

Date: 20070327

Docket: A-398-06

Citation: 2007 FCA 124

**CORAM: DESJARDINS J.A.
LÉTOURNEAU J.A.
NOËL J.A.**

BETWEEN:

ATTORNEY GENERAL OF CANADA

Appellant

and

ANTOINE ZARZOUR

Respondent

Hearing held at Montréal, Quebec, on March 27, 2007.

Judgment delivered at Montréal, Quebec, on March 27, 2007.

REASONS FOR JUDGMENT OF THE COURT BY:

LÉTOURNEAU J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the bench at Montréal, Quebec, on March 27, 2007)

LÉTOURNEAU J.A.

[1] Charged with an offence under paragraph 40(h) of the *Corrections and Conditional Release Act*, S.C. 1992, c. 20, namely, fighting with or assaulting another person, the respondent invoked self-defence under the *Criminal Code* (Code) without referring to a specific provision of that Code. The chairman of the disciplinary court concluded that section 34 of the Code did not apply because the respondent was the aggressor and not the victim. Therefore, he rejected the defence and found the respondent guilty of the offence charged.

[2] Upon judicial review, Mr. Justice Rouleau of the Federal Court (judge) set aside this decision and ordered a new hearing. The Attorney General of Canada is appealing this decision.

[3] In spite of the submissions of the counsel for the appellant, we are not satisfied that the judge made an error warranting our intervention when he ordered a redetermination of the disciplinary proceeding brought against the respondent.

[4] The appeal before us involves an erroneous understanding of the judge's analysis and conclusions. Without making any definitive findings of fact which could be binding on the disciplinary court, the judge stated that he was of the opinion that there were facts on the record giving rise to a defence of self-defence which was not restricted to the one described in section 34 of the Code. In the circumstances, the chairman of the disciplinary court had to consider this evidence on the basis of the various legal components of the defence of self-defence, as specified in, *inter alia*, sections 35 and 37 of the Code.

[5] We are also satisfied that the judge was correct in concluding that the two violent incidents involving the respondent, even if approximately one hour apart, were relevant to the analysis of the respondent's state of mind and the validity of his defence, especially the sincerity, timeliness, and reasonableness of the fear for his safety that he said he felt when he committed the act for which he was charged.

[6] For these reasons, the appeal will be dismissed with costs.

“Gilles Létourneau”

J.A.

Certified true translation
Michael Palles

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKET: A-398-06

(APPEAL FROM AN ORDER OF THE FEDERAL COURT DATED AUGUST 23, 2006,
DOCKET NO. T-2262-05.)

STYLE OF CAUSE: ATTORNEY GENERAL OF
CANADA v. ANTOINE ZARZOUR

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: March 27, 2007

REASONS FOR JUDGMENT BY: DESJARDINS J.A.
LÉTOURNEAU J.A.
NOËL J.A.

DELIVERED FROM THE BENCH BY: LÉTOURNEAU J.A.

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