1969 CarswellQue 20, 9 C.R.N.S. 24, [1970] 4 C.C.C. 69

R. v. Vallieres

Vallieres v. The Queen

Quebec Queen's Bench [Appeal Side]

Hyde, Taschereau, Montgomery, Brossard and Turgeon JJ.

Judgment: September 23, 1969

Counsel: *Robert Lemieux* and *B.S. Mergler*, for appellant.

L. Paradis and *Paul Belanger, Q.C.*, for the Crown.

Subject: Criminal

Trials — Accused belonging to terrorist organization — Bomb placed in factory — Fatality — Accused charged with murder — Evidence that accused unaware of plans for bombing in question — Conviction for manslaughter — Whether jury convicting accused merely for his ideas — Appeal by prosecutor to fears of jury — Whether jury misled by judge's answer to question.

The accused was one of the leaders of the F.L.Q., a Quebec terrorist organization which advocated and employed violence in attempting to attain its goals. The accused wrote propaganda calling for social revolution to be accomplished by the exploding of bombs. One such bomb went off at a Montreal shoe factory, fatally injuring the switchboard operator. The accused was charged with non-capital murder. The case for the prosecution was that the accused, as a prominent member of the F.L.Q., must have been aware of the decision to bomb the shoe factory. That decision had, in fact, been arrived at in a meeting held at a residence where the accused was a roomer. The meeting was a lengthy one and while the accused had been present when it opened, there was evidence that the decision to bomb had been reached in his absence and that he was not subsequently advised of it.

The jury were warned by the judge that the accused's membership in a revolutionary organization was not in itself sufficient for his conviction of the offence with which he was charged but Crown counsel told them: "Now gentlemen, free Vallieres and you know what to expect".

The accused appealed against his conviction for manslaughter on the ground that the prosecutor had improperly appealed to the prejudice and fear of the jury and had not restricted his remarks to the issue which was whether the accused had been implicated in the homicide in question.

Held, a new trial should be ordered.

Per Hyde J. (Taschereau, Montgomery, Brossard and Turgeon JJ. concurring):

Crown counsel's remark was objectionable in that it suggested to the jury that the problem before them was the need to protect society from people with ideas such as those held by the accused rather than whether he was guilty as charged.

Furthermore, the jury may have been misled by the manner in which the judge dealt with a question put by one of their number as to whether there was any significance in the fact that the premises to be bombed was specified in the indictment.

Per Montgomery J.:

While the trial judge's exposition of the law was generally correct and he did warn them that it was not a political trial, he came dangerously close to advising the jury to convict the accused because of his ideas

Per Brossard J.:

It was a paradox that the accused should secure relief pursuant to laws which he scorned and which would become extinct if the programmes which he advocated were carried out.

Per Turgeon J.:

It was entirely possible that the accused had been convicted for his subversive ideas and seditious articles rather than for his participation in the offence charged.

Appeal against a conviction for manslaughter.

***Hyde J.*:**

1 Appellant has appealed from his conviction before the Montreal Assizes of the Court of Queen's Bench, Crown Side, on 5th April 1968 of manslaughter on a charge of non-capital murder of Mlle Thérèse Morin on 5th May 1966 and from his sentence of life imprisonment imposed immediately after by the presiding judge.

2 Mlle Morin was employed at the time of her death in the office of a shoe manufacturing company, H.B. LaGrenade Ltée in Montreal, which had experienced labour trouble for over a year and had been the object of demonstrations by striking employees and other sympathizers, including members of the Front de Libération du Québec or, as it is more commonly referred to, the "F.L.Q.", of which appellant was one of the principal members and had in fact taken part in some of the demonstrations.

3 On 5th May 1966 at about 12:30 p.m., Henri LaGrenade, the general manager of H.B. LaGrenade Ltée, stated that he was temporarily at the switchboard in the front office of his company, replacing Mlle Morin who was out to lunch, when a young man, who was subsequently identified as Gaétan Desrosiers, handed him a box wrapped in brown paper, apparently being a pair of shoes which he said his employer had instructed him to return and would call him about. He apparently put it to one side at the moment and shortly afterwards received a telephone call from a person who told him to evacuate the premises. He does not remember the caller giving him a reason. In any case, a few minutes later at about 12:50 p.m. a bomb which was in the package exploded, injur-

ing Henri LaGrenade and several other employees in the front office and killing Mlle Morin who had just entered the room.

4 Called as a witness by the Crown, Desrosiers, aged 18, testified that he had been a member of the F.L.Q. since November 1965, having been recruited by one Réal Mathieu. His original duties consisted in the distribution of pamphlets and in February 1966 he first met appellant, who was then concerned with the publication of propaganda, at an apartment on Sherbrooke Street. Asked what took place at this meeting, he said:

> Il a été question de l'Avant-Garde (une F.L.Q. publication) de sécurité, et puis là je crois que c'est Vallières, il m'a demandé si on, si je savais où me procurer des armes, si je connaissais des garçons qui étaient bons pour voler une auto, des choses comme ça. On a discuté de sécurité.
>
> It dealt with l'Avant-Garde (an F.L.Q. publication) and with security, and then I believe it was Vallieres who asked me whether or not I knew where to get weapons for myself, whether I knew people who would be good for stealing a car and things like that. We discussed security.

