NOVA SCOTIA COURT OF APPEAL
Citation: *R. v. Bezanson*, 2025 NSCA 55

Date: 20250630
Docket: CAC 529709
Registry: Halifax

Between:

Gregory Bezanson

Appellant

v.

His Majesty the King

Respondent

Judges:	Bryson, Bourgeois and Gogan, JJ.A.
Appeal Heard:	June 11, 2025, in Halifax, Nova Scotia
Facts:	In July 2021, the appellant stabbed the victim in the abdomen with a hunting knife. The appellant claimed the stabbing was accidental and in self-defence. The incident occurred after a dispute over a damaged truck, which escalated into a physical altercation (paras 1, 5-8).
Procedural History:	Nova Scotia Provincial Court, December 30, 2022: The appellant was convicted of aggravated assault contrary to s. 268 of the Criminal Code (para 2).
Parties' Submissions:	Appellant: Argued ineffective assistance of trial counsel, claiming counsel failed to introduce evidence that would have impacted the credibility of key witnesses. Also claimed a miscarriage of justice due to being denied the right to self-represent (paras 27-28, 36). Respondent: The Crown argued the vast majority of the proposed fresh evidence was inadmissible and none would have impacted the outcome at trial.

Legal Issues:	Has the appellant demonstrated a miscarriage of justice due to the ineffectiveness of trial counsel? Did the appellant otherwise demonstrate a miscarriage of justice? Did the trial judge err in his credibility assessment?
Disposition:	The motion for fresh evidence and the appeal were dismissed.
Reasons:	Per Bourgeois J.A. (Bryson and Gogan JJ.A. concurring): The court found that the appellant failed to demonstrate a miscarriage of justice due to ineffective assistance of counsel. The fresh evidence proposed by the appellant was largely inadmissible, and the admissible evidence did not meet the criteria to affect the trial's outcome (paras 36-42). The appellant's claim of being denied the right to self-represent was unsupported by the record (paras 43-46). The trial judge's credibility assessment was not found to be in error, as it was based on a thorough evaluation of the evidence and witness testimonies (paras 47-56).

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Appeal Heard:	June 11, 2025, in Halifax, Nova Scotia
Held:	Motion for fresh evidence and appeal dismissed, per reasons for judgment of Bourgeois, J.A.; Bryson and Gogan, JJ.A. concurring
Counsel:	Gregory Bezanson, appellant on his own behalf Scott Morrison, for the respondent

Reasons for judgment:

[1] On July 10, 2021, Gregory Bezanson stabbed Brian Taylor in the abdomen with a hunting knife. At trial, Mr. Bezanson testified the stabbing was not intentional. He said it was both accidental and in self-defence.

[2] On December 30, 2022, he was convicted of aggravated assault contrary to s. 268 of the *Criminal Code* following trial in the Nova Scotia Provincial Court before Judge Christopher Manning[1]. Mr. Bezanson was sentenced on December 19, 2023 to a federal term of incarceration of 2 years.[2]

[3] Mr. Bezanson filed a Notice of Appeal on January 4, 2024 in which he sought to challenge "conviction and sentence". All of his grounds of appeal addressed only his conviction. As such, I direct my reasons accordingly. Additionally, Mr. Bezanson has brought a motion seeking to introduce fresh evidence in support of his request to have the conviction set aside by this Court.

[4] On June 11, 2025, this Court heard the fresh evidence motion and appeal. For the reasons to follow, I would dismiss both.

Background

[5] In July, 2021, Mr. Bezanson and Mr. Taylor were neighbours and enjoyed a friendly relationship. On the afternoon of July 10, 2021, Mr. Bezanson went to the Taylor property and asked Mr. Taylor to help tow his truck home.

[6] It would appear from the uncontroverted evidence at trial that Mr. Bezanson had, at some time earlier, driven his truck to a woodlot owned by Mr. Taylor. On the way there, the radiator was punctured, rendering the vehicle inoperable. He needed a tow to get it home.

[7] In response to Mr. Bezanson's request, Mr. Taylor, his girlfriend Crystal Tupper, Martin Gould and Mr. Bezanson set out in Taylor's truck to the woodlot. Some quantity of beer had been drunk by the men prior to setting off to the woods. Upon arriving at the location of the Bezanson truck, the vehicles were tied together with a tow rope. Mr. Taylor and Ms. Tupper set off in the Taylor truck, with Mr. Bezanson and Mr. Gould in the rear vehicle.

