

NOVA SCOTIA COURT OF APPEAL

Citation: *R. v. Johnson*, 2004 NSCA 91

Date: 20040714

Docket: CAC 173767

Registry: Halifax

Between:

Wilfred Dwayne Johnson

Appellant

v.

Her Majesty the Queen

Respondent

Judge: Oland, J.A.

Appeal Heard: February 2, 2004

Subject: Hearsay evidence. Admission of statements of deceased person. Circumstantial evidence. Sentencing. Parole ineligibility period - s. 745.4 *Criminal Code*.

Summary: The appellant was charged with the first degree murder of a woman and her two month daughter. The case against him was a circumstantial one. The trial judge allowed into evidence five out of court statements regarding earlier incidents involving the appellant that the woman had given to the police. Expert witnesses agreed as to the cause of the woman's death but differed as to whether the child may have died of sudden infant death syndrome (SIDS). A jury found the appellant guilty of the second degree murder of both the mother and child. He was sentenced to the mandatory term of life imprisonment. The jury made no recommendation as to the duration of the parole ineligibility period and the trial judge imposed a period of 21 years.

Issues: 1. Whether the trial judge erred in admitting the five hearsay statements.

2. Whether he erred in allowing a conviction to be entered in regard to the child.
3. Whether the parole ineligibility period he imposed was excessive.

Result: Appeals against conviction and sentence dismissed.

The principled exception to the hearsay rule has two components, necessity and reliability. Whether the statements are true or not is not considered at the voir dire or admissibility stage of the proceedings. That determination and their ultimate reliability is left to the trier of fact. Necessity having been accepted, the question was whether the statements satisfied the reliability component. An examination of the circumstances under which the statements were made provides circumstantial guarantees of trustworthiness sufficient to meet threshold reliability.

Having considered the whole of the evidence in regard to her death and having re-examined and to some extent re-weighted and considered its effect, the court was not persuaded that the jury verdict in finding the appellant guilty of the second degree murder of the child was an unreasonable one. The evidence was such that a properly instructed jury could find that her death was a homicide. Although the medical experts differed as to whether the child might have died of SIDS, it remained open to the jury to accept the evidence of one and to reject that of the other.

The trial judge has the discretion to determine, according to the criteria in s. 745.4, that the parole ineligibility period should be longer than ten years. In the particular circumstances here, the period of 21 years imposed by him is not excessively harsh.

<p>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 25 pages.</p>
--