

NOVA SCOTIA COURT OF APPEAL

Citation: *R. v. Landry*, 2016 NSCA 53

Date: 20160622

Docket: CAC 436235

Registry: Halifax

Between:

Joseph James Landry

Appellant

v.

Her Majesty the Queen

Respondent

Judge: The Honourable Justice Duncan R. Beveridge

Appeal Heard: January 22, 2016, in Halifax, Nova Scotia

Subject: Criminal law: sentence appeal for manslaughter; powers of a trial judge to determine facts in aggravation of sentence following a jury trial.

Summary: Crew members of a lobster boat killed a man poaching lobsters out of their traps. All faced murder charges. One of the crew eventually gave a statement to the police and became the Crown's chief witness. His evidence was that the appellant was the chief architect and actor in a series of attacks against the deceased. He said the appellant shot the deceased, then tried to tow the deceased's boat from the area. When that failed, the lobster boat rammed the deceased's boat three times, destroying the much smaller craft. The appellant then used a gaff to hook the deceased as he was towed out to sea. An anchor was tied to the deceased's body. It was never recovered.

The appellant gave numerous statements to the police. He admitted shooting at the deceased with the intent to cause death, and to ramming the deceased's boat. After the last

collision, he claimed he never saw the deceased again. The appellant was charged with murder. A jury convicted of manslaughter. The trial judge found that the manslaughter was a case of almost murder, and sentenced the appellant to 14 years' imprisonment. The appellant claimed that the trial judge erred in finding facts inconsistent with the jury's verdict and in imposing an excessive sentence.

- Issues:**
- (1) Did the trial judge err in imposing sentence based on facts inconsistent with the jury's verdict?
 - (2) Was the sentence otherwise excessive?

Result:

It is not the trial judge's role to try to discern the reasoning path that led the jury to acquit on the appellant of murder and convict on the included offence of manslaughter. The trial judge was required to accept as proven all facts essential for the jury verdict, and then make factual findings based on the evidence at trial, so long as the facts are not inconsistent with the verdict. The trial judge's findings of fact are not inconsistent with the jury's verdict. Nor is the sentence imposed excessive. Leave to appeal is granted, but 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 18 pages.