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[1] For the sake of accuracy, Mr. Bezanson was also convicted under s. 267(a), but that was later stayed.
[2] He has been on bail pending appeal since March 21, 2024.

[8] Misadventure ensued when the Bezanson truck left the road, rolled, coming to rest on its side in the ditch. Mr. Bezanson was not happy and told Mr. Taylor words to the effect – "You owe me a truck". Mr. Taylor did not agree. There was a physical altercation between the two which resulted in a rip to Mr. Bezanson's shirt sleeve. All four returned to Mr. Taylor's home in his truck. Mr. Bezanson called a tow truck and was picked up shortly thereafter by operator Harold Reeves. The two left to retrieve the Bezanson truck. It is the events which transpired when Mr. Bezanson and Mr. Reeves returned that were central to the allegations before the court. I will briefly review the witnesses' evidence relevant to the issues on appeal.

[9] The Crown's first witness was Monica Toole. In her direct evidence she testified:

- She was living with Mr. Bezanson on the date of the stabbing incident;
- She was inside Mr. Bezanson's home on the evening of July 10, 2021 and saw Harold Reeves' truck, along with Mr. Bezanson's red truck pulling into the driveway;
- She watched from the window and then went outside. At that point, the red truck was on the ground unloaded, and Mr. Reeves was undoing the chains from the vehicle. Mr. Taylor was not present at that time;
- Mr. Tayor and Mr. Gould came walking from the Taylor property. Mr. Bezanson was "hysterical" and made remarks that he had "to go teach a young boy a lesson" and "about wanting to put an arrow through his head" using a compound bow he had recently purchased;
- Words were exchanged between Mr. Bezanson and Mr. Taylor regarding the truck. She asserted "the two men, Bezanson and Taylor, kind of got in a face-to-face shouting match with some shoving involved, but there were no punches thrown by any means";
- Shortly thereafter, she turned to leave and started to walk away. She felt Mr. Bezanson shove her. He reached inside his Volkswagen, pulled out a knife and ran directly over to Mr. Taylor – a distance of about 30 to 40 feet;
- Mr. Taylor had remained in the same spot. Mr. Bezanson stabbed him. Mr. Taylor had a shocked look on his face; and

- Mr. Bezanson immediately went to the passenger side of Mr. Reeves' tow truck, got in and drove away.

[10] In response to questions from Mr. Bezanson's counsel, Ms. Toole testified:

- She had originally told the police she had not witnessed any of the events of July 10, 2021 and was not present;
- Two months later she contacted the police and gave a statement;
- She agreed she wasn't initially truthful with the police when she told them she hadn't witnessed anything, but it was because she was afraid for her safety;
- She acknowledged she had filed an affidavit in a Family Court proceeding involving Mr. Bezanson that was supportive of him, however, she added he had coerced her to provide it;
- On the night of the incident Mr. Bezanson had made verbal threats against Mr. Taylor in the presence of Mr. Reeves;
- She estimated the stabbing incident occurred between 9 and 10 p.m. and it was not yet dark out – there was full visibility;
- She had likely smoked marijuana before the incident; and
- She agreed Mr. Bezanson's back was turned to her during the incident and her view of the actual stabbing was blocked.

[11] The Crown called Harold Reeves who, in his direct evidence, testified:

- He has known Mr. Bezanson "for years";
- He went to retrieve Mr. Bezanson's truck from a ditch and returned it to his "dooryard";
- There was a bunch of people arguing as he was unloading the truck, but he didn't know who they were;
- He heard arguing, but didn't see who was involved – "I never even looked at them";
- He didn't remember what the argument was about;

- As he was about to leave, Mr. Bezanson knocked on the tow truck door and said: “Let me in. I’m going with you. I just stabbed a feller.”;
- He didn’t see a stabbing and he didn’t see a knife;
- He told Mr. Bezanson to call the RCMP and tell them what happened; and
- He dropped Mr. Bezanson off down the road at a local garage.

[12] On cross-examination, Mr. Reeves testified:

- He hadn’t seen any physical altercation when he was in Mr. Bezanson’s yard;
- He didn’t hear Mr. Bezanson say “I’m going to teach a young boy a lesson”; and
- He didn’t hear Mr. Bezanson say “he’s going to shoot someone in the head with an arrow”.

