - He was charged with criminal negligence causing bodily harm, aggravated assault and assault using a weapon - The trial judge convicted the accused of criminal negligence causing bodily harm and acquitted him of the other two counts - The Crown appealed both acquittals and the accused appealed his conviction for criminal negligence - The British Columbia Court of Appeal, *inter alia*, dismissed the accused's appeal - The trial judge had no doubt that the accused was aware of the risks arising from the conduct he planned to, and did engage in - The accused's reliance on the modified objective test therefore could not prevail - The Supreme Court of Canada dismissed a further appeal by the accused - The court agreed with the Court of Appeal that all the elements of the charges against the accused had been established.