English translation of the judgment of the Court

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| Koneak c. R. | 2024 QCCA 1665 |
| COURT OF APPEAL |
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| CANADA |
| PROVINCE OF QUEBEC |
| REGISTRY OF | QUEBEC |
| No.: | 200-10-003818-213 |
| (635-01-017029-183) (635-01-017082-182) |
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| DATE: | December 11, 2024 |
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| CORAM: | THE HONOURABLE | JULIE DUTIL, J.A.SIMON RUEL, J.A.SOPHIE LAVALLÉE, J.A. |
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| RANDY KONEAK |
| APPELLANT – Accused |
| v. |
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| HIS MAJESTY THE KING |
| RESPONDENT – Prosecutor |
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| JUDGMENT |
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1. The appellant appeals from jury verdicts convicting him of the first degree murder of Chloé Labrie and of improperly or indecently interfering with or offering an indignity to her body, which verdicts were rendered on December 4, 2020, in Kuujjuaq, District of Abitibi, after a trial in the Superior Court.[[1]](#footnote-1)

For the reasons of Ruel, J.A., with which Dutil and Lavallée, JJ.A. agree, **THE COURT**:

1. **GRANTS** the application for leave to appeal on questions of mixed fact and law;
2. **ALLOWS** the appeal;
3. **SETS ASIDE** the guilty verdicts;
4. **ORDERS** that a new trial be held.

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|  | JULIE DUTIL, J.A. |
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|  | SIMON RUEL, J.A. |
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|  | SOPHIE LAVALLÉE, J.A. |
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| Mtre Maude Pagé-Arpin |
| Latour, Dorval |
| For the appellant |
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| Mtre Maya Gold-Gosselin |
| Director of Criminal and Penal Prosecutions |
| For the respondent |
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| Date of hearing: | October 21, 2024 |

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| REASONS OF RUEL, J.A. |
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1. On June 11, 2018, the victim, Chloé Labrie, died of a traumatic brain injury caused by two firearm projectiles. She was found dead on the sofa in her home, her lower body undressed. A contraceptive ring was found near her, on the floor. The victim had suffered traumatic injuries to her vagina and anus.
2. One of the projectiles that hit the victim was fired from outside the home, through the front door window, and the other from inside. The murder weapon was found near House #827 in Kuujjuaq.
3. The appellant is a young Inuk man who is currently 26 years old. He was 20 at the time of the events.
4. On the evening of the crime, the appellant and his wife, Elsie Kauki, attended a party at Michael Snowball’s home. During the evening, the appellant consumed half a bottle of vodka, some cannabis and possibly speed or cocaine. Ms. Kauki testified, however, that she and the appellant were not intoxicated.
5. At around 9 p.m., the appellant left Mr. Snowball’s residence to go to his home to take a shower. At that time, he borrowed Ms. Kauki’s car. He did not return until around midnight. A video recording was filed into evidence, in which a car that appears to be Ms. Kauki’s is seen at 10:50 p.m. stopping close to where the murder weapon was found the next day.
6. The appellant and Ms. Kauki returned home after the party at Mr. Snowball’s house. Ms. Kauki testified that, once the appellant was in bed, he confessed to her that he had killed someone.
7. The appellant was arrested mid-afternoon on June 13, two days after the events. He was informed of his right to counsel, which he exercised. At around 6:30 p.m., officers Leblanc and Bonsant of the Sûreté du Québec, who had been dispatched to Kuujjuaq to investigate the murder, questioned the appellant. The appellant did not cooperate with the officers, and he repeatedly asserted his right to remain silent and asked to return to his cell. He was finally escorted back to his cell at around 8:10 p.m. and rested during the evening.
8. Later, at around 10:55 p.m., Officer Filteau of the Kativik Regional Police Force, who knew the appellant and speaks Inuktitut, met with the appellant in his cell. He was able to put the appellant at ease. The latter made several incriminating statements to Officer Filteau. Officers Leblanc and Bonsant listened to the conversation from outside the cell, and Officer Bonsant jotted down the appellant’s answers. A video recording of the meeting between the appellant and Officer Filteau exists but does not include an audio component. At the trial, officers Filteau, Leblanc and Bonsant recounted, with few variations, the incriminating statements made by the appellant in his cell.
9. In essence, during his discussion with Officer Filteau, the appellant admitted that he had murdered Chloé Labrie. He was in a state of rage on the evening in question and wanted to kill someone. He stole a weapon from a shed and killed the victim at random. His victim could have been anyone. According to the appellant, she did not suffer. After killing the victim, he inserted his hand into her vagina and removed a contraceptive ring. He then threw the weapon away in the location where it was actually found. The appellant told Officer Filteau that he was not drunk.
10. The judge presiding over the trial ruled that the appellant’s statements to the police were admissible.[[2]](#footnote-2) DNA evidence was filed. DNA samples found on the appellant’s underwear and finger were considered to be compatible with the victim’s, with a very high probability.
11. The appellant testified at his trial. He stated that he had no recollection of the events that took place on the evening of the crime, starting at 10 p.m., nor of having made any incriminating statements to Ms. Kauki or to Officer Filteau in his cell.

