

Murder case verdict overturned, intoxication key element in case

By Luis Millan

The Lawyers Weekly

**Vol. 33, No. 30
(December 6, 2013)**

2013

When the Quebec Court of Appeal ordered a new trial in the notorious case of Guy Turcotte, the former cardiologist found not criminally responsible due to a mental disorder in the 2009 stabbing deaths of his two young children, it took the exceptional step of overturning a verdict largely based on a ruling that had not yet been rendered by the nation's highest court, note legal experts.

The Quebec Court of Appeal, relying on guidance provided by the Supreme Court of Canada in *R. v. Bouchard-Lebrun* [2011] S.C.J. No. 58 -- issued five months after Turcotte's murder trial -- held that Quebec Superior Court Justice Marc David's instructions to the jury were "deficient, which necessarily had a major impact on the verdict."

Stéphane Beaulac, a law professor at the Université de Montréal, said that "it's not without precedence but it is rare that an appeal court will overturn a verdict based on a SCC ruling that was not issued at the time when the lower court decision was rendered."

Beaulac added it is equally rare for an appeal court to overturn a verdict of not criminally responsible due to a mental disorder.

"One cannot blame the judge of first instance," he said. "It's unfair to reproach him for not having included case law that did not exist at the time he rendered his instructions."

In the 2011 trial, the jury heard that Turcotte repeatedly stabbed his two children in their beds in the Laurentian town of Piedmont after drinking windshield washer fluid, which contains methanol, in a suicide attempt. But his lawyer had successfully argued that he was not criminally responsible due to a mental disorder, in a controversial verdict that outraged Quebecers and prompted the federal government to introduce legislation designed to make it more difficult for those found not criminally responsible to gain their freedom.

The Crown appealed, and asked the court to reconsider whether the trial judge erred by opening the

door to the verdict that Turcotte was not criminally responsible due to a mental disorder, and whether the judge had properly instructed the jury over the notion of mental disorder under s.16 of the Criminal Code.

The appeal court found in *R. c. Turcotte* [2013] J.Q. no 10269 that there was evidence that Turcotte's mental condition left him incapable of judging the nature and quality of his acts, or realizing they were wrong. The evidence therefore allowed the trial judge to submit to the jury the defence that a person cannot be criminally responsible for an act committed while suffering from a mental disorder.

"What's interesting about the ruling is that the while everybody loudly and clearly denounced the verdict that Turcotte was not criminally responsible due to a mental disorder, the Quebec Court of Appeal held that the trial judge was right to submit that line of defence to the jury, which means that at the new trial it will no doubt once again be submitted," noted Mia Manocchio, a criminal lawyer based in Sherbrooke, Que.

However, the appeal court, informed by Bouchard-Lebrun, also held that an accused must show that he was suffering from a "disease of the mind" that is unrelated to the intoxication-related symptoms and "it is the responsibility of the jury to decide." But the trial judge failed to draw attention to this distinction, which led the jury to conclude that the effects of the intoxication (caused by drinking voluminous amounts of windshield washer fluid) was a part of or an essential factor of his mental disorder. That in turn prompted them to conclude that he was not criminally responsible due to a mental disorder, without considering the possibility that the true cause of his incapacity was the intoxication as opposed to his mental disorder.

"It was necessary for the jury to make the distinction and respond to the question: was it the mental disorder or the intoxication or even a combination of the two that was the source of his capacity?" said the panel of three judges in the 28-page ruling. "If it was intoxication, it goes without saying that the mental disorder defence cannot succeed. If it is a combination of the two, then the jury must examine the contributing role of each one and determine" what prompted the incapacity.

Juries will likely face a daunting challenge in making the distinction between the two lines of defence since it is a relatively complex issue, said Manocchio. "There's no doubt that the more complicated the case, the more challenging it will be for the jury to make a well-considered decision that distinguishes between the defences," she added.

The burden of proof lies with the accused to show that he was suffering from an incapacitating mental illness, distinct from the intoxication symptoms, noted Montreal criminal lawyer Robert La Haye.

"By ordering a new trial and overturning the verdict of non-criminal responsibility, the ruling very clearly states that one cannot invoke voluntary intoxication as a defence to void the criminal character of the act," said La Haye. "The accused must show by a preponderance of evidence that

the mental disorder was exclusively the situation of an internal cause and not by intoxication."

The repercussions for the accused are significant, said Manocchio. If the defence of voluntary intoxication in a first-degree murder case is successfully pleaded, then the accused will be acquitted of first- and second-degree murder but will be found guilty of manslaughter. If on the other hand the accused is found to be not criminally responsible due to a mental disorder then the person is institutionalized, and has the possibility of gaining their freedom by submitting a request before a panel of the Tribunal administratif du Québec, a court of last resort.

Within days of the Quebec Court of Appeal ruling, Turcotte was charged on the same indictment that was filed against him in 2009, with the first-degree murders of his five-year old son Olivier and his three-year-old daughter Anne-Sophie.