NOVA SCOTIA COURT OF APPEAL
Citation: *R. v. Eagan*, 2025 NSCA 47

Date: 20250617
Docket: CAC 539343
Registry: Halifax

Between:

Patrick Joseph Eagan

Appellant

v.

His Majesty the King

Respondent

Judges:	Van den Eynden, Beaton and Gogan, JJ.A.
Appeal Heard:	June 16, 2025, in Halifax, Nova Scotia
Held:	Leave to appeal conviction denied per reasons of the Court
Counsel:	Patrick Joseph Eagan, appellant in person Glenn A. Hubbard, for the respondent

Reasons for judgment by the Court:

[1] The appellant (Mr. Eagan) was convicted of operating a conveyance while his ability to do so was impaired by a drug, contrary to s. 320.14(1)(a) of the *Criminal Code*. Judge Bryna Hatt (trial judge) of the Nova Scotia Provincial Court, presided over his trial and subsequent sentencing.[1]

[2] The core underlying facts are straightforward. On the morning of April 5, 2022, Mr. Eagan took two zopiclone pills. Zopiclone was a medication prescribed to Mr. Eagan to help him sleep. The recommended dosage for this medication is only one pill before bedtime.

[3] Mr. Eagan testified that he realized he consumed a double dose of the wrong medication. And further, he knew the impairing effects of this medication. Nevertheless, Mr. Eagan decided to "power through" the day. To counteract the impending drowsiness from the zopiclone, Mr. Eagan took other medication he had been prescribed, which he said typically increased his energy level. He also thought drinking lots of coffee would help.

[4] Mr. Eagan proceeded to drive himself to work. He was observed to be driving in an erratic manner and caused a motor vehicle collision. This led to the impaired driving charge. At trial, Mr. Eagan acknowledged he was impaired while driving but contended the requisite *mens rea* (intent) for the s. 320.14(1)(a) offence was not made out.

[5] The trial judge determined the Crown proved both the *actus reus* and *mens rea* elements of the offence beyond a reasonable doubt. As to the *mens rea* (intent to operate), the trial judge determined Mr. Eagan's impairment on the date in question was the result of him having voluntarily ingesting zopiclone and acting recklessly, aware that impairment could result but persisted despite the risk.

[6] The trial judge held:

> I am satisfied beyond a reasonable doubt that Mr. Eagan's impairment was the result of him voluntarily ingesting the drug and acting recklessly, aware that impairment could result but persisted despite the risk. Criminal *mens rea* may also be recognized through accused recklessness or wilful blindness – see *R. v.*

[1] The trial judge's decisions on conviction and sentence were delivered orally and remain unreported.

> *Sault Ste. Marie*,[2] the 1978 decision of the Supreme Court of Canada, as well as *R. v. Sansregret*,[3] another 1985 decision of the Supreme Court of Canada.
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> As explained by the Newfoundland Court of Appeal in *Mavin*[4] at paragraph 38:
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> > [38] ... By defining the *mens rea* as intent to become voluntarily intoxicated to include recklessness, the law is addressing situations where, although the intoxication may not have been intentional, a person persists in his or her consumption to the point despite his or her awareness of the risk. In doing so the law is also casting the net of individual responsibility more tightly in impaired driving cases.
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> In this case, after becoming aware he had mistakenly took a double dose of zopiclone, Mr. Eagan did not recalibrate any of his decision making. […] When looking at the full picture, including Mr. Eagan's testified knowledge about zopiclone and its risks, it reflects acts of recklessness and ignores his knowledge of the risks.

[7] Mr. Eagan appealed his conviction to the Nova Scotia Supreme Court. Justice Scott C. Norton, sitting as a Summary Conviction Appeal Court Justice (SCAJ), heard and dismissed the appeal. His decision is reported at 2024 NSSC 375.

[8] Before the SCAJ, Mr. Eagan acknowledged the trial judge correctly referenced the governing legal principles; however, he asserted the trial judge erred in her application of them. In particular, he argued she erred in (1) finding he had the required *mens rea* for the offence of driving while under the influence of drugs, and she (2) misstated his evidence and failed to give effect to the principles of *R. v. W. (D.),* [1994] 3 S.C.R. 521.