This is, as far as I can find, the only contact of any importance between Desrosiers and appellant disclosed in the record. He also testified that early in May 1966 he was asked by Réal Mathieu to place a small bomb in a building. This request was made on a Wednesday, which was 4th May, with the bomb to be delivered the following day. He agreed and accordingly met another member of the F.L.Q., Serge Demers, in front of his school on a motor bicycle with what appeared to be a box of shoes strapped on the back but was, in fact, a bomb made by Demers. They stopped at a small park near the LaGrenade building where Demers connected the wires of the bomb and Desrosiers then carried it into the LaGrenade office as recounted by Henri LaGrenade. He left immediately and rejoined Demers who first made a telephone call from a public booth, being presumably the warning call already mentioned, and then drove Desrosiers back to school. Obviously there is direct implication by Desrosiers of Mathieu and Demers.

5 No witness testified directly that appellant was aware of or condoned the plan for the delivery of the bomb which killed Mlle Morin. The Crown's case is based on its contention that appellant was the founder and one of the leaders of the F.L.Q. and, having regard to his position and intimate concern with all its affairs, was among those who took part in the decision to plant the bomb at H.B. LaGrenade Ltée which killed Mlle Morin.

6 Appellant was tried on the following charge:

> PIERRE VALLIERES: à St-Philippe, en Montréal, District de Montréal, et à St-Alphonse, district de Joliette, entre le premier (1er) juillet 1965 et le 6 mai 1966, pour une fin illégale, savoir: *ayant illégalement conseillé ou incité ou donné son encouragement par ses attitudes, ses actes, ses écrits ou autrement, à l'explosion* d'une bombe à la fabrique de chaussures H.B. LaGrenade Ltée, à Montréal, district de Montréal, chose qu'il savait ou devait savoir être de nature à causer la mort, même s'il désirait attendre son but sans causer la mort ou une lésion corporelle à qui que ce soit, a ainsi illégalement et sans droit causé la mort de Mlle Thérèse Morin, commettant par là un meurtre, tel que prévu aux articles 201, paragraphe C, 202-A (3), 206(2), et le tout en relation avec les articles 21 et 22 du Code criminel.
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> [At St-Philippe, in Montreal, in the District of Montreal, and at St-Alphonse, in the District of Joliette, between July 1, 1965 and May 6, 1966, for an unlawful object, to wit: *having unlawfully counselled, or in-*

cited, or encouraged through his attitudes, actions, writings, or otherwise, the explosion of a bomb at the H.B. LaGrenade Ltd. shoe factory in Montreal, in the District of Montreal, something which he knew or ought to have known was likely to cause death, notwithstanding that he desired to effect his object without causing death or bodily harm, PIERRE VALLIERES unlawfully, and without colour of right, caused the death of Mademoiselle Therese Morin, thereby committing murder, contrary to the provisions of ss. 201(*c*), 202-A(3) and 206(2) of the Criminal Code, as read in the light of ss. 21 and 22 of the Criminal Code.]

7 I might note here that the original charge was amended by the trial judge on his own motion under the provisions of s. 510 of the Criminal Code after the Crown had closed its case and the defence had commenced the examination of witnesses (see p. 1629) wherein the words I have italicized were substituted for the following in the original charge: "dans un but de faire exploser" ["with intent to explode"]. The reference to s. 22 of the Criminal Code was also added at the same time after s. 21. In view of my conclusion on other grounds, I do not feel it necessary to discuss appellant's objections to these changes.

8 The trial was a lengthy one commencing on 26th February 1968 and concluding with appellant's conviction on 5th April, occupying 24 days in all. The Crown called some 40 witnesses, including several of the members of the F.L.Q., the most important of which were Serge Demers and Marcel Faulkner, both of whom were convicted of manslaughter, the latter on a plea of guilty, and are serving terms in the penitentiary.

9 Demers, having given testimony at the trial different from that given under oath on previous occasions, was declared a hostile witness (p. 808). Faulkner, although denying the veracity of certain statements in a declaration made to the police implicating appellant, was not declared hostile despite repeated applications therefor by the Crown. The jury were properly warned by the trial judge that they could only take into account the testimony actually given before them and that they were to disregard the extracts from declarations or testimony given on these other occasions, some of which were read into the record, which could be considered only for the purpose of testing credibility (p. 2429).

10 They both testified that the decision to place a bomb at H.B. LaGrenade Ltée was taken at a weekend meeting at the house of Demers' mother at St. Philippe de Laprairie in the middle of April 1966. Appellant at the time was rooming at Mme Demers', althugh Demers himself was living in Montreal. The meeting started on Saturday morning with seven of the members present, namely, Faulkner, Demers, Réal Mathieu, André Lavoie, Gérard Laquerre, Charles Gagnon and appellant. Demers and Faulkner testified that Saturday was devoted to general discussion, that Sunday morning Gagnon and appellant went to Montreal, returning only in the evening when the discussions continued. They insisted that the decision to form a central committee and to bomb the LaGrenade premises was taken during Sunday in the absence of Gagnon and appellant, and that the two latter were never advised of the decisions despite their prominence in the movement and its direction. Demers (p. 796) says that on their return:

on les a informés de notre décision de former un comité central. On leur a demandé s'ils voulaient continuer de travailler avec nous. On leur a demandé de s'occuper de la progagande; de faire des analyses sur la situation économique et sociale à Québec; de conseiller le Front en matière de penser; de faire la formation politique des membres, etc. Alors, ils ont accepté. ["they were told of our decision to form a central committee. They were asked if they wished to continue working with us. They were asked to deal with propaganda, to analyse the economic and social situation in Quebec; to advise the Front on policy matters; to form political associations among the members, etc. Then they accepted."] The jury had to place this alongside the

evidence as to the only meetings of the central committee referred to in the evidence — one held in early May at a camp at St. Alphonse de Joliette rented by appellant while appellant was on the premises — and another at Rochester, N.Y. (p. 966) on 20th August 1966, at which both appellant and Gagnon were present.