[13] The Crown called Martin Gould who testified as follows:

- He was outside at Mr. Taylor’s house when he saw Mr. Reeves and Mr. Bezanson returning with the truck;
- He couldn’t find his cellphone and thought it may have been left in Mr. Bezanson's truck from the earlier roll-over. He and Mr. Taylor walked over to the Bezanson yard to see if it was in the truck;
- When they approached, Mr. Taylor asked Mr. Bezanson if the phone was in the truck. Mr. Bezanson replied “There’s no fucking phone here”;
- Mr. Bezanson then went to a car in his yard. “He grabbed something and he came back right quick and stabbed Brian Taylor”;
- Mr. Tayor then turned and said “Martin, I just got stabbed”; and
- He didn’t recall anything physical occurring between Taylor and Bezanson immediately prior to the stabbing incident.

[14] On cross-examination, Mr. Gould stated:

- He had been drinking beer that day;
- He did not recall Mr. Taylor tearing Mr. Bezanson's shirt earlier in the day, or any pushing and shoving between the two;
- When he went to the Bezanson yard, it was only him, Mr. Taylor, Mr. Reeves and Mr. Bezanson present;
- He agreed there had been yelling about the truck having been crashed when he and Mr. Taylor went over to the tow truck;
- He never saw a knife at any time;
- He never heard Mr. Bezanson make any threats to stab Mr. Taylor; and
- He confirmed the police did not take a statement from him on the night of the incident because he was too intoxicated.

[15] The Crown called Brian Taylor. He testified:

- He and Mr. Gould went to Mr. Bezanson's yard to see if Gould's cellphone was in the truck;
- Mr. Reeves had the truck unloaded and he took off when words were being exchanged between he and Bezanson;
- The words exchanged were about "me owing him a truck again . . . like it all just flared up again . . . From there, I … remember him going, walking towards his car. Monica said something to him (Mr. Bezanson). I didn't hear what was said";
- Mr. Bezanson grabbed something from the car, and walked towards him. He didn't see a knife until the butt was sticking out of his stomach; and
- He looked at Marty, and told him he had been stabbed.

[16] On cross-examination Mr. Taylor said:

- He and Mr. Gould had been drinking beer prior to going to retrieve Mr. Bezanson's truck at the woodlot;
- Mr. Gould would have "had a buzz on";

- The animosity between he and Mr. Bezanson started at the roll-over scene, with Mr. Bezanson insisting Taylor owed him a truck;
- At the roll-over site, Mr. Bezanson was in his truck and "continues jawing about being owed a truck." He told Bezanson to get out of the truck, but he wouldn't. He then grabbed Mr. Bezanson by the arm to get him out, ripping his sleeve. Things settled down after that;
- As the tow-truck was arriving in the Bezanson yard, Mr. Gould realized he didn't have his cellphone and they walked over to look for it;
- There was no shoving between he and Mr. Bezanson before the stabbing;
- It was getting dark at the time of the stabbing;
- There was no physical altercation, but it had escalated to name-calling between he and Mr. Bezanson prior to the stabbing;
- Mr. Bezanson had not made any threats to stab him;
- He had a criminal record and acknowledged the various convictions put to him by counsel;
- He denied there had been pushing and shoving between he and Mr. Bezanson earlier in the day at the site of the roll-over, the only physical interaction being when he ripped the shirt sleeve;
- He denied punching Mr. Bezanson prior to the stabbing; and
- He denied seeing the knife in Mr. Bezanson's hand and reaching for it prior to the stabbing.

[17] Constable John Hopkins was called by the Crown. He testified he was the investigating officer in relation to the incident in question. He was dispatched due to having received a call from someone reporting they had been attacked and had stabbed someone. He described finding Mr. Bezanson at a tire shop on his knees and with his hands behind his head. Mr. Bezanson advised him that he had been attacked by Brian Taylor and he had stabbed him in self-defence.

[18] Constable Hopkins described that he placed Mr. Bezanson in investigative detention, during which time he took photographs depicting a rip to his shirt sleeve. The witness testified that he saw no other indicators "to support the fact

that Mr. Bezanson had been attacked or anything like that or been in an altercation".

[19] Corporal David Greene testified he was dispatched due to a 911 call of a stabbing. He was acting in a backup role to Cst. Hopkins. Cpl. Greene testified he knew both Mr. Bezanson and Mr. Gould from previous interactions. In his view, Mr. Bezanson was intoxicated when he spoke to him following the incident. Further, he declined to take a statement from Mr. Gould on the evening of the incident because of his high state of intoxication.

