

IN THE COURT OF APPEAL OF MANITOBA

Coram: Chief Justice Richard J. Chartier
Mr. Justice Marc M. Monnin
Madam Justice Karen I. Simonsen

BETWEEN:

<i>HER MAJESTY THE QUEEN</i>)	<i>K. T. Ewanochko</i>
)	<i>on his own behalf</i>
)	
<i>Respondent</i>)	<i>A. Y. Kotler</i>
)	<i>for the Respondent</i>
<i>- and -</i>)	
)	<i>Joint written submissions filed:</i>
<i>KENNETH TERRANCE EWANOCHKO</i>)	<i>March 29, 2019</i>
)	
<i>(Accused) Appellant</i>)	<i>Judgment delivered:</i>
)	<i>April 25, 2019</i>

MONNIN JA (for the Court):

[1] The accused appeals his conviction. He also moves for the admission of fresh evidence. The accused pled guilty to one count of careless storage of a firearm contrary to section 86(1) of the *Criminal Code*. He received a conditional discharge with one year of supervised probation.

[2] The accused’s son was also charged in relation to the incident that led to the charge against the accused. The fresh evidence relates to information which came to the attention of the Crown prosecuting the son, and which had not been fully disclosed to the accused prior to entering his guilty plea and conviction. That information concerned a warrantless search that was not part of the disclosure to the justice who subsequently issued a search warrant for the accused’s home where the firearms were located.

[3] After receiving the information, the Crown discontinued the proceedings against the son on the basis that there was no reasonable likelihood of success. The Crown also supported the accused's application for leave to re-open his conviction by way of this appeal. In this appeal, the Crown does not oppose the accused's motion for the admission of fresh evidence. It has filed a joint factum with the accused whereby it adopts the facts and arguments advanced that the failure to disclose the conduct described in the fresh evidence led to a miscarriage of justice. The parties also consented to conducting this appeal in writing without an oral hearing.

[4] We are all of the view that the fresh evidence should be admitted as its failure to be disclosed in a timely fashion affected the overall fairness of the trial process that led to the accused's decision to enter a guilty plea.

[5] We are also all of the view that, in light of the fact that the fresh evidence goes to trial fairness, it would be a miscarriage of justice to uphold his guilty plea.

[6] Accordingly, the fresh evidence motion is granted, the accused's guilty plea is withdrawn, his conviction is quashed and the matter is returned to the Provincial Court for a new trial.

Monnin JA

Chartier CJM

Simonsen JA