

R. v. Boudreault, 2012 SCC 56 (CanLII)

Facts:

Donald Boudreault went to a bar on February 7, 2009. There he met Danye Dubois. They went back to her place, where more drinking took place. Around 10 am the next morning, Boudreault realized he was too drunk to drive, so he asked Ms. Dubois to call a cab for him. She called a cab company that sent two drivers, one to drive the driver and one to drive the driver's vehicle. Ms. Dubois called the cab twice, since the cab was taking a while to arrive. After the second call, Ms. Dubois asked Boudreault to wait outside. He went to his truck and started it up so to stay warm. He fell asleep in the driver's seat. The cab arrived. The cab driver called the police. Boudreault was arrested. A breathalyzer test was done. The readings were 250 mg and 242 mg per 100 ml of blood. Boudreault was charged with having care and control of a motor vehicle while his ability to drive was impaired by alcohol and with having care and control of a motor vehicle with more than 80 mg of alcohol in 100 ml of blood. At trial he was acquitted. The trial judge found there was no risk of Boudreault putting the vehicle in motion. The Crown appealed. The Quebec Court of Appeal allowed the appeal, set aside the acquittals and entered convictions. Boudreault appealed to the Supreme Court of Canada.

The Decision:

The majority decision was delivered by Justice Fish. They reinstated the acquittals. The majority felt that an essential element of the offence was whether there was a realistic risk of danger to persons or property. They felt that there were three essential elements of care and control under section 253(1) of the Criminal Code:

- “1) an intentional course of conduct associated with a motor vehicle;
- 2) by a person whose ability to drive is impaired, or whose blood alcohol level exceeds the legal limit;
- 3) in circumstances that create a realistic risk of danger to persons or property.”

The risk of danger must be realistic, not just theoretically possible. Accused would have to provide credible and reliable evidence showing that no realistic risk of danger existed in the particular circumstances of their case.

The majority also felt that the trial judge had not erred in law and was entitled on the evidence to find on the facts that no risk of danger existed. The Crown could not appeal, since there was no error in law, even if the finding of fact was not satisfactory or reasonable to others.

Justice Cromwell dissented. He agreed with the Crown that risk of danger is not an element of the offence. Cromwell felt that by making risk of danger an element of the offence, this would undermine Parliament's preventive purpose in passing the legislation. Justice Cromwell also felt that the trial judge had made an error in law and therefore the Court of Appeal could overturn the

Discussion Questions:

- 1) Which position do you agree with, that of the majority or that of Justice Cromwell, and why?
- 2) Can you think of evidence an accused could use to prove there was no realistic risk of danger?
- 3) In the case of *Saunders v. The Queen*, from 1967, Saunders was charged with impaired driving. He was found impaired behind the wheel of his car with the key in the ignition. The car was in a ditch and had to be towed. The Supreme Court of Canada decided that the car was still a motor vehicle, even though it could not be moved. In light of the *Boudreault* decision, would the *Saunders* case be decided the same way today?

Relevant Law:

Criminal Code of Canada:

Section 253 (1)

acquittals. The error was in finding that there was no risk of setting the vehicle in motion because there was no intention to drive.

Relevant Law:

Criminal Code of Canada

Operation while impaired

253. (1) Every one commits an offence who operates a motor vehicle or vessel or operates or assists in the operation of an aircraft or of railway equipment or has the care or control of a motor vehicle, vessel, aircraft or railway equipment, whether it is in motion or not

(a) while the person's ability to operate the vehicle, vessel, aircraft or railway equipment is impaired by alcohol or a drug; or

(b) having consumed alcohol in such a quantity that the concentration in the person's blood exceeds eighty milligrams of alcohol in one hundred millilitres of blood.

Resources:

You can read the entire case at:

<http://www.canlii.org/en/ca/scc/doc/2012/2012scc256/2012scc56.html>

You can find The *Criminal Code* at:

<http://laws.justice.gc.ca/eng/>

You can find the Saunders case at:

<https://www.canlii.org/en/ca/scc/doc/1967/1967canlii56/1967canlii56.html>