[20] Mr. Bezanson testified on his own behalf. With respect to the events surrounding the stabbing, he asserted:

> I got in Harold's truck and Harold lifted the deck back up onto the truck and we went home. Brian passed us, got home first, came over, him and Martin, trying to bully and . . . and start something again. The . . . we got the truck off. It . . . it's a flat-deck truck, so it tips the deck and extends it back. The truck rolls off. I get the chains and stuff from the underside of the truck, and you have to hook them into the deck, and then Harold will tighten them up with his winch.
>
> As I get up from doing that, Brian hits me in the . . well, the forehead basically as I'm starting to stand up, and I . . . I was like, Fuck off, man, go home, and . . . and so, I had gone, and I was going to cut that strap that we had tried to tow it with off the truck because it was still dangling around there, and as soon as I . . . as soon as I pulled the knife out . . . like I never intended to stab my friend. I wasn't that mad, but as soon as I pulled the knife out, he gra- . . . Brian grabbed me again, and I don't know whether he was trying to take the knife or slam me against the truck or what he was trying to do, but as soon as he did that . . . like my . . . property is 9,000 square feet. It's very, very small, and that truck is 30-feet long, then mine's 20 feet long.
>
> You know, it was a tight space, and it . . . it was so quick . . .

[21] Mr. Bezanson testified the knife had been on his belt since he had taken it to the woodlot earlier in the day. He later testified:

> I had thought that the altercation was over and basically . . . so where Brian was standing was directly behind the tow truck, directly in front of the towed truck . . .
>
> . . .
>
> and so I basically went to go around him to cut the strap off, and actually, I was going to try and pick it first because you can kind of pick the tied part of it, but as soon as . . . as soon as I came . . . so the . . . my driveway has banks on each side of it, and as soon as I stepped down over that bank, Brian was right there trying to get that knife. . . .

> And like I say, it was . . . it was a two second thing.

[22] On cross-examination Mr. Bezanson denied retrieving the knife from his car. He asserted the other witnesses who had testified otherwise were conspiring against him "trying to keep Brian out of trouble and . . . them continue their constant party house".

Decision under Appeal

[23] The trial judge rendered an oral decision on December 30, 2022. It is not reported. He identified the issue before the court as "whether or not it was an intentional application of force, accidental force, or force used in self-defence". The judge recognized, having heard from various witnesses, that the assessment of credibility and reliability would be paramount.

[24] The trial judge's reasons demonstrate he reviewed the principles relating to the assessment of credibility, as well as the direction contained in *R. v. W.(D.)*, [1991] 1 S.C.R. 742. He set out the necessary elements of the offences under s. 267(a) (assault) and s. 268 (aggravated assault) of the *Criminal Code*. Mr. Bezanson has taken no issue with the trial judge's identification of the relevant legal principles. Nor do I.

[25] The trial judge then reviewed the evidence of the various witnesses, specifically addressing those aspects relevant to the defences of accident and self-defence. Ultimately, the trial judge accepted the evidence of those witnesses who described Mr. Bezanson retrieving a knife from his car and proceeding to stab Mr. Taylor. He further explained, giving ten reasons, why he did not find Mr. Bezanson to be a credible witness.

[26] Mr. Bezanson's claims of accident and self-defence were rejected by the trial judge. The trial judge was satisfied beyond a reasonable doubt after having considered all of the evidence, that Mr. Bezanson was guilty of aggravated assault.

Issues

[27] In his Notice of Appeal Mr. Bezanson set out the following grounds of appeal:

1. Inadequate Representation (fired on record)
2. Right to self Represent (counsel fired during trial refused to withdraw!)

3. Error in law (judge alleges I lied by saying 3 different wordings, all are true)
4. Witness credibillity (sic) (Pugury (*sic*)) witness was not there (confirmed in disclosure)

[28] Mr. Bezanson made a motion for the introduction of fresh evidence and filed two affidavits with exhibits, on October 3, 2024 and January 13, 2025 respectively. The purpose of the fresh evidence is in support of the appellant's allegation that his conviction arose due to a miscarriage of justice arising from the incompetent conduct of his trial counsel. Specifically, Mr. Bezanson asserts his trial counsel failed to introduce evidence at trial that would have materially impacted on the trial judge's credibility assessment of Mr. Taylor and Ms. Toole.

[29] Trial counsel, Nicholaus Fitch, filed an affidavit in response to Mr. Bezanson's allegations. The affidavits were provisionally accepted by the panel.