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1. The appellant raises several grounds of appeal. I will focus on just one, which settles the outcome of the case – i.e., the sufficiency of the judge’s charge to the jury on the issue of planning and deliberation, which are essential elements of the offence of first degree murder under s. 231(2) of the *Criminal Code*.[[3]](#footnote-3)
2. It should be noted that the requirements of planning and deliberation do not have the exact same meaning and must coexist in order for a jury to make a finding of first degree murder.[[4]](#footnote-4) The notion of “planning” refers to a calculated scheme or design that has been carefully thought out and whose nature and consequences have been considered and weighed before the scheme or design is carried out.[[5]](#footnote-5) The term “deliberate” presupposes that the murderer took the time to reflect on the ambit of his intended action, that he acted in a manner that was not impulsive.[[6]](#footnote-6)
3. The judge’s instructions to the jury on the concepts of planning and deliberation are accurate in law. The appellant is not challenging this.
4. In addition to being legally accurate, however, the judge’s instructions to the jury must be sufficient.[[7]](#footnote-7) Indeed, a judge presiding a jury trial has “a general duty to inform the jury of the relevant evidence, and to assist the jury in linking that evidence to the issues that it must consider in reaching a verdict”.[[8]](#footnote-8) The charge to the jury does not always require an abundance of factual details; the level of detail will depend on the context.[[9]](#footnote-9)
5. In the matter at hand, despite the judge’s meticulous work in the difficult context of a jury trial in a northern environment, I am of the view that, as regards the question of planning and deliberation, his instructions to the jury were insufficient.
6. Indeed, in this particular case, the judge’s failure to isolate the critical facts[[10]](#footnote-10) and relate them to the relevant legal criterion – that is, whether the murder was “planned and deliberate”[[11]](#footnote-11) – constitutes a legal error.[[12]](#footnote-12)
7. In my opinion, because of this error, the jury was not properly equipped to decide whether the crime was planned and deliberate, which had the potential to elevate the murder from second degree to first degree, with very significant consequences for the appellant.[[13]](#footnote-13)
8. If the jury found that murder had been committed,[[14]](#footnote-14) then the central issue of the case, according to the prosecution, was whether, based on proof beyond a reasonable doubt, it was planned and deliberate, so as to lead to a finding that it was first degree murder.
9. With regard to the link between the evidence and the planning and deliberation required for first degree murder, the instructions were limited to telling the jury (1) that it should consider all of the evidence and (2) that a certain degree of intoxication could be sufficient to negate the planned and deliberate nature of the murder. In my opinion, these instructions were insufficient.
10. The following elements could support the prosecution’s argument on the issue of planning and deliberation: evidence of at least a minimal plan, including the theft of the weapon from a shed; the particular circumstances of the murder, including the fact that the killer targeted his victim by firing a precise shot at her head from outside the house through the window near the door, that the door to the house was subsequently broken down and that a second shot was fired at the victim’s head; and the appellant’s extrajudicial admissions that he prepared for the offence by stealing a weapon and actively looking for a target.
11. As for evidence that could raise a reasonable doubt on the issue of planning and deliberation, the judge rightly mentioned the question of intoxication. That is, even if the jury rejected the defence of intoxication to negate the specific intent required for murder, the evidence of intoxication and its degree could have affected the additional requirements for first degree murder.[[15]](#footnote-15)
12. The following elements, however, which the judge did not mention, were also relevant to the question of whether the murder was planned and deliberate: the fact that the appellant had no prior knowledge of the victim; the fact that he had no apparent motive for committing the crime; the short duration of the appellant’s absence from Mr. Snowball’s home during the time the crime was committed, which might raise doubts about the implementation of a genuine scheme or design; and the appellant’s statements to the police, which could have led one to believe that his actions were the result of a destructive impulse, rather than a thought out and considered process of planning and deliberation.
13. In my opinion, the judge also erred in his instructions by failing to caution the jury that the appellant’s statement to Ms. Kauki was not relevant to the issue of whether the murder was planned and deliberate. The appellant told Ms. Kauki that he had killed someone, without offering any further details. This statement by the appellant, if not properly framed, was potentially highly prejudicial to him. Indeed, its content is irrelevant to the issue of planning and deliberation. The trial judge’s instructions were not specific enough in explaining to the jury the narrower basis for which they could use this piece of evidence.[[16]](#footnote-16)
14. In short, given the crucial importance in this case of the question of planning and deliberation as regards the murder, the trial judge should have summarized the relevant evidence regarding these issues in a structured and clear manner, and should have established links with the applicable legal criteria for a finding of first degree murder. The jury was not properly equipped to decide on the issues of planning and deliberation according to the law and the evidence.[[17]](#footnote-17)
15. The judge should also have given a limiting instruction regarding the use the jury could make of the evidence of the appellant’s after-the-fact conduct – i.e., his statements to Ms. Kauki as well as the interference with the victim’s body.[[18]](#footnote-18)
16. These are overriding errors. It cannot be said that the prosecution’s evidence on the issue of planning was overwhelming, nor that the judge’s errors in the wording of his charge to the jury were harmless. Consequently, in my opinion, the curative proviso cannot be applied.[[19]](#footnote-19)
17. For these reasons, I am of the view that the appeal should be allowed and a new trial ordered.

