

The reasons for judgment of the Court were delivered orally by:

CLARKE, C.J.N.S.

The appellant appeals from his conviction of second degree murder following his trial by a judge and jury. In our opinion the appeal must be allowed and a new trial ordered on second degree murder.

There are three main issues: the first is whether the evidence involving the sexual assault on M.M. was admissible; in our opinion this evidence was admissible because it was part of the *res gestae*. We also agree with the Crown that the evidence went to motive.

The second issue involves the statement made by the Crown prosecutor in his opening address to the jury. The statement was an admission allegedly made by the appellant to a fellow inmate at the Correctional Centre which statement was inculpatory. The statement was not proved at trial; the statement was highly prejudicial and could not be cured by the admonition given by the trial judge. See **R. v. Taylor** (1979), 30 N.S.R. (2d) 351.

The third issue is the inadequacy of the instruction on second degree murder and manslaughter. It failed to adequately deal with these two offences in a manner capable of being understood by the jury. In addition, the instructions to the jury failed to adequately deal with the defences raised at trial.

Having come to these conclusions it is unnecessary to deal with the remaining issues in this appeal. The appeal is allowed and a new trial is ordered on second degree murder.

C.J.N.S.

Concurred in:

Jones, J.A.

Hallett, J.A.

NOVA SCOTIA COURT OF APPEAL

BETWEEN:

PAUL WINSTON BOUDREAU

Appellant

- and -
FOR

BY:
HER MAJESTY THE QUEEN

(orally)

Respondent

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) REASONS
) JUDGMENT
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) CLARKE,
) C.J.N.S.
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