

COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Grant, 2025 ONCA 288

DATE: 20250415

DOCKET: C70493

Fairburn A.C.J.O., Paciocco and Harvison Young JJ.A.

BETWEEN

His Majesty the King

Respondent

and

Barrington Grant

Appellant

Breana Vandebeek, for the appellant

Andrew Hotke, for the respondent

Heard: April 14, 2025

On appeal from the conviction entered by Justice Edward Prutschi of the Ontario Court of Justice on September 9, 2021.

REASONS FOR DECISION

[1] This is an appeal from a conviction for possession of a loaded firearm contrary to s. 95(1) of the *Criminal Code of Canada*, R.S.C., 1985, c. C-46.

[2] The appellant had challenged the admissibility of evidence seized pursuant to a warrant. The information to obtain (ITO) sworn in support of the warrant was heavily redacted owing to confidential informant privilege. The appellant's application was dismissed, after which he was convicted on the uncontested evidence admitted at trial.

[3] Following his conviction, in a separate but related proceeding involving the same ITO (*R. v. Jassem*), a *Garofoli* application succeeded – despite the *Charter* ruling at the appellant's trial – and the proceedings were stayed. Shortly after the stay was entered in the *Jassem* proceeding, the Crown entered stays in relation to two other matters, namely *R. v. Vinogradsky* and *R. v. El-Zahawi*, 2023 ONSC 2686.

[4] In September 2023, this court allowed the appeal of one of the appellant's co-accused who had been tried separately and convicted on the basis of the same evidence that had been found admissible at the appellant's trial: *R. v. Khamo*, 2023 ONCA 614. This court accepted the Crown's concession that the proceedings in *Jassem* and *Vinogradsky* were admissible as fresh evidence and that the *Khamo* appeal should be allowed. The conviction was quashed and a stay of proceedings was entered.

[5] This court in *Khamo*, at paras. 8-10, noted as follows:

The appellant seeks to adduce as evidence in the appeal, extracts from the proceedings in *Jassem* and *Vinogradsky*. The Crown concedes that the material should be received by this court, the appeal allowed, and the convictions quashed.

We accept the Crown's concession. Evidence is admissible on appeal if it is "in the interest of justice" to receive that evidence. The material proffered by the appellant impacts directly on the integrity of the criminal process in this case. The Crown's concession in two subsequent proceedings that the trial should be stayed because the accused were unable to make full answer and defence without disclosure the Crown could not make would be entirely inconsistent with a Crown argument on this appeal that the appeal should be dismissed.

The appellant presently stands convicted and sentenced as a result of a trial which the Crown has effectively conceded in two other prosecutions should not have gone ahead. Fairness requires that the appellant's prosecution also be stayed under s. 24(1).

[6] In light of the history of this matter, the Crown respondent concedes this appeal. We agree with this appropriate concession for the reasons given by the Crown, and also for the reasons set out in this court's decision in *Khamo*.

[7] The appeal is allowed, the conviction is set aside, a new trial is ordered, and a stay of that new trial is entered.

[8] We thank counsel for their responsible approach to this matter.

“Fairburn A.C.J.O.”

“David M. Paciocco J.A.”

“A. Harvison Young J.A.”