



SUPREME COURT OF CANADA

CITATION: R. v. Clark, 2022 SCC
49

APPEAL HEARD: November 30, 2022

JUDGMENT RENDERED:

November 30, 2022

DOCKET: 40090

BETWEEN:

Ryan David Clark
Appellant

and

His Majesty The King
Respondent

CORAM: Karakatsanis, Côté, Brown, Martin and Kasirer JJ.

UNANIMOUS

JUDGMENT READ

Karakatsanis J.

BY:

(para. 1)

NOTE: This document is subject to editorial revision before its reproduction in final form in the *Canada Supreme Court Reports*.

Ryan David Clark

Appellant

v.

His Majesty the King

Respondent

Indexed as: R. v. Clark

2022 SCC 49

File No.: 40090.

2022: November 30.

Present: Karakatsanis, Côté, Brown, Martin and Kasirer JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR SASKATCHEWAN

Criminal law — Charge to jury — Evidence — Identification — Accused convicted of second degree murder by jury — Accused appealing conviction on basis that trial judge erred by failing to provide specific caution to jury regarding frailties of in-court identification by two witnesses — Majority of Court of Appeal holding that instructions properly equipped jury to understand task in evaluating eyewitness evidence including in-court identification — Majority upholding conviction — Dissenting judge finding that circumstances required caution about inherent frailties

of in-court identification evidence and that new trial should be ordered — Conviction set aside and new trial ordered.

Cases Cited

Referred to: *R. v. Hibbert*, 2002 SCC 39, [2002] 2 S.C.R. 445.

APPEAL from a judgment of the Saskatchewan Court of Appeal (Ottenbreit, Leurer and Tholl JJ.A.), 2022 SKCA 36, 475 D.L.R. (4th) 659, [2022] 6 W.W.R. 659, [2022] S.J. No. 98 (QL), 2022 CarswellSask 125 (WL), affirming the conviction of the accused for second degree murder. Appeal allowed.

Bruce K. Campbell and *Edward F. Sacher*, for the appellant.

Erin Bartsch, for the respondent.

The judgment of the Court was delivered orally by

[1] KARAKATSANIS J. — We agree with Justice Leurer, in dissent, that a specific *Hibbert* type instruction (*R. v. Hibbert*, 2002 SCC 39, [2002] 2 S.C.R. 445) was required in the circumstances of this case. The appeal is allowed, substantially for the reasons of Justice Leurer. The conviction is set aside and a new trial ordered.

Judgment accordingly.

*Solicitor for the appellant: Legal Aid Saskatchewan, Regina Rural Area
Office, Regina.*

Solicitor for the respondent: Attorney General of Saskatchewan, Regina.