11 From all this evidence it would be difficult for any jury to avoid the conclusion that appellant was intimately connected with the direction of the revolutionary F.L.Q., that he wrote much of the material used as propaganda amongst its followers, that he advocated the overthrow of the whole social order in this province and that this could only be accomplished by violence and terroristic methods, including the use of bombs.

12 Appellant objected that most of the pamphlets and writings attributed to him were not pertinent to the charge against him and were simply introduced to prejudice his position in the eyes of the jury. Certainly his membership and participation as a leader in the movement was pertinent, and, while much of the material in these articles may be irrelevant, I consider they were properly admitted to show the extent of appellant's involvement in the movement and the means advocated for achieving its ends; although that in itself, and taken alone, would not be enough to convict appellant as charged.

13 The testimony of both Demers and Faulkner affirms that appellant, with one Charles Gagnon, were the founders of the F.L.Q. They both testified that appellant wrote the mimeographed pamphlet entitled "Qu'est ce que le f.l.q.?" (Ex. P-92) published in June 1966 under the pen name "Mathieu Hébert", which was in course of preparation during the month of April, and appellant himself admits he was the author of "Nègres blancs d'Amérique" (Ex. P-94) subtitled "Autobiographie précoce d'un 'Terroriste' Québéçois", written while he was in detention pending extradition in New York City in the latter part of 1966 and early 1967, although only published in 1968 during the trial itself.

14 There were also introduced into the record a number of copies of L'Avant-Garde, which is described in the first issue published in January 1966 as the official organ of Le Comité Central of the F.L.Q.

15 In issue No. 4 of January 1966 (Ex. P-44) there appears a long article over appellant's pen name of "Mathieu Hébert" from which I extract the following:

Mais la propagande seule ne suffit pas à persuader. Il y faut aussi la preuve immédiate par des ACTES immédiats.

C'est le rôle des bombes et autres actes de sabotage d'aider le F.L.Q., les travailleurs organisés, premièrement à sortir les masses de l'apathie ou de la peur; deuxièmement, à révéler aux autres travailleurs qu'ils ne sont pas seuls et désarmés face à l'oppression colonialiste et capitaliste; troisièmement à semer la panique au sein des classes dirigeantes et à les forcer à se révéler publiquement sous leur vrais jour, sans masque, telles qu'elles sont;

[But propaganda alone is not sufficiently persuasive. There must also be immediate evidence furnished through immediate ACTIONS.

Bombs and other acts of sabotage play their role in assisting the F.L.Q. and the organized workers first of all to jolt the masses out of their apathy or fear; secondly to prove to other workers that they are not alone and defenceless against colonial and capitalistic oppression; thirdly to disseminate panic among the ruling classes and to force them to reveal publicly, without disguise, the type of people they are;]

and at p. 22 the following reference to H.B. LaGrenade Ltée appears:

> Pour prendre un exemple brûlant d'actualité: les scabs qui ont vendu leur capacité de travail à H.B. LaGrenade pour un plat de lentielles, vaient-ils le droit de tirer leur épingle du jeu en contribuant à la misère de grévistes qui ont eu le courage d'entrer en lutte ouverte contre leurs exploiteurs pour obtenir la reconnaissance de quelques droits élémentaires?
>
> [To take a current and extremely annoying example: are the scabs who have sold themselves to H.B. LaGrenade for a plate of beans entitled to withdraw from the game by contributing to the misery of the strikers who have had the courage to enter into open conflict with those who are exploiting them, in order to obtain recognition of certain elementary rights?]

16 In pamphlet No. 2 of March 1966 another article over the same pen name concludes as follows:

> Comme il a été dit plus haut, dans l'exposé général sur les structures du mouvement, aucun les réseaux ne peut se suffire à lui-même. Groupes de propagandistes et d'agitateurs, détachements de partisans armés et comités populaires de libération forment un tout homogène par la fusion de la direction politique et militaire au niveau du Comité central et des comités régionaux du F.L.Q. Aucun des réseaux ne peut évoluer séparément, car une stratégie unique commande la formation et le développement de chacun au sein du F.L.Q. Et cette stratégie se fonde sur le fait que les seuls intérêts en jeu sont ceux de la nation québécoise, des exploités du Québec, et de personne d'autre.
>
> [As we have already said, in the general expose dealing with movement structures, none of the networks can subsist on its own. Groups of propagandists, agitators, detachments of armed partisans and popular liberation committees all form a homogeneous unit through the fusion and political and military direction provided at the central committee and regional committee levels of the F.L.Q. None of the networks can evolve separately since a single strategy governs the formation and development of each one under the aegis of the F.L.Q. And this strategy is based on the fact that the only interests at stake are those of the Quebec nation and of the exploited peoples of Quebec, and of no one else.]

17 As will be seen these extracts are all taken from writings attributed to appellant published prior to 5th May 1966. While the two books published after that date would not appear to be essential, Ex. P-92 "Qu'est ce que le f.l.q.?" has a chapter on the role of terrorism and Ex. P-94, "Nègres blancs d'Amérique", of which appellant was admittedly the author, ties in with these earlier pamphlets although there is much less detail on terrorism in the last-mentioned book, which is of a more general autobiographical nature.

