

CASE NO.

VOLUME

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Cite as: R. v. Eisenhauer, 1998 NSCA 60

DORIS MAE EISENHAUER

HER MAJESTY THE QUEEN

- and -

(Appellant)

(Respondent)

C.A.C. No. 135715

Halifax, N.S.

CROMWELL, J.A.

APPEAL HEARD:

November 12, 1997

JUDGMENT DELIVERED:

January 30, 1998

SUBJECT:

**Criminal Law - Charge to the Jury
Criminal Evidence - Prior Statements - Hearsay Exceptions**

SUMMARY:

The accused was convicted of second degree murder. Many of the witnesses at trial had criminal records and had made prior inconsistent statements. There were numerous conflicts in the evidence of the various witnesses. The defence sought to have out of court statements by two Crown witnesses and one defence witness admitted as evidence of the truth of their contents. The trial judge refused. In his charge to the jury, the judge set out the theory of the defence but did not review all of the inconsistencies in the evidence of the various witnesses. He also, after giving the jury the standard direction with respect to use of prior criminal convictions, offered his opinion to the jury that the criminal records of the witnesses or the accused were not particularly helpful because they had no direct bearing on the present charge before the Court.

ISSUES:

- (1) Did the trial judge adequately review the evidence in relation to the theory of the defence?
- (2) Did the trial judge misdirect the jury with respect to the use of prior criminal convictions? and
- (3) Did the trial judge err in refusing to admit as evidence of the truth of their contents the prior statements by three of the witnesses?

RESULT: Appeal dismissed. The trial judge's charge met the standard set by the Supreme Court of Canada in **R. v. Jacquard**, [1997] 1 S.C.R. 314. He conducted a substantial review of the evidence. Although he did not review by any means all

of the inconsistencies in the evidence, he was not obliged to do so in the circumstances of this case. His opinion with respect to the helpfulness of the evidence of prior criminal convictions did not constitute misdirection given that the jury was clearly instructed that this was a matter for their decision and that they were not bound by the trial judge's remarks in this regard. The judge did err in refusing to admit as evidence of the truth of their contents certain prior statements of three witnesses but these errors did not occasion any substantial wrong or miscarriage of justice given that there was no possibility that the verdict would have been different had this evidence been admitted.

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