

NOVA SCOTIA COURT OF APPEAL

Citation: *R. v. Tower*, 2008 NSCA 3

Date: 20080117

Docket: CAC 280533

Registry: Halifax

Between:

Trevor John Tower

Appellant

v.

Her Majesty the Queen

Respondent

Judge: The Honourable Justice Thomas Cromwell

Appeal Heard: December 12, 2007

Subject: Criminal Law - intervening cause - self-defence - sentencing principles for manslaughter

Summary: The appellant was convicted of manslaughter and sentenced to 5 years imprisonment. He and a friend had left a party to go outside to confront a neighbour about his behaviour. The appellant hit the neighbour across the back with long handled pruning shears. This fractured the neighbour's ribs and ruptured his spleen. He refused all medical treatment and died in police custody 2 days later. At his trial, the appellant alleged that police had failed to follow their policy respecting medical assistance for injured prisoners and that this failure could be an intervening cause of death. The judge ruled that this could not be an intervening cause and that the defence could not lead evidence concerning the alleged failure to follow the policy.

- Issues:**
1. Did the judge err in excluding evidence about the alleged failure of the police to follow the policy?
 2. Did the judge err in his instructions about self-defence by failing to tell the jury that an “unlawful assault” could be a threatened as well as an actual blow?
 3. Did the judge err in his sentencing decision by failing to give adequate weight to rehabilitation and too much weight to denunciation and deterrence?

Result: Conviction appeal dismissed. Leave to appeal sentence granted but appeal dismissed. The alleged failure to follow the police policy could not be an intervening cause of death in this case and the judge was correct not to allow the defence to lead evidence about the alleged failure. The judge’s jury instructions were correct when read as a whole and in the context of the trial evidence and the positions of counsel. The judge considered all relevant matters and his sentence was not based on any error in principle or manifestly unfit.

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 21 pages.