18 As the trial judge took pains to point out in his address to the jury (p. 2425), the fact that the accused was a terrorist is not enough to establish his guilt of the crime of which he was charged. Quite properly he told them:

> Messieurs les membres du jury, si l'accusé dans cette cause n'était et n'est qu'un théoricien, s'il n'était et n'est qu'un écrivain, s'il n'était et n'est qu'un professeur, s'il n'était et n'est qu'un diffuseur d'idées ou de pensées sociologiques, politiques ou autres, s'il n'était et n'est qu'un penseur, même révolutionnaire, ou F.L.Q., ou autre, s'il favorisait ou favorise encore ou non la violence, même s'il affirmait qu'il est prêt à mettre le feu et à sac ce qui lui déplait dans la société québécoise, tout celà, en principe, je dis bien en principe, ne signifie pas qu'il aurait participé à l'intrusion et à l'explosion de la bombe terroriste à l'usine LaGrenade le 5 mai

1966. Mais vous ne devez pas en arriver à une conclusion aussi facile, car il est de votre devoir de peser et de sous-peser les trois espèces de preuve que l'on vous a servies, c'est-à-dire la preuve directe, la preuve documentaire pertinente et la preuve de circonstance.

[Gentlemen of the jury, whether the accused was or is merely a theorist, a writer, a professor, a disseminator of sociological, political, or other ideas, a thinker or even an F.L.Q. or other revolutionary, whether or not he favoured or still favours violence, and even if he swore that he was ready to set fire to and to sack everything which displeased him in Quebec society, all that, in principle, and I emphasize in principle, would not necessarily mean that he had participated in the placing and exploding of the terrorist bomb at the LaGrenade factory on 5th May 1966. But you must not reach any conclusion with respect to these matters quite so easily, for it is your duty to weigh and reweigh the three types of evidence which have been presented to you, i.e., the direct evidence, the relevant documentary evidence, and the circumstantial evidence.]

19 Unfortunately, counsel for the Crown did not properly respect this distinction. After analyzing the testimony of Faulkner and Demers, which, taken with other circumstances, he suggested incriminated appellant despite their denials, he then proceeded with his concluding remarks which he introduced in the following way:

Je voudrais, et c'est la dernière phase, et ça ne sera pas long, vous exposer ce que je considère des aveux de l'accusé. Je ne sais pas si vous vous souvenez, mais à un certain moment, j'ai exposé devant la Cour que Pierre Vallières lui-même avait admis qu'il était terroriste.

[I wish now, and this is the last phase of the matter, and will not take long, to point out to you certain confessions made by the accused. I do not know whether or not you remember, but at one point I mentioned in court that Pierre Vallieres himself had admitted that he was a terrorist.]

He then read extracts from "Qu'est ce que le f.l.q.?" ["What is the F.L.Q.?"] and "Nègres blancs d'Amérique" ["white negroes of America"] relating to the need for terroristic action, the use of bombs and other violent means, which occupy some four pages in the transcription, and he concluded his address as follows:

Messieurs, un dernier passage qui est un appel à la violence à tous, dans ce livre que certains sociologues sont venus dire qu'ils l'avaient recommandé à leurs éléves:

> Et Georges, qu'est-ce que tu attends pour te décider? Et vous autres: Arthur, Louis, Gilles, Ernest, debout les gars, et tous ensemble au travail. On prendra un autre verre de bière quand on aura fait plus que discuter et de mettre le blâme toujours sur les autres. Chacun de nous a sa petite part de responsabilité à assumer et à transformer en action. Plus vite nous serons unis, les gars, plus vite nous vaincrons. Nous avons déjà perdu trop de temps en vaines réclamations; il faut maintenant passer à l'action.

Messieurs, libérez Vallières et vous savez ce que vous attend.

[Gentlemen, let me quote to you a final passage constituting a universal exhortation to violence, and appearing in this book which certain sociologists have just said that they had recommended to their students:

> And George, what's keeping you from deciding? And you others: Arthur, Louis, Gilles, Ernest, stand up boys and let's all work together. We'll drink another glass of beer when we have done something more than to carry on discussion and always to place the blame on others. Each one of us has his small bit of responsibility to assume, and to transform into action. The sooner we unite, fellows, the sooner we will

be victorious. We have already lost too much time in useless protests; we must now move on to action.

Now gentlemen, free Vallieres and you know what to expect.]

20 Appellant, with reason, strongly contends that this is simply an appeal to passion or prejudice or fear tending to divert the jury from their principal problem, which is whether the Crown has proven his implication in the killing of Mlle Morin. In the case of *Boucher v. The Queen*, [1955] S.C.R. 16, 20 C.R. 1, 110 C.C.C. 263, the Supreme Court of Canada ordered a new trial in part because of inflammatory language used by counsel for the Crown. The whole Court was of the opinion that counsel had gone beyond the bounds of propriety although two dissenting members were of the opinion that, notwithstanding the illegalities, no miscarriage of justice had taken place. Taschereau J., who was one of the dissenting judges as noted, said [p. 6]:

La situation qu'occupe l'avocat de la Couronne n'est pas celle de l'avocat en matière civile. Ses fonctions sont quasi-judiciaires. Il ne doit pas tant chercher à obtenir un verdict de culpabilité qu'à assister le juge et le jury pour que la justice la plus complète soit rendue. La modération et l'impartialité doivent toujours être les caractéristiques de sa conduite devant le tribunal. Il aura en effet honnêtement rempli son devoir et sera à l'épreuve de tout reproche si, mettant de côté tout appel aux passions, d'une façon digne que convient à son rôle, il expose la preuve au jury sans aller au delà de ce qu'elle a révélé.

[The task of counsel for the Crown is not the same as the one facing counsel in civil matters. His functions are quasi-judicial. He should not be so concerned with obtaining a conviction as he should be with assisting the judge and the jury to reach a most completely just result. Moderation and impartiality must always characterize his conduct before the Court. In fact, he will honestly have fulfilled his functions, and will be beyond reproach, if he sets aside all appeals to passion in a dignified fashion befitting his role, and sets before the jury the evidence without ranging beyond what is contained therein.]

