



SUPREME COURT OF CANADA

CITATION: R. v. Underwood, 2025
SCC 14

APPEAL HEARD: April 17, 2025
JUDGMENT RENDERED: April 17, 2025
DOCKET: 41434

BETWEEN:

Buddy Ray Underwood
Appellant

and

His Majesty The King
Respondent

CORAM: Karakatsanis, Côté, Rowe, Martin, Kasirer, O’Bonsawin and Moreau JJ.

UNANIMOUS Karakatsanis J.

JUDGMENT READ

BY:
(paras. 1 to 8)

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Buddy Ray Underwood

Appellant

v.

His Majesty The King

Respondent

Indexed as: R. v. Underwood

2025 SCC 14

File No.: 41434.

2025: April 17.

Present: Karakatsanis, Côté, Rowe, Martin, Kasirer, O’Bonsawin and Moreau JJ.

ON APPEAL FROM THE COURT OF APPEAL OF ALBERTA

Criminal law — First degree murder — Elements of offence — Planning and deliberation — Group of individuals including accused beating and leaving victim to die in outdoor remote location after injecting her with drugs — Accused charged with first degree murder — Trial judge convicting accused of second degree murder on basis that Crown had not established elements of planning and deliberation required for first degree murder — Court of Appeal holding that trial judge erred by applying incorrect legal test to facts in assessing whether murder was planned and entering conviction for first degree murder — Conviction upheld — Criminal Code, R.S.C. 1985, c. C-46, s. 231(2).

Statutes and Regulations Cited

Criminal Code, R.S.C. 1985, c. C-46, s. 231(2), (5).

APPEAL from a judgment of the Alberta Court of Appeal (Slatter, Antonio and Friesen JJ.A.), 2024 ABCA 267, 73 Alta. L.R. (7th) 196, 501 D.L.R. (4th) 458, 440 C.C.C. (3d) 473, 98 C.R. (7th) 63, [2024] 10 W.W.R. 517, [2024] A.J. No. 993 (Lexis), 2024 CarswellAlta 2085 (WL), substituting a conviction for first degree murder to the conviction for second degree murder entered by Graesser J., 2022 ABKB 709, [2022] A.J. No. 1261 (Lexis), 2022 CarswellAlta 3080 (WL). Appeal dismissed.

Peter Sankoff and Elek Reitsma, for the appellant.

Matthew Griener, for the respondent.

The judgment of the Court was delivered orally by

[1] KARAKATSANIS J. — The appellant, Buddy Ray Underwood, was charged with the robbery, kidnapping, and first degree murder of Nature Duperron. A group of five individuals, including the appellant, confined her for several hours during which time she was injected with fentanyl and transported from Edmonton to a remote location near Hinton, where she was beaten and left to die. The trial judge, sitting alone, convicted the appellant as a party to the robbery, kidnapping and second degree murder of Ms. Duperron.

[2] The trial judge concluded that the Crown had not established that this was a planned and deliberate murder under s. 231(2) of the *Criminal Code*, R.S.C. 1985, c. C-46. While the trial judge was satisfied that the appellant was a party to the kidnapping of Ms. Duperron, he concluded that the Crown had not met its burden of establishing all elements of the offence of constructive first degree murder beyond a reasonable doubt under s. 231(5) of the *Criminal Code*.

[3] The Crown appealed the acquittal on the charge of first degree murder, arguing that the trial judge erred in law in his assessment of planning and deliberation and misapplied the legal test for constructive first degree murder.

[4] The Court of Appeal of Alberta allowed the Crown appeal, quashed the acquittal and substituted a conviction for first degree murder under both s. 231(2) and s. 231(5) of the *Criminal Code*.

[5] The appellant appeals the first degree murder conviction as of right.

[6] We are all of the view that the appeal should be dismissed, substantially for the reasons of the Court of Appeal at paras. 61 to 81 (2024 ABCA 267, 73 Alta. L.R. (7th) 196).

[7] The trial judge erred with respect to the legal test for a planned and deliberate murder. But for this error of law, the trial judge's findings of fact, which we accept as they were found, would have led him to convict the appellant of first degree murder under s. 231(2).

[8] As this is sufficient to dispose of the appeal, we need not consider whether the Court of Appeal erred in substituting a conviction for constructive first degree murder under s. 231(5) of the *Criminal Code*.

Judgment accordingly.

Solicitors for the appellant: Sankoff Criminal Law, Edmonton.

Solicitor for the respondent: Alberta Crown Prosecution Service, Edmonton.