

R. v. Tran, [2010] 3 S.C.R. 350 – Provocation Defence

Facts:

On February 10, 2004, Thieu Khan Tran found his estranged wife in bed with her new boyfriend. Tran stabbed the man to death.

At trial the only defence was whether the charge of murder should be reduced to manslaughter because of provocation. The trial judge accepted the defence and convicted Tran of manslaughter. The Crown appealed. The Court of Appeal of Alberta unanimously decided that there was no evidence on which to base the defence of provocation. They convicted Tran of second degree murder. Tran appealed the case to the Supreme Court of Canada.

The Decision:

The Supreme Court of Canada decided that the trial judge had erred in law in finding that there was evidence to substantiate the defence of provocation. There was no insult. Tran knew his wife was involved with another man.

Provocation will reduce murder to manslaughter if the proper requirements are met. The requirements are: an objective component – “a wrongful act or insult sufficient to deprive an ordinary person of the power of self-control” and a subjective component – “the provocation must have caused the accused to lose self-control and act while out of control.” The subjective element can be described as: “1) the accused must have acted in response to the provocation, and 2) on the sudden before there was time for his passion to cool.” Social context has always been important in defining what amounts to provocation.

The conduct of Tran’s wife and her boyfriend did not amount to an insult. They were alone in the privacy of her bedroom and did not want, or expect, Tran to show up. There was also nothing sudden about Tran’s discovery. He suspected his wife was involved with another man. Therefore, it cannot be said that the discovery, “struck upon a mind unprepared for it.”

Relevant Law:

The Criminal Code of Canada

229. Culpable homicide is murder

(a) where the person who causes the death of a human being

(i) means to cause his death, or

(ii) means to cause him bodily harm that he knows is likely to cause his death, and is reckless whether death ensues or not;

Discussion Questions:

- 1) “The social context has always played an important role in defining what amounts to provocation at law.” What does this mean?
- 2) What would the facts have had to have been in order for Tran’s defence of provocation to have been successful?
- 3) What is the penalty for murder? What is the penalty for manslaughter?

Relevant Law:

Criminal Code of Canada:

Sections 229, 232(1)

Resources:

You can read the entire case at:

<http://canlii.org/en/scc/doc/>

[2010/2010scc58/2010scc58.html](http://canlii.org/en/scc/doc/2010/2010scc58/2010scc58.html)

You can find the *The Criminal Code* at:

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

(b) where a person, meaning to cause death to a human being or meaning to cause him bodily harm that he knows is likely to cause his death, and being reckless whether death ensues or not, by accident or mistake causes death to another human being, notwithstanding that he does not mean to cause death or bodily harm to that human being; or

(c) where a person, for an unlawful object, does anything that he knows or ought to know is likely to cause death, and thereby causes death to a human being, notwithstanding that he desires to effect his object without causing death or bodily harm to any human being.

232. (1) Culpable homicide that otherwise would be murder may be reduced to manslaughter if the person who committed it did so in the heat of passion caused by sudden provocation.