21 In that case the Court had to deal more with the improper expression of opinion by Crown counsel as to the guilt of accused, and that particular complaint is not pertinent here. However, I find it equally objectionable and improper that counsel did conclude a case of this sort with the words: "Messieurs, libérez Vallières et vous savez ce qui vous attend" ["Gentlemen, free Vallières and you know what to expect"], especially in the context above quoted. In other words, what counsel is suggesting to the jury is not the real problem before them, namely, complicity of appellant in the death of Mlle Morin but the need to protect society from people with ideas such as those held by appellant, ideas which counsel could well anticipate would be shocking to the senses of the members of the jury but which in themselves do not constitute the offence for which appellant was being tried, even though they might be evidence of the commission of some other offence under the Criminal Code.

22 An equally serious objection is also taken to something which occurred at the conclusion of the trial when the jury had retired and returned to ask a question of the presiding judge. This is recorded as follows:

PAR LE JURE NUMERO DEUX (2)

Votre Seigneurie, mon problème est grand et la question qu'on m'avait posée va peut-être vous sembler simple, voir même simplette mais nous allons certainement l'apprécier à sa juste valeur.

Dans l'acte d'accusation que j'ai en main ici, nous aimerions savoir si, quand il est dit: 'ayant illégalement conseillé ou incité ou donné son encouragement par ses attitudes, ses actes, ses écrites ou autrement, à

l'explosion d'une bombe à la fabrique de chaussures H.B. LaGrenade Ltée, nous aimerions savoir, c'est ça qui me semble simple, si la Fabrique de chaussures H.B. LaGrenade Ltée a une importance fondamentale, l'expression, la phrase.

PAR LA COUR:

Non. C'est pour indiquer l'endroit seulement où l'explosion a eu lieu, Montréal, district de Montréal, à tel endroit précis. C'est un détail de l'acte d'accusation.

PAR LE JURE NUMERO DEUX (2)

Nous voulions savoir si les conseils ou incitations devaient indéniablement se relier avec une précision totale à cette adresse.

PAR LA COUR:

Il s'agit d'une indication de lieu plus précise que la ville de Montréal.

PAR LE JURE NUMERO DEUX (2):

Merci.

LE JURY SE RETIRE.

[JUROR NUMBER TWO (2)

My Lord, my problem is a big one, and the question which has been put to me will probably seem to you to be simple, even very simple, but we certainly must devote to it all due consideration.

In the indictment which I have before me, we would like to know whether, when it says 'having unlawfully counselled, or incited, or encouraged through his attitudes, actions, writings, or otherwise, the explosion of a bomb at the H.B. LaGrenade Ltd. shoe factory,' we would like to know, and to me this seems very simple, whether the explosion, the phrase, or the reference to the H.B. LaGrenade shoe factory, are of fundamental importance.

THE COURT:

No. This is merely to indicate the place at which the explosion occurred, in Montreal, in the District of Montreal, at such and such a particular place. This is a detail contained in the charge.

JUROR NUMBER TWO (2):

We would like to know whether these counsellings or incitations ought undeniably to be connected with this precise delineation of the street address.

THE COURT:

This is a more precise indication of the place than the City of Montreal.

JUROR NUMBER TWO (2):

Thank you.

THE JURY RETIRED.]

23 This exchange has troubled me considerably. I can appreciate that after a lengthy and difficult trial such as the presiding judge had experienced, he may well have been caught off-guard at this point. On the other hand, the jury was faced with evidence that appellant had advocated the use of terrorism and violence, including bombs, and it was a difficult distinction for anyone, let alone one untrained in the law, to distinguish between the general advocacy of terroristic methods and the point at which the accused might be implicated in the death of a person by the use of such methods. It could well have been in the minds of the jury that, while they were satisfied that Desrosiers, who delivered the bomb at H.B. LaGrenade Ltée, had been exposed to the ideas of the accused and strongly influenced by them, they were not convinced beyond reasonable doubt that the accused had taken part in the decision to place a bomb in the premises of H.B. LaGrenade Ltée.

24 With respect I consider that the first answer given by the trial judge lent support to the first view and although this was modified to some extent by the second answer, I am still left with the feeling that the jury could have understood that this proof was not essential.

25 The Crown supports the trial judge's answers by reference to Archbold, Criminal Pleading, Evidence and Practice, 35th ed., para. 4145, which is based on the case of *Regina v. Bainbridge*, [1960] 1 Q.B. 129, [1959] 3 All E.R. 200, 43 Cr. App. R. 194, where the Court of Criminal Appeal had to deal with a case where an accused had supplied oxygen-cutting equipment to another, knowing that it was to be used for some unlawful purpose and this other person broke into a bank with the use of this equipment and stole some money. The Court approved the following direction to the jury [p. 194]:

> The knowledge that is required to be proved in the mind of this man is not the knowledge of the precise crime. In other words, it need not be proved he knew the Midland Bank, Stoke Newington branch, was going to be broken into and money stolen from that particular bank, but he must know the type of crime that was in fact committed. In this case it is a breaking and entering of premises and the stealing of property from those premises. It must be proved that he knew that sort of crime was intended and was going to be committed. It is not enough to show that he either suspected or knew that some crime was going to be committed, some crime which might have been a breaking and entering or might have been disposing of stolen property or anything of that kind. That is not enough. It must be proved he knew the type of crime which was in fact committed was intended.

