

Charge stayed in Clarenville case

By PHIL McNICHOL
Sun Times staff

After more than eight months in custody, Gordon Mark Sutton is a free man.

And it felt good, the youthful-looking 23-year-old said shortly after his formal release from the Owen Sound jail Thursday.

It's been like "a bad dream," since he was charged with setting fire to the Clarenville in Owen Sound harbor last summer, Sutton said as he enjoyed his first moments of freedom, and a tall glass of orange pop.

"I can get on with my life now," he said, a little bewildered by the sudden turn of events.

Sutton's lengthy, often volatile, arson trial ended shortly after noon Thursday when Owen Sound Provincial Court Judge J.F. Laing ruled in favor of an application by defence attorney David Midanik to stay the last of six charges Sutton had originally faced.

But Sutton may not have much time to relax. Crown attorney Ken Rae told reporters immediately after the ruling that he intends to ask the Attorney-General to appeal the case because "the judge's decision was wrong under the circumstances."

Five other charges alleging Sutton had set a series of garbage fires downtown had already been stayed

because city police and fire officials didn't preserve evidence and the existence of an eyewitness was not disclosed until after the trial began.

And when the eyewitness was shown a photo lineup last week he couldn't identify Sutton as one of the two people he saw trying to set a fire in an alley.

The stay on the Clarenville fire charge was granted on similar Charter of Rights grounds.

Judge Laing ruled that Sutton's rights to present "a full answer in defence", as the charter demands, were violated because the Crown failed to disclose the existence of the man whose job it was to watch over the bankrupt floating restaurant last summer.

The defence only found out about shipkeeper Bob Bricker after the trial began. Rae also said city police investigators who interviewed Bricker several days after the Clarenville fire didn't tell him until just recently.

Finally called to testify Tuesday by Midanik, Bricker said the electricity was still turned on in the 45-year-old Clarenville when she burned.

And he also said he initially thought the constantly operating sump pump in the leaking vessel might have caused the spectacular fire that sent the ship to the bottom

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Man free after arson charges stayed

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The harbor last Aug. 7.

The actual cause has never been determined. Evidence that might have helped solve the riddle was lost forever when the Clarenville was taken from the harbor piece by piece because efforts to lift it intact proved futile.

After Midanik brought his application, Rae argued Bricker's evidence wasn't important enough to lead to a stay.

Judge Laing did not agree. He noted the defence asked for full disclosure of all the evidence against Sutton as early as February.

Judge Laing said he didn't think the failure to disclose Bricker's evidence amounted to deliberate suppression. But neither would he accept that "oversight or neglect" by the Crown was an excuse when an accused person was "in jeopardy of his freedom."

Judge Laing also noted a recent policy statement from the Attorney-General's office says defence attorneys are entitled to "full disclosure as soon as reasonably possible."

Midanik also sought to stay the Clarenville charge on the grounds Rae had interfered with Sutton's right to communicate privately with him during voir dire arguments.

Rae said he had the right to deduce certain information that could only have come to Midanik through his client.

Rae earned Judge Laing's displeasure for that Wednesday. But noting Midanik himself was confident the court had not been prejudiced, the judge ruled against a stay on those grounds.

Thursday's ruling came in the midst of arguments on a voir dire

hearing to determine the admissibility as evidence of statements Sutton gave city police late last summer.

Rae readily admitted his case depended on them, in the absence of other evidence.

And from the Crown's point of view, that issue hinged on the proposition that Sutton, a person with an admittedly serious mental illness, was lucid at the time he gave his statements to police.

The court heard conflicting psychiatric evidence on that issue.

However, the proceedings ended before it could be decided.

Although he was obligated to act when the opportunity presented itself, Midanik expressed some regret the case did not go further.

He said he would have liked the opportunity to prove Sutton's complete innocence.

He repeated his assertion, also made during the trial, that the case should never have been prosecuted "on the basis of the evidence they had."

He said he would be surprised if there's an appeal.

Immediately after the ruling, Midanik contacted a Sutton family friend who has found a home for Sutton outside the area.

At the time of his arrest on a petty theft charge, Sutton, who has family in the Durham area, was a homeless drifter.

He was arrested late last August. In early November he was recommended to the Penetanguishene Mental Health Centre to be assessed for his fitness to stand trial.

He was certified mentally ill and kept there for treatment, while the original arson charges lapsed.

New charges were laid when he was declared fit to stand trial in February.

Things he said to psychiatrist, and Crown witness, Dr. Angus McDonald, while being treated at Penetanguishene became evidence in the trial.