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| SIMON RUEL, J.A. |

1. *R. c. Koneak*, Que. Sup. Ct., Nos. 635-01-017029-183 and 635-01-017082-182, December 4, 2020, the Honourable Guy de Blois. [↑](#footnote-ref-1)
2. *R. v. Koneak*, 2021 QCCS 218. [↑](#footnote-ref-2)
3. *Criminal Code*, R.S.C. 1985, c. C-46, s. 231(2). [↑](#footnote-ref-3)
4. ##  Duchaussoy c. R., 2020 QCCA 380, para. 33.

 [↑](#footnote-ref-4)
5. *Duchaussoy c. R.*, 2020 QCCA 380, para. 33, citing *R. c. Gentry*, 1999 CanLII 13176 (QC CA), p. 2; *R. v. Campbell*, 2020 ONCA 221, para. 33, citing *R. v. Nygaard*, [1989] 2 S.C.R. 1074, p. 1084. [↑](#footnote-ref-5)
6. *Duchaussoy c. R.*, 2020 QCCA 380, para. 33, citing *R. c. Gentry*, 1999 CanLII 13176 (QC CA), p. 2; *R. v. Campbell*, 2020 ONCA 221, para. 33, citing *R. v. Nygaard*, [1989] 2 S.C.R. 1074, p. 1084. [↑](#footnote-ref-6)
7. *R*.*v. Abdullahi*, 2023 SCC 19, para. 37. [↑](#footnote-ref-7)
8. *R. v. Rodgerson*, 2015 SCC 38, para. 30. [↑](#footnote-ref-8)
9. *R. v. Rodgerson*, 2015 SCC 38, para. 30; *R*.*v. Abdullahi*, 2023 SCC 19, paras. 54 and 55. [↑](#footnote-ref-9)
10. *R. v. Rodgerson*, 2015 SCC 38, para. 51. [↑](#footnote-ref-10)
11. *Criminal Code*, R.S.C. 1985, c. C-46, s. 231(2). [↑](#footnote-ref-11)
12. *R. v. Rodgerson*, 2015 SCC 38, para. 31. [↑](#footnote-ref-12)
13. *R. v. Calnen*, 2019 SCC 6, para. 9; *R. v. Rodgerson*, 2015 SCC 38, para. 30; *R*.*v. Abdullahi*, 2023 SCC 19, para. 36. [↑](#footnote-ref-13)
14. The appellant had raised a defence of intoxication, which could have led to a verdict of manslaughter. [↑](#footnote-ref-14)
15. R. v. Chanthabouala, 2011 BCCA 463, para. 18. [↑](#footnote-ref-15)
16. *R. v. Rodgerson*, 2015 SCC 38, para. 28. [↑](#footnote-ref-16)
17. *R. v. Abdullahi*, 2023 SCC 19, para. 72. [↑](#footnote-ref-17)
18. *R. v. Rodgerson*, 2015 SCC 38, para. 20; *Bresaw c. R.*, 2017 QCCA 1255, para. 52. [↑](#footnote-ref-18)
19. *R. v. Rodgerson*, 2015 SCC 38, para. 39; *R*.*v. Abdullahi*, 2023 SCC 19, para. 33; *Criminal Code*, R.S.C. 1985, c. C‑46, s. 686(1)(b)(iii). [↑](#footnote-ref-19)