

SUPREME COURT OF NOVA SCOTIA

Citation: R. v. Muise, 2013 NSSC 146

Date: 20130515

Docket: CRH 373467

Registry: Halifax

Between:

Her Majesty the Queen in and for the Province of Nova Scotia

Crown

v.

Cody Alexander Muise

Defendant

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Judge: The Honourable Justice Peter P. Rosinski

Heard: May 6, 2013

Subject: *When manslaughter as an included lesser offence should be put to a jury in a case charged as 1st degree murder?*

Summary: Mr. Muise fatally shot the deceased; he claimed that he shot “wildly” and in self defence. Self defence was a “live issue” at trial. The Defence was concerned that if manslaughter would be put to the jury, would it still have the benefit of arguing “no intention to kill” on the murder charge as well as the self defence on both the murder and manslaughter charges

Issue: Determining when manslaughter should be put to the jury and how to structure the jury’s decision making process to ensure the accused gets the benefit of all available defences.

Result:

Given the accused's testimony that he shot "wildly", his lack of intention to kill was a live issue as was his claim to have been defending himself pursuant to s.34(2) of the *Criminal Code*. Therefore, manslaughter will be put to the jury for their consideration, but after they reject that the "intention to kill" is present and self defence.

***THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION.
QUOTES MUST BE FROM THE DECISION, NOT THIS LIBRARY SHEET.***