

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: *R. v. Fitzpatrick.*, 2005 NSSC 298

Date: 20051005

Docket: SH 228523

Registry: Halifax

Between:

Donald Patrick Fitzpatrick

Appellant/Applicant

v.

Her Majesty the Queen

Respondent

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Judge: The Honourable Justice Walter R.E. Goodfellow

Heard: October 5, 2005, in Halifax, Nova Scotia

Written Decision: November 3, 2005

Subject: Fresh Evidence

Summary: Fitzpatrick convicted of four counts under the Criminal Code of assault and uttering a threat. Represented by counsel at trial. Fitzpatrick has filed his own appeal and intends to be self-represented.

Fitzpatrick applies for introduction of “fresh evidence” including a volume he prepared entitled “Historicity”. Further that failure to provide certain material should constitute incompetency on the part of his trial solicitor.

Issue: The evidence advanced “fresh evidence” and such that should be admitted on appeal?

Result: Issue answered in the negative. “Historicity” a recanting and expansion of the evidence he already presented to court. Material pre-dated court hearing and was either addressed or readily available at trial. An appeal is not a re-trial, an appeal is not an extension of the trial.

Application to admit “fresh evidence” dismissed. Appeal to proceed as scheduled.

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