

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** *R. v. Calnen*, 2017 NSCA 49

**Date:** 20170614

**Docket:** CAC 448011

**Registry:** Halifax

**Between:**

Paul Trevor Calnen

Appellant

v.

Her Majesty the Queen

Respondent

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**Judge:**

Scanlan, J.A.

MacDonald, C.J.N.S. (Dissenting)

**Appeal**

February 15, 2017, in Halifax, Nova Scotia

**Heard:**

**Subject:**

**Appeal of criminal conviction for murder and appeal of sentence.**

**Summary:**

The appellant was convicted by a jury in relation to the death of a female partner. They had been in a relationship and the deceased intended to leave the appellant, planning to steal some of his personal property when she left. The appellant came home to discover her in the process of leaving with some of his property. There were texts suggesting that the situation became tense. There was no evidence at trial, other than the appellant's statement to the police and the deceased's mother where he gave his version as to what occurred at the time of the deceased's death. The appellant at all times maintained that he did not cause the death of the deceased. He said she took a swing at him in anger, missed, and the momentum carried her down the stairs where the appellant, upon deciding she was dead, said he removed the body from his house so as not to be blamed for her death. In an attempt to deflect blame, the appellant sent a text suggesting she had left the property when in fact she

was dead. There was no evidence as to the cause of death, the appellant had repeatedly moved and subsequently incinerated the body of the deceased. Repeated searches of the appellant's home did not reveal any evidence of a struggle or any blood. Her remains were never located, the appellant had given a statement to the police saying he burned the body several times until there were only ashes, which he dispersed in a lake in front of the cottage of the deceased's parents.

The vast majority of the evidence against the appellant was circumstantial evidence mainly related to his after-the-fact conduct.

The appellant pleaded guilty to the offences related to the burning of the deceased body. He was sentenced to five years concurrent on each of two offences.

**Issues:**

- (1) Appeal of conviction of murder based on an assertion by the appellant that the trial judge made numerous errors in the evidentiary rulings and the instructions to the jury.
- (2) The fitness of the sentences related to the burning of the deceased body. The court was unanimous in dismissing the appeal of that sentence.

**Result:**

The appellant appealed the convictions on a number of grounds. He argued that the trial judge did not properly instruct the jury as to the use of evidence of after-the-fact conduct. He also appealed the trial judge's refusal to grant a motion for a directed verdict. The majority determined that the final instruction to the jury related to after-the-fact conduct was inadequate. The conviction of second degree murder was set aside. The majority also held that the trial judge should have granted the motion for directed verdict on the second degree murder charge as the after-the-fact conduct evidence alone was not evidence that could prove the requisite intent for second degree murder. There was no other evidence that could prove intent to murder. The majority noted that, in the absence of any additional evidence, any retrial should not include the charge of second degree murder.

The dissenting judgement held that the jury charge was not deficient and

that the after-the-fact conduct evidence together with the other evidence was sufficient to maintain a conviction. The dissenting judge would have dismissed all grounds of appeal.

There were a number of other grounds of appeal related to the statements of the accused to the deceased's mother and to the police, use of texts as evidence, and expert evidence. The court was unanimous in saying there was no merit to any other grounds of appeal.

***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 55 pages.***