

NOVA SCOTIA COURT OF APPEAL

Citation: *R. v. Eisnor*, 2015 NSCA 64

Date: 20150625

Docket: CAC 420821

Registry: Halifax

Between:

Wayne Paul Eisnor

Appellant

v.

Her Majesty the Queen

Respondent

Judge: The Honourable Justice Duncan R. Beveridge

Appeal Heard: November 25, 2014, in Halifax, Nova Scotia

Subject: Criminal law: criteria for fitness to stand trial; admissibility of deceased's hearsay statements and evidence of discreditable conduct

Summary: The appellant was seen talking to his wife in a parking lot. He ran to his nearby vehicle. On his return, he shot her in the head, twice. He then shot himself in the head. Her wounds were fatal, his were not. Initially, the appellant was not fit to stand trial. His condition improved, but the damage to his brain left him with amnesia for six months preceding the shooting, that day, and for some weeks following. Nonetheless, he was found fit to stand trial. The appellant asked the trial judge to direct a trial of his fitness, arguing that there were reasonable grounds to believe he was unfit to stand trial because his amnesia left him unable to communicate with counsel about the events. The trial judge declined. During trial, the trial judge permitted the Crown to lead evidence of hearsay statements made by the deceased to a number of witnesses, and of certain assaultive conduct by the

appellant toward the deceased. The appellant complained that the trial judge erred in doing so.

Issues:

- (1) Did the trial judge err in his interpretation of statutory criteria for fitness to stand trial, and thereby err in refusing to direct a trial of the issue?
- (2) Did the trial judge err in admitting the hearsay statements and evidence of other discreditable conduct by the appellant?

Result:

The trial judge did not err in his interpretation of the *Criminal Code* requirements for fitness to stand trial. Amnesia of the events, standing alone, does not call into question the ability of the appellant to communicate with counsel. There was no basis to interfere with the trial judge's decision wherein he balanced the probative value of the evidence and its prejudicial effect. The appeal is dismissed.

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 38 pages.