

# **In the Court of Appeal for the Northwest Territories**

**Citation:** *R v Eeyeevadluk*, 2018 NWTCA 2

**Date:** 2018 04 16  
**Docket:** A1-AP-2017-000 009  
**Registry:** Yellowknife, N.W.T

**Between:**

**Her Majesty the Queen**

Respondent

- and -

**Karma Eeyeevadluk**

Appellant

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**The Court:**

**The Honourable Mr. Justice Ronald Berger  
The Honourable Mr. Justice Frans Slatter  
The Honourable Mr. Justice Thomas W. Wakeling**

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## **Memorandum of Judgment**

Appeal from the Conviction by  
The Honourable Madam Justice S.H. Smallwood  
Dated the 9th day of February, 2017  
(Docket: S-1-CR2016000007)

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## Memorandum of Judgment

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### The Court:

[1] The appellant appeals her conviction by a jury for robbery of a taxi driver. The taxi driver testified that two co-accused robbed him, and that the appellant participated in the incident. The appellant had provided a statement to the police which, if true, would have exonerated her. That statement, however, was not placed before the jury, and the appellant did not testify.

[2] The Crown closed its case. The appellant instructed her counsel that she did not want to testify, so no defence evidence was called. However, prior to the charging of the jury the appellant changed her mind, and indicated that she did want to testify. Her trial counsel advised her that it was “too late”, although he now deposes that after consulting with senior counsel and doing further legal research he is of the opinion he could have applied to the trial judge to reopen the defence case at that point.

[3] After the jury convicted the appellant she changed counsel, and her new counsel applied for a mistrial. By this time the jury had been discharged for several months. The trial judge found that she could not declare a mistrial because the jury had been discharged and she was *functus officio*, relying on *R. v Burke*, 2002 SCC 55, [2002] 2 SCR 857; *R. v Head*, [1986] 2 SCR 684; and *R. v Halcrow*, 2008 ABCA 319, 94 Alta LR (4th) 1, 437 AR 314.

[4] The appellant accordingly filed this appeal, arguing that there has been a miscarriage of justice because she lost her opportunity to testify in her own defence, based on her lawyer’s misunderstanding of her opportunity to do so: *Criminal Code*, s. 686(1)(a)(iii).

[5] The Crown argues that a defendant does not have a right to reopen her case, but that in this case such an application could have been brought, and applying the test in *R. v Hayward* (1993), 67 OAC 379, 86 CCC (3d) 193 (CA) it had a “strong chance of succeeding”. The Crown, accordingly, has very fairly conceded that the appeal should be disposed of without oral argument, the appeal should be allowed, and a new trial should be ordered. The appeal is accordingly allowed, and a new trial is directed.

Written submissions received on December 4, 2017 and March 8, 2018

Memorandum filed at Yellowknife, Northwest Territories

this            day of April, 2018

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Authorized to sign for:            Berger J.A.

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Slatter J.A.

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Authorized to sign for:            Wakeling J.A.

**Appearances:**

A. Godfrey  
for the Respondent

S. Fix  
for the Appellant

IN THE COURT OF APPEAL  
FOR THE NORTHWEST TERRITORIES

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**Between:**

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- and -

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MEMORANDUM OF JUDGMENT

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