[30] Based on the grounds of appeal and arguments advanced at the appeal hearing, I would re-frame the issues to be determined as follows:

1. Has the appellant demonstrated a miscarriage of justice due to the ineffectiveness of trial counsel?
2. Did the appellant otherwise demonstrate a miscarriage of justice?
3. Did the trial judge err in his credibility assessment?

Legal Principles

[31] Prior to delving into the issues on appeal, it is useful to set out the applicable legal principles.

Principles relating to ineffectiveness of counsel

[32] In *R. v. Snow*, 2019 NSCA 76, Justice Beveridge set out the principles relating to ineffectiveness of counsel claims as follows:

> [25] There are now legions of cases that have found or dismissed allegations that trial counsel provided ineffective assistance. For a claim to succeed, the appellant must establish on a balance of probabilities that trial counsel's acts or omissions constituted incompetence and a miscarriage of justice resulted.
>
> [26] Incompetence is to be determined by application of a reasonableness standard. There is a strong presumption that counsel's conduct fell within the

> wide range of reasonable professional assistance. The conduct of counsel is not to be assessed simply with the clairvoyance of hindsight.
>
> [27] If no prejudice can be demonstrated, it is appropriate to dispose of the claim on that basis and leave the issue of counsel's conduct or performance to the profession's self-governing body (see *R. v. G.D.B.*, 2000 SCC 22, at paras. 26-29).
>
> [28] What is meant by prejudice? An appellant must satisfy the Court that the failings of counsel caused a miscarriage of justice. This requirement can be satisfied by different considerations. In a general way, an unfair trial, or one tainted by a serious appearance of unfairness, amount to a miscarriage of justice. In *R. v. Wolkins*, 2005 NSCA 2, Cromwell J.A., as he then was, discussed the broad scope of this nomenclature:
>
> > [89] The clearest example is the conviction of an innocent person. There can be no greater miscarriage of justice. Beyond that, it is much easier to give examples than a definition; there can be no "strict formula ... to determine whether a miscarriage of justice has occurred": *R. v. Khan*, [2001] 3 S.C.R. 823 *per* LeBel, J. at para. 74. However, the courts have generally grouped miscarriages of justice under two headings. The first is concerned with whether the trial was fair in fact. A conviction entered after an unfair trial is in general a miscarriage of justice: *Fanjoy*, *supra*; *R. v. Morrissey* (1995), 97 C.C.C. (3d) 193 (Ont. C.A.) at 220-221. The second is concerned with the integrity of the administration of justice. A miscarriage of justice may be found where anything happens in the course of a trial, including the appearance of unfairness, which is so serious that it shakes public confidence in the administration of justice: *R. v. Cameron* (1991), 64 C.C.C. (3d) 96 (Ont. C.A.) at 102; leave to appeal ref'd [1991] 3 S.C.R. x.
>
> (See also: *R. v. Joanisse*, [1995] O.J. No. 2883 at para. 67; *R. v. G.K.N.*, 2016 NSCA 29 at paras. 39-42.)

[33] In assessing a claim of ineffective counsel, the Court will examine first whether an appellant has demonstrated a miscarriage of justice, and only if so, will an assessment of trial counsel's conduct be undertaken. In *R. v. G.K.N.*, 2016 NSCA 29, the approach was described this way:

> [43] Where an alleged miscarriage of justice is founded on an assertion of the ineffectiveness of counsel, the Court will generally first decide whether a miscarriage has occurred. If not, the question of counsel's performance does not arise: *R. v. G.D.B.*, 2000 SCC 22, ¶ 29; *R. v. Messervey*, 2010 NSCA 55 at ¶ 21; *R. v. L.B.*, 2014 ONCA 748, ¶ 8; *R. v. Meer*, 2015 ABCA 141, ¶ 27.

