



Case in Brief: **R. v. Calnen**

Judgment of February 1, 2019 | On appeal from the Court of Appeal for Nova Scotia
Neutral citation: 2019 SCC 6

Repeated and extreme attempts to destroy evidence can, in some circumstances, be used to infer intention to commit murder, the Supreme Court has ruled.

Ms. Jordan went missing in 2013. Police suspected that her partner, Mr. Calnen, murdered her. They arrested him. During questioning, Mr. Calnen said Ms. Jordan died accidentally. He said that she was going to leave him and they argued. He said Ms. Jordan became physically aggressive. He said she tried to punch him, but he ducked and she fell down the stairs and died.

Mr. Calnen said he panicked. He said he'd used crack cocaine on the way home, and again after Ms. Jordan died. He didn't want to call police. He said he hid her body in the woods, but came back to move it a couple of times, and burned it in two different places. He said he placed Ms. Jordan's ashes near her family cottage, because that's what Ms. Jordan had said she wanted done with her ashes if she died. He said he put the parts that were not fully burned by the fire in the lake.

Police found some burned belongings in the woods and unidentifiable bone fragments in the lake. They also found text messages. Some seemed to suggest Mr. Calnen may have been abusive toward Ms. Jordan. Others showed her plans to leave him and steal his property.

Mr. Calnen was charged with second-degree murder (intentionally causing Ms. Jordan's death). He was also charged with indecent interference with human remains (damaging or disrespecting a dead person's body). He pleaded guilty to the interference charge at the start of the trial, but said he didn't kill her. A jury found him guilty of second-degree murder. The majority of the Court of Appeal said the trial judge made a mistake in his instructions to the jury. It overturned the murder conviction. It said that if there were a retrial, it should be for manslaughter, not murder.

Second-degree murder is more serious than manslaughter. That's because someone who murders intends to kill (or at least cause serious harm), while someone who commits manslaughter doesn't. Everyone agreed that the jury could use Mr. Calnen's attempts to destroy Ms. Jordan's body to infer he killed her and was guilty of *manslaughter*. The question was whether it could use these attempts to infer he intended to *murder* her. Inferences have to be based on logic, common sense, and experience. Some can be stronger than others. For example, if there is no other reasonable explanation, an inference will be strong. Judges can tell juries what kinds of inferences they are allowed to make. In this case, there was no direct physical evidence (like blood or video) that Mr. Calnen killed Ms. Jordan, so proper inferences were important.

All judges at the Supreme Court agreed, in principle, that someone's actions after a suspected murder can (in some circumstances) be used to infer their intent to commit second-degree murder. Most of the judges agreed, in this case, that evidence about Mr. Calnen's actions after Ms. Jordan died could be used to infer his intent for second-degree murder. If Mr. Calnen hadn't destroyed the body, it could have showed how she died and revealed something about his intent. For example, if Ms. Jordan had been stabbed, it would have been obvious her death wasn't an accident. It would have been open to the jury to find that Mr. Calnen intentionally killed her. Inferring that he moved and burned her body to hide what he had done was common sense.

Another issue in this case was the trial judge's instructions to the jury. After juries hear all the evidence, they get instructions from the judge about how to decide if a person is guilty. These are meant to make sure juries make decisions based on the law and the evidence (not feelings or hunches). The question was whether the judge made an error by not specifically telling the jury what inferences it was allowed to make about Mr. Calnen's actions after Ms. Jordan died. The majority said judges have to give *proper* instructions, not perfect ones, so the trial judge didn't make any error. It restored Mr. Calnen's second-degree murder conviction.

This case came to the Supreme Court as an appeal "as of right." That means the right to appeal is automatic, and the Court's permission isn't needed. The right was automatic in this case because a Court of Appeal judge dissented (disagreed) on a point of criminal law.

Breakdown of the Decision: *Majority:* Justice Michael [Moldaver](#) allowed the appeal (Justices [Gascon](#) and [Rowe](#) agreed) | *Dissenting in part:* Justice Sheilah [Martin](#) said the trial judge made a mistake in the jury instructions and would have allowed the appeal in part and ordered a new trial on second-degree murder | *Dissenting:* Justice Andromache [Karakatsanis](#) said Mr. Calnen’s destruction of the body shouldn’t have been admissible as evidence of his intent for second-degree murder; she would have dismissed the appeal and agreed with the Court of Appeal that any retrial should be limited to the charge of manslaughter

More information (case # 37707): [Decision](#) | [Case information](#) | [Webcast of hearing](#)

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