26 In the present instance the Crown's case, in my view, rested upon the jury being satisfied beyond reasonable doubt that appellant took part in or was privy to the decision taken at St. Philippe de Laprairie the weekend in April 1966, to place a bomb in the premises of H.B. LaGrenade Ltée. There is no evidence that the placing of a bomb anywhere else was approved and up to that time, despite appellant's writings in support of violent methods, there is nothing to indicate that a decision actually to use bombs had been taken. If the decision at that meeting had simply been that a bomb was to be placed somewhere in the near future at, say, one of the trouble spots which had been discussed, I would agree that the reference to H.B. LaGrenade Ltée was not important, but as this site was the only place mentioned and, to establish the guilt of appellant, his participation in that decision has to be established, one cannot avoid the connection with H.B. LaGrenade Ltée.

27 I accordingly conclude that the jury may well have been misled by the judge's handling of the question

put by juryman No. 2.

28 For both these reasons, I find it necessary to maintain the appeal and order a new trial.

29 I have given careful consideration to appellant's contention that there is no evidence on which the jury could have properly convicted him and that he is entitled to an acquittal. I cannot agree with this but, as there is to be a new trial, I do not propose to discuss the evidence more than I have upon which I think a properly-instructed jury could found a conviction.

30 In view of this conclusion, I do not find it necessary to deal with any of the other grounds.

***Taschereau J.*:**

31 D'accord avec mon collègue, monsieur le juge Hyde, j'ordonnerais un nouveau procès.

32 L'appelant était accusé:

> d'avoir illégalement conseillé, ou incité, ou donné son encouragement par ses attitudes, ses actes, ses écrits, ou autrement, à l'explosion d'une bombe à la fabrique de chaussures H.B. LaGrenade Ltée, à Montréal, district de Montréal, ...

33 Le jure numéro 2 ayant demandé à la Cour si les mots: "la fabrique de chaussures H.B. LaGrenade Ltée" avaient une importance fondamentale, le juge a répondu: "qu'il s'agissait d'une indication de lieu plus précise que la Ville de Montréal". Or, selon l'acte d'accusation, la Couronne devait prouver hors de tout doute raisonnable que l'appelant avait participé à la décision de placer une bombe non à un endroit quelconque, mais bien dans l'établissement de H.B. LaGrenade Ltée. Comme la question ainsi posée impliquait que dans l'esprit du jury, ce fait n'avait pas été établi à sa satisfaction, l'on peut présumer que le verdict eût été au re si la directive du juge avait été conformé à l'acte d'accusation.

34 L'on doit donc en venir à la conclusion qu'un tort important a été causé à l'accusé par suite de cette directive erronée et qu'il y a lieu de casser le verdict et d'ordonner un nouveau procès.

[Translation]:

35 Along with my colleague, Hyde J., I would order a new trial.

36 The appellant was charged with:

> unlawfully counselling, or inciting, or encouraging through his attitudes, actions, writings, or otherwise, the explosion of a bomb at the H.B. LaGrenade Ltd. shoe factory, in Montreal, in the District of Montreal.

37 Juror No. Two (2) asked the Court whether the words "the H.B. LaGrenade Ltd. shoe factory" were of fundamental importance, and the trial judge answered: "This is a more precise indication of the place than the City of Montreal". Now, according to the charge, the Crown was obligated to prove beyond a reasonable doubt that the appellant had taken part in the decision to place a bomb not in any place whatsoever, but on the premises of H.B. LaGrenade Ltd. Since this question implied that this fact had not, in the minds of the jurors, been satisfactorily established, it may be presumed that the verdict may have been different if the trial judge's

directions had conformed with the charge.

38 It must therefore be concluded that, as a result of the judge's erroneous directions on this point, the accused was seriously prejudiced, so that the verdict should be quashed, and a new trial should be ordered.

***Montgomery J.*:**

39 I agree with my colleague Hyde J. that there should be a new trial.

40 The basic difficulty, as I see it, arose from the introduction into the record by the Crown of a mass of documentary evidence of dubious relevancy, despite the protests of the defence. Finally, in his charge (at p. 8) the trial judge instructed the jury to disregard certain of these exhibits. Appellant argues that much of what remained was prejudicial to his right to a fair trial. (He and his advisers have proceeded throughout on the assumption that any evidence relating to the political and social ideas of him and his associates was likely to create prejudice against him in the minds of normal men.) To the extent that they might discredit the defence that appellant was a mere theoretician, unconnected with the fatal bombing, these documents were material, but they could not be used merely to suggest that appellant was the sort of person who might commit the offence with which he was charged. The distinction was not easy to make, and the Crown and the trial judge were obliged to proceed with unusual circumspection to avoid undue prejudice to appellant.

41 Unfortunately, as pointed out by my colleague, the Crown's attorney ended his address to the jury with an appeal to their fears rather than to their reason. This placed a still heavier burden upon the trial judge to explain to the jury in the clearest possible terms that they could convict appellant only if they found that the proof established beyond a reasonable doubt that he was implicated in the placing of the bomb that killed Miss Morin and that if they were not so satisfied they must acquit him, even though they might consider his ideas subversive and himself a danger to society.

