

TOP FIVE 2016

Each year at OJEN's Toronto Summer Law Institute, former Ontario Court of Appeal judge Stephen Goudge presents his selection of the top five cases from the previous year that are of significance in an educational setting. This case summary and related questions, based on his comments and observations, is appropriate for discussion and debate in the classroom.

***R v TATTON*, 2015 SCC 33, [2015] 2 S.C.R. 574**

Date Released: June 4, 2015

Full decision: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15397/index.do>

Facts

Mr. Tatton was an alcoholic. He experienced blackouts and sometimes had no recollection of events that took place when he was under the influence.

In 2010, Mr. Tatton was living in his ex-girlfriend's home. On September 24, she left town to visit friends. Mr. Tatton was not happy about this and drank heavily throughout the day and evening, consuming approximately 52 ounces of alcohol. He eventually passed out. When he woke up, he decided to cook some bacon and put the stove temperature on "high". He then drove to a nearby coffee shop. Fifteen to twenty minutes later, he returned to find the house on fire. He called 911. Firefighters were able to save the home, but not any of its contents. The firefighters determined that the cause of the fire was the oil that was left burning on the stove. Mr. Tatton was charged with arson, contrary to s. 434 of the *Criminal Code*. The section reads:

434. Every person who intentionally or recklessly causes damage by fire or explosion to property that is not wholly owned by that person is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.¹

Mr. Tatton argued at trial that he thought he left the stove on "low", and that the fire was an accident. He argued that he did not intend nor foresee the consequences of leaving the stove unattended.

A central question at trial was whether Mr. Tatton had the requisite intent (meaning the crime was planned and on purpose) to commit the offence of arson under s. 434. Another key issue was whether the court could take his state of intoxication into account in making its assessment.

Procedural History

The trial judge acquitted Mr. Tatton. The judge considered whether s. 434 was a specific intent offence (meaning that the Crown had to prove that Mr. Tatton intentionally or

¹ *Criminal Code*, R.S.C., 1985, c. C-46 at s. 434.

knowingly started the fire) or a general intent offence (where the Crown only had to prove that Mr. Tatton committed an illegal act, and whether or not he *intended* to start the fire would be irrelevant). The trial judge found that the facts and circumstances of a case are relevant to deciding whether an offence involves general or specific intent, and that in this case, arson should be considered a specific intent offence. The trial judge was not satisfied that Mr. Tatton “intentionally or recklessly” left the stove on high. Mr. Tatton was acquitted.

The Ontario Court of Appeal rejected the trial judge’s determination that the facts and circumstances of a case are relevant to whether an offence requires specific or general intent. However, the majority agreed with the lower court that s. 434 is a specific intent offence. The Court held that it requires a voluntary act, coupled with an awareness of the more distant consequences of that act and a decision to proceed in the face of those consequences. In the Court’s view, the words “intentionally or recklessly” require consideration of an accused’s subjective state of mind, to which intoxication is relevant. Consequently, the Court of Appeal upheld Mr. Tatton’s acquittal.²

The Crown appealed to the Supreme Court of Canada (SCC).

Issues

1. Is arson a general or specific intent offence?
2. If arson is a general intent offence, can intoxication be used as a defence?

Decision

The SCC concluded that arson is a general intent offence. Since it is a general intent offence, Mr. Tatton was unable to rely on intoxication as a defence. The Court ordered a new trial.

Ratio

Section 434 of the *Criminal Code* is a general intent offence, for which intoxication is not a valid defence.

Reasons

The Supreme Court of Canada held that the analysis of whether an offence is one of specific or general intent must start with a determination of the mental element in question. Specific intent offences involve a heightened mental element and engage more complex thought and reasoning processes. General intent offences, on the other hand, do not require a high level of mental acuity.

The SCC concluded that even if a person is intoxicated, they could still foresee the risk to someone else’s property by fire. The Court held that complex reasoning is not required to recognize such danger. As a result, it concluded that intoxication is not a valid defence for s. 434 charges.

The SCC ordered a new trial. Even though the trial judge determined that Mr. Tatton accidentally left the stove on, the SCC was convinced that the trial judge’s decision was influenced by Mr. Tatton’s intoxication, which could not be used as a defence.

² See *R. v. Tatton*, 2014 ONCA 273

DISCUSSION

1. What is specific intent? What is general intent?

2. What are some examples of specific intent crimes and general intent crimes?

3. Why does the difference between specific and general intent matter in this case?



4. Do you agree with the SCC that the defence of intoxication should not be allowed in a general intent offence such as arson? Why or why not?

5. The defence of intoxication is not frequently used in criminal trials. Why do you think that is?