

The Top Five 2011

Each year at OJEN's Toronto Summer Law Institute, a judge from the Court of Appeal for Ontario identifies five cases that are of significance in the educational setting. This summary, based on these comments and observations, is appropriate for discussion and debate in the classroom setting.



***R. v. White*, 2011 SCC 13, [2011] 1 S.C.R. 433**

<http://scc.lexum.org/en/2011/2011scc13/2011scc13.html>

In this case, the Supreme Court of Canada (SCC) examined the issue of whether the behaviour of an accused person immediately after an alleged incident can be presented to juries as evidence of the accused's level of guilt.

Date Released: March 3, 2011

Ruling

Post-offence conduct can rightly be considered by juries in determining the level of culpability of an accused person. While it is possible that juries will misuse this type of evidence, it nonetheless ought to be considered by jurors as long as its evidentiary value exceeds its prejudicial effect. This sort of evidence should also be accompanied by a cautionary instruction from the judge to the jury to help prevent overreliance.

Facts

Lee Matasi was shot in the heart with a handgun and died instantly. Several eyewitnesses reported that he was shot by Dennis White. Mr. White immediately fled the scene. The identity of the shooter was initially an issue at trial. Later in the trial, the defence conceded that Mr. White had shot Mr. Matasi and was guilty of manslaughter, not second-degree murder.

At trial, the defence's theory was that Mr. White unintentionally shot Mr. Matasi in the course of a physical altercation. The prosecution argued that the fact that Mr. White ran away immediately after the shooting, and without any hesitation, was evidence of an intentional shooting. In other words, the prosecution suggested that a person could be expected to hesitate if the shooting was truly accidental. The only issue for the jury, therefore, was to decide whether Mr. White intended to shoot Mr. Matasi. The jury decided that he intentionally shot Mr. Matasi and thus convicted him of second-degree murder. The trial judge convicted Mr. White, and he appealed.

Decision

The Supreme Court of Canada (SCC) ruled that juries can be permitted to consider actions that occur after the offence was committed as circumstantial evidence of guilt. In most cases, however,

this must be done very carefully, and post-offence conduct as evidence must be accompanied by a cautionary instruction to members of the jury. The post-offence conduct of Mr. White in this case had probative value (i.e. it was useful) in determining whether he was guilty of the more serious offence of second-degree murder.

If Mr. White had hesitated before fleeing the scene of the shooting, it is likely that the defence would have used it as indicating that the shooting was an accident. It follows that the lack of hesitation, while not determining the matter entirely, supports the position that this was an intentional shooting. It was therefore appropriate to allow the jury to consider his flight from the scene in coming to their conclusion as to his guilt or innocence of second-degree murder.

The law assumes that juries are reasonable and intelligent fact-finders and can appropriately weigh the evidence before them, provided that the judge issues a caution based on past judicial experience. The judge at trial cautioned the jury as to the possibility of misusing this sort of post-conduct information by alerting them of the risks associated with giving it too much emphasis. As such, the SCC was not concerned that the jury *only* considered post-offence conduct in determining Mr. White's level of guilt. The SCC therefore dismissed the appeal and sustained Mr. White's conviction for second-degree murder.

Discussion

1. Do you agree with the prosecution's theory that the fact that Mr. White fled immediately and without hesitation means that he killed Mr. Matasi intentionally? Why or why not?
2. Should judges allow juries to consider the conduct of an accused person *after* an offence is committed? How could a jury misuse this sort of information?
3. What other explanations could justify Mr. White's flight from the scene of the shooting? Should the jury be required to consider those possibilities?
4. If the SCC had decided that the trial judge should not have allowed post-offence conduct to be considered, would Mr. White deserve a new trial? Why or why not?