

NOVA SCOTIA COURT OF APPEAL

Citation: *R. v. Reid*, 2003 NSCA 104

Date: 20031009

CAC 179257

Joey Robert Reid and Michael Gene Stratton

Appellants

v.

Her Majesty the Queen

Respondent

- and -

CAC 179434

Her Majesty the Queen

Appellant

v.

Joey Robert Reid and Michael Gene Stratton

Respondents

Judge: Saunders, J.A.

Appeal Heard: May 29, 2003

Subject: Manslaughter. Cause of Death. Intervening act or intervening cause. What constitutes proper and adequate directions when charging a jury on the standard of causation in a homicide case?

Summary: Reid & Stratton were convicted of manslaughter for killing Joey MacKay after a night of drinking in Truro. An argument in a driveway escalated into a physical altercation where Stratton & MacKay exchanged punches and Stratton was able to subdue MacKay by grabbing his neck in a headlock. While MacKay was on the ground Reid administered some kicks. After noticing that MacKay was no longer resisting or struggling, Stratton let go and

got to his feet. It soon became apparent that MacKay was unconscious. Some in the group attempted resuscitation, but to no avail. MacKay was pronounced dead at the hospital. The uncontroverted evidence at trial, the view shared by all of the doctors whose reports and testimony were before the jury, was that MacKay's death was due to asphyxia after he aspired on his stomach contents. The botched attempts at CPR brought on his death when the pressure of physical resuscitation efforts forced large quantities of vomitus into his lungs.

Reid and Stratton appealed on several grounds including an allegation that the trial judge erred in law in not adequately instructing the jury on the issue of *intervening act* and *intervening cause* as it related to the CPR procedure which, on the evidence, was the cause of death.

Held: Appeal allowed, convictions quashed and a new trial ordered for both Reid and Stratton.

The trial judge's charge to the jury was seriously incomplete in that he did not specifically instruct them on the issue of *intervening act* and *intervening cause* as it related to the failed attempts at CPR which, on the evidence, was the sole cause of Mr. MacKay's death. This omission constituted a significant error of law. Directions given as to what would constitute a proper charge to a jury under the circumstances.

In light of the result there was no need to address the several other grounds of appeal advanced by Reid and Stratton or the Crown's cross-appeal on sentence.

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 35 pages.