

NOVA SCOTIA COURT OF APPEAL

Citation: R. v. Kagan, 2004 NSCA 77

Date: 20040610

Docket: CAC 203573

Registry: Halifax

Between:

Paul David Kagan

Appellant

v.

Her Majesty The Queen

Respondent

Judge:

The Honourable Justice Elizabeth Roscoe

Appeal Heard:

May 25, 2004

Subject:

Criminal Law, jury charge, self defence

Summary:

The appellant was convicted by a jury of aggravated assault as a result of pepper spraying and stabbing his university residence roommate. He claimed he had acted in self defence. At the trial a forensic psychiatrist testified that the appellant suffered from features of Asperger's Syndrome, a mental condition which may have affected his perception of the situation. The trial judge did not refer to the expert evidence as relevant to the issues of the appellant's reasonable apprehension of death or grievous bodily harm or his belief on reasonable grounds that there was no other way to protect himself.

Issue:

Did the failure to refer to the psychiatrist's evidence as relevant to the elements of self defence amount to reversible error?

Result:

Appeal allowed, new trial ordered. In the circumstances of this case, particularly since there was a question from the jury about self defence, the charge was seriously incomplete.

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 30 pages.