

# COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Wittke, 2025 ONCA 429

DATE: 20250613

DOCKET: M56022 (C69094)

Gomery, Dawe and Madsen JJ.A.

BETWEEN

His Majesty the King

Respondent (Responding Party)

and

Zachary Wittke

Appellant (Moving Party)

Zachary Wittke, acting in person

Ian Kasper, appearing as *amicus curiae*

Brent Kettles, for the respondent

Heard: June 5, 2025

## REASONS FOR DECISION

[1] The appellant brings a motion for a fresh psychiatric assessment under s. 672.11 of the *Criminal Code*, R.S.C. 1985, c. C-46. He says that such an assessment will show that he lives with several psychiatric disorders, including intermittent explosive disorder, which, he asserts, could support his position that

he did not have the *mens rea* to commit the murder for which he has been convicted.

[2] To obtain an order for an assessment, the appellant must show reasonable grounds that the assessment is necessary to determine an issue of fitness or that he is not criminally responsible. Reasonable grounds requires a clear, tangible basis in the evidence.

[3] We are not prepared to grant the order sought.

[4] First, a psychiatric assessment was commissioned by the defence at the trial stage. That assessment was undertaken by a qualified forensic psychiatrist who is an expert in the field of criminal law and criminal responsibility and whose credentials or experience are not in question on this motion. The assessment confirmed the diagnoses the appellant now seeks to show. However, following a *voir dire* in which the expert opined that the diagnoses did not preclude the ability to form the intent for murder, the defence made the strategic decision not to call her as a witness at trial. This was a strategic decision the defence was entitled to make, but not a basis for a further assessment at the appeal stage.

[5] Second, we are not satisfied that a fresh assessment is necessary, or that a new assessment could reasonably shed light on the appellant's psychiatric circumstances eight years ago when the offence was committed. No evidence has been tendered to show that the psychiatric report prepared for trial was flawed, or

that a fresh assessment would assist the appellant in advancing his appeal. There is no evidence that anything of substance has changed since the first report was prepared: see *R. v. Campbell*, 2021 ONCA 423.

[6] Accordingly, this motion is dismissed.

“S. Gomery J.A.”

“J. Dawe J.A.”

“L. Madsen J.A.”