

CASE NO.

VOL. NO.

PAGE

GEORGE HOWARD DESMOND - and - HER MAJESTY THE QUEEN

Appellant

Respondent

CAC 161156

Halifax

ROSCOE, J.A.
(Orally)

[Cite as: R. v. Desmond, 2002 NSCA 40]

APPEAL HEARD:

March 26, 2002

JUDGMENT DELIVERED:

March 26, 2002

WRITTEN RELEASE OF ORAL:

March 28, 2002

SUBJECT:

**EVIDENCE: HEARSAY, STATE OF MIND EXCEPTION,
DOCUMENTS WRITTEN BY DECEASED.**

SUMMARY:

The appellant was convicted of first degree murder of his estranged wife. On appeal, he submits that the trial judge erred in law in admitting into evidence eight documents, five of which are typewritten and handwritten notes alleged to have been authored by the deceased, two witness statements the deceased gave to police on earlier occasions of domestic aggression, and a letter she sent to her lawyer after their separation.

ISSUE:

Did the trial judge err in law in admitting the documents into evidence?

RESULT:

Appeal dismissed. There was no error of law respecting the admission of any of the documents nor in the corresponding charge to the jury. The trial judge properly applied the principled approach to the hearsay rule and the law relating to the traditional hearsay exceptions. The trial judge made no error of law in the exercise of his residual discretion in balancing the probative value of these documents against their prejudicial effect. There was nothing to support the appellant's contention that the jury may have misused the documents.

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