

IN THE COURT OF APPEAL OF MANITOBA

Coram: Mr. Justice Marc M. Monnin
Mr. Justice Christopher J. Mainella
Madam Justice Jennifer A. Pfuetzner

BETWEEN:

<i>HER MAJESTY THE QUEEN</i>)	<i>J. F. Rogala</i>
)	<i>for the Appellant</i>
<i>Respondent</i>)	
)	<i>R. D. Lagimodière</i>
<i>- and -</i>)	<i>for the Respondent</i>
)	
<i>JAMES DAVID PLANTE</i>)	<i>Appeal heard and</i>
)	<i>Decision pronounced:</i>
<i>(Accused) Appellant</i>)	<i>April 5, 2019</i>

PFUETZNER JA (for the Court):

[1] The accused appeals his conviction for use of an imitation firearm (a CO2 air pistol) in the commission of an offence contrary to section 85(2) of the *Criminal Code*. The sole ground of appeal alleges that the trial judge erred in concluding that section 8 of the *Canadian Charter of Rights and Freedoms* (the *Charter*) had not been violated by the police conducting a warrantless search of the accused's residence incident to an arrest because of exceptional circumstances.

[2] In our view, the appeal is moot. Even if the imitation firearm was excluded, there was sufficient evidence to uphold the conviction as the trial judge accepted the evidence of the victim who testified he and his vehicle were shot at. However, we are also of the view that the trial judge was correct in his section 8 analysis.

[3] The trial judge found that there was a genuine concern as to public safety justifying the warrantless search to secure the imitation firearm as it had been recently used to shoot at a person; it was unknown whether other individuals were in the residence after the accused was arrested outside of it; and it was mid-morning and the surrounding neighbourhood was frequented by children.

[4] In our view, the trial judge instructed himself correctly on the law (see *R v Golub* (1997), 117 CCC (3d) 193 (Ont CA)) and made no errors in applying the law to the facts. We are not persuaded that there is a basis to intervene in the trial judge's finding that there was no breach of the accused's right under section 8 of the *Charter*.

[5] For all of these reasons, the appeal is dismissed.

Pfuetzner JA

Monnin JA

Mainella JA