> [44] **The appellant must show that but for counsel's error there was a "reasonable probability" that the trial outcome would have been different, (*Joanisse*, ¶¶ 81-82), or that trial fairness was otherwise compromised**, (*Wolkins*; *Ross*).
>
> (Emphasis added)

Principles relating to the introduction of fresh evidence

[34] In most instances, an appellant will attempt to establish a miscarriage of justice by introducing fresh evidence on appeal. Section 683(1) of the *Criminal Code* authorizes this Court to introduce and consider such evidence, however, there are important parameters as to what can be admitted. In *R. v. Finck*, 2019 NSCA 60, the Court explained:

> [19] This Court has a wide discretion to admit fresh evidence on appeal "where it considers it in the interests of justice": *Criminal Code*, s. 683(1). Generally, there are two kinds of fresh evidence in cases alleging ineffective assistance of counsel: evidence relating to an issue adjudicated at trial and evidence relating to the trial process. These two types correlate to the two main categories of miscarriage of justice—unreliable verdict and unfair adjudicative process.
>
> [20] Cromwell, J.A. (as he then was) in *R. v. Wolkins*, 2005 NSCA 2 at ¶59 explained that the principles governing the admission of fresh evidence on appeal differ according to the type of fresh evidence to be adduced. Generally, where the fresh evidence relates to issues decided at trial, the test set out in *Palmer v. R.*, [1980] 1 S.C.R. 759 at pg. 775 must be met. Those well-known criteria are:
>
> > (1) The evidence should generally not be admitted if, by due diligence, it could have been adduced at trial provided that this general principle will not be applied as strictly in a criminal case as in civil cases … .
> >
> > (2) The evidence must be relevant in the sense that it bears upon a decisive or potentially decisive issue in the trial.
> >
> > (3) The evidence must be credible in the sense that it is reasonably capable of belief, and
> >
> > (4) It must be such that if believed it could reasonably, when taken with the other evidence adduced at trial, be expected to have affected the result.
>
> [21] The due diligence criterion is not applied inflexibly and yields where its application might lead to a miscarriage of justice: *Wolkins* at ¶60. In cases where it is claimed that ineffective assistance of counsel resulted in an unreliable verdict, the due diligence criterion will be met where the reason the evidence was not adduced at trial was counsel's incompetence: (*R. v. Ross*, 2012 NSCA 56 at ¶27

> citing *R. v. Appeleton* (2001), 55 O.R. (3d) 321 (C.A.) at ¶23; see also *R. v. G.D.B.*, 2000 SCC 22 at ¶36).
>
> [22] In the second type of case, where the fresh evidence proffered relates to the fairness of the trial process itself, *Wolkins* at ¶61 states that the *Palmer* test "cannot be applied and the admissibility of the evidence depends on the nature of the issue raised." The examples it gave included: "Where the appellant alleges that his trial counsel was incompetent, the fresh evidence will be received where it shows that counsel's conduct fell below the standard of reasonable professional judgment and a miscarriage of justice resulted: see *R. v. G.D.B.*, *supra*."

[35] It is important to highlight that the proffered fresh evidence must be admissible in order for this Court on appeal to find it could have affected the result. In *R. v. West*, 2010 NSCA 16, Justice Saunders stated:

> [34] The fresh evidence could only affect the result, under *Palmer's* fourth factor, **if it is admissible under the usual rules of evidence that govern criminal proceedings**. Section 683(1) does not dispense with the law of evidence. In *R. v. O'Brien*, [1978] 1 S.C.R. 591, Justice Dickson said at p. 602:
>
> > Section 610[3] of the *Criminal Code* lends no assistance to respondent's case. **It is a prerequisite that any evidence sought to be adduced under the discretion granted by that section be admissible evidence**. **The section manifestly does not authorize a Court of Appeal to dispense with the law of hearsay evidence**. If that were so we would have the anomalous situation in which counsel could seek to adduce on appeal that which the common law prohibits at trial. The section is not operative until the threshold for admissibility as defined by common law and statute is crossed. That threshold has not been crossed in the instant case.
>
> Similarly, in *R. v. Dell*, [2005] O.J. No. 863 (OCA), at ¶ 85, Justice Sharpe said:
>
> > 85 Most of the material in the Crown brief relied upon by the appellant is unsworn, inadmissible hearsay. The appellant submits that Keyes' sworn videotaped statement is not hearsay. I disagree. That statement was given at another time for another purpose; indeed, it was given when Keyes was the subject of an investigation for conspiracy to murder Kim Knott. It is not evidence sworn for the purpose of this appeal. **Requiring an affidavit sworn in the particular proceeding offering first hand evidence is not a mere formality.** It appropriately directs the mind of the witness to the precise reason for which the evidence is offered and provides a means whereby the responding party can test the evidence by way of cross-examination**. A statement given**

[3] Section 610 is the precursor to the present section 683(1).

> **under oath at another time and for another reason does not satisfy these important safeguards.**
>
> (Emphasis added)

Analysis

Has the appellant demonstrated a miscarriage of justice due to the ineffectiveness of trial counsel?

