

NOVA SCOTIA COURT OF APPEAL

Citation: *R. v. Stewart*, 2003 NSCA 150

Date: 20031230

Docket: CAC 194890

Registry: Halifax

Between:

Peter Edward Stewart

Appellant

v.

Her Majesty The Queen

Respondent

Judge: Oland, J.A.

Appeal Heard: October 15, 2003

Subject: **Criminal law; Burden of proof; Unreasonable verdict.**

Summary: Appeal from conviction for the second degree murder of a two year old. At trial the theory of the Crown was that the child had died from shaken baby syndrome. The evidence of the several medical experts who testified on behalf of the Crown was not entirely consistent as to the cause of death. Most were of the view that she had died of injuries consistent with shaken baby syndrome and all agreed that her death was not accidental or caused by a household fall. The theory of the defence was that the injuries could have resulted in an accidental fall down stairs. The defence witnesses included a kinesiologist who accepted the findings of the pathologists and considered whether the injuries could have been caused by a fall. The appellant also testified. On appeal the defence urged that the trial judge had erred in law by failing to properly apply the burden of proof and that the verdict should be set aside on the grounds that it was unreasonable.

Result: Appeal dismissed. The trial judge did not simply choose the expert testimony which she favoured. Rather, she approached the burden of proof correctly. She rejected the evidence of the appellant and proceeded to take the totality of the evidence, including the kinesiologist's hypothesis and its basis, into account. Neither the evidence of the appellant nor that of the kinesiologist was accepted as an alternative rational explanation. Nor does her decision disclose that the trial judge had improperly placed the burden on the defence to prove that the child had been injured falling down stairs or that she had had a reasonable doubt and yet failed to acquit. A re-examination and re-weighing of the evidence in accordance with the standard of review did not establish that the trial judge had reached an unreasonable verdict in finding the appellant guilty beyond a reasonable doubt.

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 14 pages.