

**SUPREME COURT OF CANADA**

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| **Citation:** R. *v.* Ibanescu, 2013 SCC 31, [2013] 2 S.C.R. 400 | **Date:** 20130530  **Docket:** 34653 |

**Between:**

**Mihai Ibanescu**

Appellant

and

**Her Majesty The Queen**

Respondent

**Coram:** McLachlin C.J. and LeBel, Fish, Abella, Rothstein, Cromwell, Moldaver, Karakatsanis and Wagner JJ.

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| **Reasons for Judgment:**  (paras. 1 to 4) | The Court |

R. *v.* Ibanescu, 2013 SCC 31, [2013] 2 S.C.R. 400

Mihai Ibanescu Appellant

v.

Her Majesty The Queen Respondent

**Indexed as: R. *v.* Ibanescu**

2013 SCC 31

File No.: 34653.

2013:  May 15; 2013:  May 30.

Present: McLachlin C.J. and LeBel, Fish, Abella, Rothstein, Cromwell, Moldaver, Karakatsanis and Wagner JJ.

on appeal from the court of appeal for quebec

*Criminal law — Evidence — Operation of vehicle with blood alcohol level exceeding legal limit — Section 258(1)(d.1) of Criminal Code providing that, absent evidence to contrary, breathalyser reading above 80 mg of alcohol per 100 mL of blood is proof that blood alcohol concentration exceeded legal limit at time of driving — Evidence placing appellant’s blood alcohol concentration in range that straddled legal limit at time of driving — Whether “straddle evidence” can rebut statutory presumption.*

*Held*: The appeal should be allowed.

The straddle evidence in this case was admissible and the trial judge committed no error in finding that the statutory presumption had been rebutted. Nor did the trial judge commit any error in weighing the appellant’s other indicia of impairment.

**Cases Cited**

**Applied:** *R. v. Gibson*, 2008 SCC 16, [2008] 1 S.C.R. 397.

APPEAL from a judgment of the Quebec Court of Appeal (Duval Hesler C.J. and Dalphond and Bich JJ.A.), 2011 QCCA 2304, SOQUIJ AZ-50813303, [2011] J.Q. no 18752 (QL), 2011 CarswellQue 13644, setting aside the accused’s acquittal and substituting a conviction. Appeal allowed.

*Rose-Mélanie Drivod*, for the appellant.

*Dennis Galiatsatos* and *Benoit Lauzon*, for the respondent.

The following is the judgment delivered by

1. The Court — In *R. v. Gibson*, 2008 SCC 16, [2008] 1 S.C.R. 397, a majority of this Court — for the reasons of LeBel and Deschamps JJ. — held that straddle evidence is admissible to rebut the statutory presumption that the blood alcohol level of the accused exceeded the legal limit at the time of driving, although there was disagreement on the issue of the probative value of this evidence. In our view, a statement of a legal principle that is accepted by a majority of the Court constitutes the opinion of the Court with respect to that legal principle. This is so even if some of the members of the Court who endorse that legal principle dissent from the majority’s disposition of the appeal. Therefore, the straddle evidence in this appeal was admissible.
2. With respect to the probative value of the evidence, we would adopt the reasons of LeBel J. in *Gibson* as setting out the appropriate test.
3. Applying these principles, we would allow the appeal. LeBel J. in *Gibson* found that straddle evidence showing blood alcohol content between 40 mg of alcohol per 100 mL of blood, assuming an elimination rate of 20 mg per hour, and 82 mg, assuming an elimination rate of 10 mg, “may be capable of raising a reasonable doubt” as to whether the accused’s blood alcohol content exceeded the legal limit at the time of driving (para. 72). The straddle range in this case was almost identical to LeBel J.’s example, placing the appellant’s blood alcohol content within a range of 57 mg, assuming an elimination rate of 15 mg, and 83 mg, assuming a rate of 10 mg, at the time of driving. The trial judge who, in accordance with LeBel J.’s reasons in *Gibson*, weighed this evidence in the light of all of the evidence at trial, committed no legal error in finding that the statutory presumption had been rebutted. Nor did the trial judge commit any palpable or overriding errors in weighing the appellant’s other indicia of impairment (2009 QCCQ 4279 (CanLII)).
4. Accordingly, we would allow the appeal and reinstate the appellant’s acquittal at trial.

*Appeal allowed.*

Solicitors for the appellant:  Schurman, Longo, Grenier, Montréal.

Solicitor for the respondent:  Poursuites criminelles et pénales du Québec, Montréal.