[36] In his Notice of Appeal, Mr. Bezanson did not provide particulars of his allegations of trial counsel's ineffectiveness. However, from his submissions on appeal, his concerns can be articulated as follows:

- He had given trial counsel voluminous materials which demonstrated that he was the victim of a conspiracy, the purpose of which was to have him lose access with his three children, or even have him killed;
- The materials would have demonstrated Monica Toole was a member of the conspiracy and introduction of the evidence would have shown her evidence at trial to be unbelievable;
- Brian Taylor had resiled from his trial evidence, as demonstrated in an affidavit filed in a subsequent family court proceeding. If trial counsel had contacted Brian Taylor prior to trial, he may have given different testimony, thus preventing the conviction; and
- Trial counsel failed to call two witnesses, neither of whom were present during the stabbing incident, but who had later interactions with Mr. Bezanson and Mr. Taylor which gave rise to other criminal charges.

[37] To summarize the legal principles reviewed earlier, Mr. Bezanson must demonstrate with admissible evidence a "reasonable probability" that the outcome at trial would have been different if his trial counsel had acted differently. As I will explain, Mr. Bezanson's first stumbling block is that much of the fresh evidence he proposes to introduce is not admissible.

[38] I do not intend to review his two affidavits and exhibits in detail. It is sufficient to note that:

- The body of Mr. Bezanson's affidavits consists of a historical narrative of his interactions with various persons, the only one

involved in this trial being Monica Toole. His assertion of a conspiracy against him amounts to nothing more than speculation and his own opinion. It is not admissible;

- The proffered exhibits consist of documents full of inadmissible hearsay and unauthenticated electronic messages between people other than Mr. Bezanson. They are inadmissible;
- The affidavits of third parties contained in the exhibits, particularly Mr. Taylor, are not sworn in this appeal, but rather in family proceedings. As in *Dell, supra*, they are not admissible; and
- Mr. Bezanson includes in his affidavit and exhibits reference to events which post-date the trial which are clearly irrelevant to his claim of ineffective assistance of counsel.

[39] The one piece of evidence that requires consideration is a portion of a text message between Mr. Bezanson and Mr. Taylor which was provided to trial counsel prior to trial. Mr. Bezanson says this message demonstrates Mr. Taylor seeking a bribe to change his trial testimony. He argues this should have been used by trial counsel to attack Mr. Taylor's credibility.

[40] Trial counsel acknowledged receiving a copy of the message from Mr. Bezanson, but he did not use it in cross-examination. He explained he viewed the message as vague and open to multiple interpretations, including ones potentially harmful to his client's case.

[41] Having read the message, I do not agree with Mr. Bezanson that its intent is clear or it would have definitively served to undermine Mr. Taylor's credibility at trial. Mr. Bezanson has not demonstrated there was a reasonable probability the trial outcome would have been different had this evidence been used at trial.

[42] Practically all of the fresh evidence filed by Mr. Bezanson does not meet the threshold for admissibility. The remainder does not meet the *Palmer* criteria, even with the due diligence factor being relaxed. Mr. Bezanson has not demonstrated a miscarriage of justice. As such, I would dismiss the motion to adduce fresh evidence and this ground of appeal.

Did the appellant otherwise demonstrate a miscarriage of justice?

[43] This ground of appeal does not relate to a miscarriage of justice arising from the ineffective assistance of counsel, but rather due to an allegedly unfair

adjudicative process. Mr. Bezanson says he was denied the right to represent himself at trial and was forced to continue with trial counsel's representation despite having fired him.

[44] This assertion is contained in Mr. Bezanson's written and oral submissions. His affidavits did not address this ground of appeal. As such, Mr. Bezanson has provided no evidence supporting the assertion he repeatedly attempted to discharge his trial counsel, including on the record.

[45] I have carefully reviewed the transcript, including all appearances leading up to and during the trial. There is nothing on the record to support Mr. Bezanson's assertion he tried to dismiss trial counsel and was forced to continue with his representation at trial. I note that after trial, and before sentencing, a motion was made by trial counsel to be removed as solicitor of record.

[46] I would dismiss this ground of appeal.

Did the trial judge err in his credibility assessment?