42 I find the trial judge's exposition of the law to have been generally correct, yet the tone of his address, taken as a whole, appears unfavourable to appellant. He set out the case for the prosecution with admirable clarity but tended to refer to the arguments of the defence only to discredit them. While in certain passages he warned the jury that they could not convict appellant merely because of his ideas, in others he came dangerously close to advising them to do so. Thus, after referring to the Crown's documentary evidence, he said (at pp. 34-35):

> A l'examen de toute cette littérature que vous jugerez pertinente ou non d'apprécier, demandez-vous, Messieurs, si les conseils, instructions, recettes que vous trouverez dans les revues, lettres ou autres documents produits au dossier, ont pour fin véritable le bien commun, ou s'il ne s'agirait pas plutôt d'un moyen utilisé pour semer la violence et le terrorisme au sein d'une population aux prises avec des difficultés d'ordre économique, social ou autre telles qu'en avait l'usine LaGrenade. Demandez-vous aussi si le but poursuivi avait ou n'avait pas pour objet d'ignorer la loi et même de la braver.
>
> [In examining all this literature whose relevance you will have to decide, ask yourselves, gentlemen, whether the counsel, instructions, and advice which you found in the magazines, letters, or other documents produced in the Record, are truly intended to advance the common interests, or whether they represent, on the contrary, a means of disseminating violence and terror amongst a people burdened with economic, social, or other difficulties such as the ones at the LaGrenade factory. Also ask yourselves whether the methods adop-

ted were intended to ignore the law or even to flout it.]

43 The trial judge did indeed warn the jury that this was not a political trial but he did so in terms scarcely favourable to the accused, saying (at pp. 41-42):

> Je vous prie de ne pas vous laisser distraire par l'aspect politique ou extrémiste de l'offense. De grâce, soyez pertinement réalistes. Ayez toujours présente à l'esprit cette pensée que la fin ne justifie jamais l'emploi de moyens illégaux directement ou indirectement, et que la loi doit servir non pas le désordre, la violence, la destruction, la mort — mais la vie, l'ordre, la discipline, la paix et le bien commun de tous les citoyens.
>
> [I beg you not to allow yourselves to be diverted by the political or extremist aspects of the offence. Please be realistic and deal with relevancies. Always keep in your mind the thought that the end never justifies the direct or indirect use of illogical means, and that the law must not sanction chaos, violence, destruction, and death, but life, order, discipline, peace and the well-being of all the citizens.]

44 It is in the light of what they had previously heard that we must consider the possible effect upon the jury of the answers given by the trial judge to a juror's questions, as set forth in my colleague's notes. The answers can be defended on logical grounds, yet I agree that they were likely to increase the danger of a conviction based upon strong disapproval of appellant's general conduct rather than upon a reasonable certainty that he was implicated in the death of this unfortunate woman.

45 I would set aside the conviction and sentence and order a new trial.

***Brossard J.*:**

46 Au Canada, ceux qui sont recherchés et poursuivis pour des crimes qu'ils auraient commis bénéficient tous, sans exception, de la protection de droits de défense fondamentaux basés sur des principes de common law implantés dans les moeurs par une très ancienne, très profondément humaine et toujours vivace tradition juridique.

47 Quelle que soit la gravité des crimes qui leur sont reprochés, quelque effet effarant que ceux-ci puissent avoir auprès des citoyens pour qui le droit et le respect de la lois constituent les éléments fondamentaux de la protection des individus et le maintien de l'ordre et de la paix dans la société, quels que soient les dangers qu'ils créent par la brutalité et l'animalité de leur violence, ceux qui en sont accusés ont, de la part de l'autorité judiciaire, droit au respect des grands principes suivants de notre droit criminel: nul ne peut être présumé coupable; nul ne peut être trouvé coupable d'un crime à moins que sa culpabilité ne soit établie hors de tout doute raisonnable; dans un procès devant jury, aucune preuve ne doit être présentée et aucune affirmation ne doit être faite par la Couronne qui soient susceptibles d'induire le jury à appuyer un verdict de culpabilité sur des motifs d'ordre psychologique ou passionnel pouvant affaiblir la plus grande objectivité et le plus grand esprit de justice envers l'accusé compatibles avec la froide raison; dans un tel procès, aucune instruction erronée en droit ou en fait ne doit être donnée au jury qui soit sérieusement susceptible d'affecter la décision de celui-ci quant au doute raisonnable au bénéfice duquel l'accusé peut avoir droit.

48 C'est essentiellement pour assurer le respect intégral de ces principes que, comme mon collègue, M. le juge Hyde, et pour les motifs qu'il donne, j'ordonnerais un nouveau procès.

49 Certes, le premier juge, dont la conduite du procès avait jusque là été exemplaire, a pu avoir un moment de défaillance en donnant des réponses ambiguës à des questions ambiguës du jury, au terme d'un long procès à la longueur duquel n'avait sans doute pas été étranger le moyen inusité adopté par l'appelant de conduire lui-même sa défense tout en recourant constamment aux conseils d'aviseurs légaux obtenus séance tenante mais sans aucun échange de dialogue entre ces aviseurs et le tribunal.

50 Certes, aussi, il est compréhensible qu'au terme de ce long procès, le procureur de la Couronne dont l'attitude envers l'accusé avait pu être involontairement conditionnée par la lecture des écrits vitrioliques dont l'appelant n'a jamais nié la paternité ni même tenté d'atténuer le sens et les effets ait pu laisser échapper un appel passionnel au jury.

51 Quelle que soit la cause involontaire de ces erreurs, elles ne peuvent être entérinées, en droit, par le tribunal d'appel.

52 On me permettra de souligner le caractère paradoxal de la situation que soulève cet appel: l'appelant doit le répit qui lui est accordé à des lois que, si l'on en juge par ses écrits, il semble mépriser et que pourraient être susceptibles de devenir lettre morte si les recours à la violence qu'il préconise par ces écrits étaient suivis; c'est pour ainsi dire sans son concours et en opposition avec certaines idées malsaines qu'il paraît vouloir disséminer que les principes de justice dont il met l'application en danger lui assurent le bénéfice d'une annulation du jugement de culpabilité pour manslaughter dont ses procureurs ont appelé en sa faveur.

