

NOVA SCOTIA COURT OF APPEAL
Citation: *R. v. MacDonald*, 2012 NSCA 50

Date: 20120511
Docket: CAC 347642
Registry: Halifax

Between:

Erin MacDonald

Appellant

and

Her Majesty the Queen

Respondent

and

The Attorney General of Canada

Intervenor

Judge: The Honourable Chief Justice J. Michael MacDonald

Appeal Heard: October 12, 2011

Subject: Criminal Law; *s. 95* - Possession of a restricted weapon; *s. 86* - Careless Handling of a Weapon ; *s. 88* - Possession of a Weapon dangerous to the Public peace; Unlawful Search - *s. 8* and *s. 24* of the *Charter of Rights and Freedoms*; Mandatory Minimum Sentences; Cruel and Unusual Punishment - *s. 12* of the *Charter of Rights and Freedoms*; Sentencing

Summary: The appellant is a gun enthusiast. In December of 2009, a seemingly innocuous noise complaint at his downtown Halifax condominium erupted into a dangerous police struggle over his loaded 9mm *Beretta* handgun. In the end, the appellant, with no previous criminal record, found himself convicted of several serious gun-related offences for which he received a 3-year prison sentence. He now appeals his convictions and sentences to this Court.

Issues: The appellant asserts that the trial judge erred in finding:

1. that the police entry into his home did not violate *s. 8* of the *Charter*,
2. that the 3-year mandatory minimum sentence for possession of a restricted weapon was valid and not cruel and unusual punishment under *s. 12* of the *Charter*,
3. that the appellant's authorization to possess the restricted weapon did not constitute a defence or, in the alternative, that his mistaken belief that he was so authorized did constitute a defence,
4. that the appellant's attempt to defend his property did not constitute a defence to the careless use and possession dangerous to the public peace charges,
5. that three years was a fit sentence for the possession dangerous to the public peace offence.
6. that two years was a fit sentence for the careless handling offence.

Result (Beveridge J.A. dissenting): Appeal allowed in part:

1. The appeal was dismissed as it applied to:
 - a. the alleged *s. 8 Charter* breach,
 - b. the careless use and possession dangerous for the public peace convictions (*s.86* and *s. 88*).
2. The appeal was allowed as it applied to:
 - a. the possession of a restricted weapon conviction with an acquittal entered,
 - b. the sentences for the careless use and dangerous for the public peace convictions with them being reduced to time served plus 2 years probation.
3. In light of the acquittal on the possession of a restricted weapon charge, there was not need to examine the constitutionality of this provision's 3-year minimum sentence.
4. In light of the acquittal on the *s. 95* - possession of a restricted weapons charge, the mandatory *s. 109* lifetime firearms prohibition was vitiated and replaced with a *s. 110* 5-year prohibition.

Beveridge J.A. (dissenting) would allow the appeal and enter acquittals on all charges. The officer had no lawful authority to push open the appellant's door to his home. The burden was on the Crown to establish the search was not unreasonable. The trial judge should have found the burden was not met and so erred in law in finding no breach

of the appellant's *Charter* rights. Balancing and assessing the effect of the admission of the unconstitutionally obtained evidence, it was more likely than not that the administration of justice would be brought into disrepute by its admission, and therefore the evidence obtained must be excluded pursuant to s. 24(2) of the *Charter*.

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 79 pages.