[47] Independent of his claim that trial counsel's ineffective assistance negatively impacted on the trial judge's credibility assessment, Mr. Bezanson submits there are other clear errors on the face of the trial judge's reasons. He says the trial judge erred in his credibility assessment by:

- Placing weight on the unreliable and uncorroborated evidence of Monica Toole, instead of the reliable evidence of Harold Reeves;
- By finding him lacking in credibility because he described the stabbing as both as an accident and having occurred in self-defence; and
- By failing to recognize that he had no criminal record and accepting the evidence of "two liars" over his own.

[48] This Court applies a deferential lens to a trial judge's assessment of credibility. In *R. v. Patel*, 2024 NSCA 40, Justice Derrick affirmed "credibility findings are entitled to deference unless a palpable (clear) and overriding (material) error can be shown". Quoting from *R. v. Kruk*, 2024 SCC 7, Justice Derrick noted trial judges, having heard the evidence, "are best placed to make complex and multifaceted factual findings that culminate in fair and nuanced credibility assessments".

[49] In my view, Mr. Bezanson has not demonstrated a palpable and overriding error in the trial judge's credibility assessment. With respect to Monica Toole's evidence, the trial judge was clearly attuned to the defence argument regarding the alleged frailty of her trial testimony. He was aware she had previously made statements to police and under oath that suggested she may be prone to dishonesty. However, the trial judge accepted her explanation for the discrepancies and found Ms. Toole to be credible. That was a determination the trial judge was entitled to make. It does not constitute an error justifying this Court's intervention.

[50] Mr. Bezanson also takes issue with Ms. Toole's evidence alleging he had made threats towards Mr. Taylor in the lead up to the stabbing. He says the trial judge should not have accepted any of her evidence given that Mr. Reeves testified he heard no such comments.[4] The trial judge did not fall into error by accepting Ms. Toole's description of the stabbing notwithstanding no other witness testified as to hearing the alleged threats. He was not required to reject Ms. Toole's testimony because it contained information other witnesses did not provide.

[51] With respect to Mr. Bezanson's complaint that he was unfairly found to be "a liar", the trial judge gave 10 reasons for finding Mr. Bezanson to be lacking in credibility. With respect to the final one, the trial judge said:

> (10) His alternate positions about the incident. To Reeves it was: "I stabbed someone", to Cst. Hopkins it was: "I stabbed in self-defence", and during his testimony it was: "Taylor tried to grab my knife, it ended up in his abdomen, it was not intended." In other words, it was an accident.
>
> Looking at these three statements, I stabbed someone suggests an intentional act and this was said to a friend. Secondly, I stabbed in self-defence, said to the police, suggests a measured response to a serious danger. The third, during his testimony, he disclosed that it was an accident, he suggests it was a totally unexpected act. These are three very different descriptions requiring different acts and very different intents.

[52] Mr. Bezanson says the three descriptions above can all co-exist, can all be true, and should not have been used by the trial judge to find he lacked credibility.

[53] In concluding this complaint does not gain traction, I note the trial judge articulated nine other reasons for finding Mr. Bezanson's credibility to be wanting. Even if he was wrong in his assessment on the 10th (which he was not), it is highly unlikely it would have altered his credibility assessment – it was not overriding.

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[4] I note as well that Mr. Taylor testified he heard no verbal threats.

[54] In addition, the trial judge was correct in highlighting the legal difference between an accident and self-defence. An accident would arise at law if Mr. Bezanson never intended to stab Mr. Taylor at all. Self-defence would arise in the case where Mr. Bezanson intentionally stabbed Mr. Taylor, but did so because he was fearful for his own safety. It cannot be both, and the trial judge considered and rejected both scenarios. Having heard all the evidence and seen the witnesses testify, it was open to the trial judge to conclude this dichotomy in Mr. Bezanson's description of the stabbing at different times impacted negatively on his credibility.

[55] With respect to Mr. Bezanson's complaint that he was not believed and "liars" were, I would say there is no apparent error demonstrated in the trial judge's reasons. Every day judges accept the evidence of some witnesses and disregard that of others. That is their role and this Court will not interfere unless an appellant demonstrates a clear error.

[56] Here, the trial judge was aware of Mr. Taylor's criminal record and noted it in his credibility assessment. Notwithstanding, Mr. Taylor's description of the stabbing incident was accepted by the trial judge. This is a determination that was open to the trial judge to make. It is neither a palpable nor overriding error.

Disposition

[57] For the reasons above, I would dismiss the motion to adduce fresh evidence and the appeal.

Bourgeois, J.A.

Concurred in:

Bryson, J.A.

Gogan, J.A.