[9] The SCAJ dismissed the appeal. In doing so, the SCAJ said:

> [34] […] I am satisfied that the evidence before the trial judge is reasonably capable of supporting the trial judge's conclusions. The trial judge committed no error of law. No miscarriage of justice results. The trial judge's statement that she did not accept his later testimony to the effect that he did not know or was unable to foresee that the sleeping pills would impair his ability to drive, when no such testimony was given, does not amount to a reversible error. This argument was made by Mr. Eagan's counsel in his brief and in my view the judge was simply rejecting that argument, albeit misidentifying it as testimony. Her finding of recklessness does not amount to an error in the application of the *W. (D.)* test.

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[2] [1978] 2 S.C.R. 1299.
[3] [1985] 1 S.C.R. 570.
[4] [1997] N.J. No. 206.

> [35] Accordingly, I would dismiss the appeal.

[10] On appeal, Mr. Eagan essentially repeats the same grounds that were unsuccessfully advanced before the SCAJ.

[11] This is not a second appeal from the trial decision. Rather, it is an appeal from the SCAJ's decision and is restricted to questions of law alone.

[12] As s. 839 of the *Criminal Code* makes clear, the first hurdle Mr. Eagan must overcome is to obtain leave to appeal. This section reads, in part:

> (1)… an appeal to the court of appeal as defined in section 673 may, with leave of that court or a judge thereof, be taken on any ground that involves a question of law alone, against
>
> (a) decision of a court in respect of an appeal under section 822 … .

[13] The issue of leave was reviewed by this Court in *R. v. Ankur; R. v. Chandran*, 2023 NSCA 55 wherein Justice Bryson explained:

> [6] Because this is an appeal under s. 839 of the *Criminal Code*, it is restricted to questions of law on leave. The standard of review is correctness (*R .v. Pottie*, 2013 NSCA 68, at para. 14; *R. v. MacNeil*, 2009 NSCA 46, at para. 8).
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> [7] Leave to appeal in accordance with s. 839 of the *Criminal Code* is sparingly granted. This Court will consider the significance of the legal issues raised to the general administration of criminal justice and the merits of the proposed grounds of appeal. If issues significant to the administration of justice transcend the particular case, leave may be granted, even if the merits are not strong although they must be arguable. Alternatively, where the merits appear very strong, leave to appeal may be granted, even if the issues are of no general importance, particularly if the convictions are serious and the applicant faces a significant deprivation of his or her liberty (*Pottie*, at ¶18-19).
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> [8] In *Pottie*, the Court endorsed the Crown's submissions, summarizing the principles from the case law when deciding whether to grant leave:
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> > [21] The Crown, in its factum, has accurately summarized the principles that have emerged from the case law to guide provincial appellate courts when deciding whether to grant leave to appeal from a SCAC decision. They are:
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> > 1. Leave to appeal should be granted sparingly. A second appeal in summary conviction cases should be the exception and not the rule.

> 2. Leave to appeal should be limited to those cases in which the appellant can demonstrate exceptional circumstances that justify a further appeal.
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> 3. Appeals involving well-settled areas of law will not raise issues that have significance to the administration of justice beyond a particular case.
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> 4. If the appeal does not raise an issue significant to the administration of justice, an appeal that is merely "arguable" on its merits should not be granted leave to appeal. Leave to appeal should only be granted where there appears to be a clear error by the SCAC.
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> 5. A second level of appeal is an appeal of the SCAC justice. It is to see if he or she made an error of law. The second level of appeal is not meant to be a second appeal of the provincial court decision.
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> […]
>
> [citations omitted]

[14] The Crown opposes Mr. Eagan's application for leave to appeal. In written argument, the Crown submits:

> 82. The Appellant has presented no clear error on the part of the SCAC Judge's analysis.
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> 83. The Appellant does not face a significant deprivation of his liberty. Although the Appellant cites an on-going Bar Society investigation, there is no evidence before this Court regarding any proposed sanction that is being considered by that body. The sentence imposed upon the Appellant, by the Trial Judge, was a $1,500 fine and 1 year driving prohibition.
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> 84. As a result, the Respondent submits that the Appellant should not be granted leave to appeal in this case.

[15] We agree with the Crown's submissions. With respect, Mr. Eagan has not raised any legal issue important to the administration of justice that requires resolution. Further, the record does not reveal any error of law, let alone a clear one. Nor has there been a significant deprivation of Mr. Eagan's liberty.

[16] Accordingly, we are of the unanimous view that leave to appeal must be denied.

Van den Eynden J. A.

Beaton, J.A.

Gogan, J.A.