[Translation]:

53 In Canada, those who are arrested and charged with offences which they have allegedly committed, are all, without exception, entitled to the protection afforded by fundamental rights to a defence based upon the principles of the common law implanted in our mores by a very ancient, very deeply human, and extremely virile judicial tradition.

54 However serious may be the offences with which they are charged, whatever nefarious effect these may have upon the citizens for whom the law and the respect for the law constitute the fundamental elements associated with the protection of individuals and the maintenance of order and peace in society, and whatever dangers are created by the brutality and animalistic qualities of their violence, in so far as the judicial authorities are concerned, those people charged with such offences are entitled to the benefit of the following great principles inherent in our criminal law: no one is presumed to be guilty; no one can be convicted of an offence unless his guilt is established beyond all reasonable doubt; in a jury trial, no evidence may be adduced and no statement can be made by the Crown, which might be likely to cause the jury to base its verdict of guilty upon psychological or passionate grounds which might weaken the true objectivity and the true spirit of justice commensurate with cool reason which must be exhibited towards the accused; and in such a trial, moreover, no instructions which are erroneous in law or in fact may be given to the jury if they are likely to affect the latter's decision in so far as the reasonable doubt, to the benefit of which the accused is entitled, is concerned.

55 Essentially, it is to ensure that these principles are integrally respected that I, as my colleague, Hyde J., and for the reasons given by him, would order a new trial.

56 Certainly the trial judge, whose conduct of the trial up to this point had been beyond reproach, could have suffered a moment of weakness when answering ambiguously certain ambiguous questions put by the jury, during a long trial, the length of which, no doubt, was aggravated by the unusual method adopted by the appel-

lant in conducting his own defence, while constantly turning to his legal advisers in open court, although no dialogue took place between these legal advisers and the Court.

57 Furthermore, it is understandable that during this long trial, counsel for the Crown allowed a passionate appeal to the jury to escape from him, since his attitude towards the accused may involuntarily have been conditioned by reading the vitriolic material which the appellant never denied writing, and which he never sought to have interpreted moderately.

58 Whatever may have been the involuntary cause of these errors at law, they cannot be tolerated by the Court of Appeal.

59 I would like to emphasize the paradoxical character of the situation raised in this appeal: the appellant owes the respite which we have given him to laws which, if he is judged by what he has written, he would appear to scorn, and which could become extinct if resort to the violence advocated to him in his writings were to be had; hence, without his concurrence, and in opposition to certain inane ideas which he would appear to wish to have disseminated, the principles of justice, the application of which he is endangering, are conferring upon him the benefit of quashing his conviction for manslaughter from which his counsel have appealed in his favour.

***Turgeon J.*:**

60 Je partage l'opinion de Monsieur le juge Hyde parce que je suis incapable de me convaincre que le jury aurait nécessairement prononcé le même verdict si les erreurs signalées par mon collègue n'avaient pas été commises lors du procès. A cause de ces erreurs il me semble possible que l'appelant ait été condamné pour ses idées subversives et ses écrits séditieux, plutôt que pour sa participation au crime dont il était accusé.

[Translation]:

61 I concur with Hyde J., because I cannot convince myself that the jury would necessarily have reached the same verdict if the grave errors pointed out by my colleague had not been made during the trial. Because of these errors, it seems to me to be entirely possible that the appellant was convicted for his subversive ideas and seditious articles, rather than for his participation in the committing of the offence with which he was charged.

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KEYCITE

R. v. Vallieres, [1970] 4 C.C.C. 69, 9 C.R.N.S. 24, 1969 CarswellQue 20 (C.A. Que., Sep 23, 1969)

History

Direct History

=> 1 **R. v. Vallieres,** [1970] 4 C.C.C. 69, 9 C.R.N.S. 24, 1969 CarswellQue 20 (C.A. Que. Sep 23, 1969) **(Judicially considered 9 times)**

Negative and Cautionary Citing References (Canada)

Distinguished in

2 R. v. Terry, 91 C.C.C. (3d) 209, 46 B.C.A.C. 185, 1994 CarswellBC 591, 34 C.R. (4th) 77, 75 W.A.C. 185, [1994] B.C.W.L.D. 1665, 24 W.C.B. (2d) 112 (B.C. C.A. Jun 15, 1994) (Negative Treatment Available) **(Judicially considered 8 times)**

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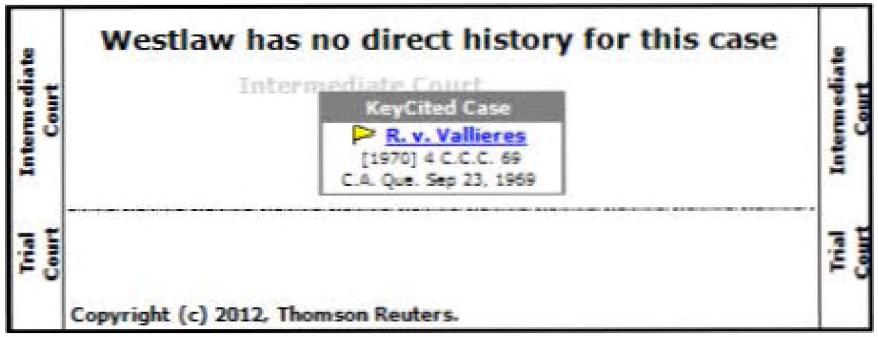
Intermediate Court
Trial Court
Westlaw has no direct history for this case
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