

IN THE COURT OF APPEAL OF MANITOBA

Coram: Chief Justice Richard J. Chartier
Madam Justice Diana M. Cameron
Madam Justice Jennifer A. Pfuetzner

BETWEEN:

	)	<i>M. G. Enright</i>
	)	<i>for the Appellant</i>
)	
<i>HER MAJESTY THE QUEEN</i>	)	<i>C. R. Savage</i>
	)	<i>for the Respondent</i>
<i>Respondent</i>)	
	)	<i>Appeal under r 45 of the</i>
<i>- and -</i>	)	<i>Manitoba Criminal Appeal</i>
	)	<i>Rules, SI/92-106; and r 37.3 of</i>
<i>DEREK PAUL DARCH</i>	)	<i>the MB, Court of Appeal Rules,</i>
	)	<i>MR 555/88R</i>
<i>(Accused) Appellant</i>)	
	)	<i>Judgment delivered:</i>
	)	<i>July 6, 2021</i>

PFUETZNER JA (for the Court):

[1] This is a conviction appeal.

[2] The accused was convicted at trial of a number of offences, including flight from a peace officer, dangerous operation of a conveyance and two counts of assaulting a peace officer with a weapon.

[3] The accused appeals the two convictions for assaulting a peace officer with a weapon on the basis that the verdicts are unreasonable and the trial judge’s reasons

are insufficient.

[4] The Crown agrees that the verdicts are unreasonable and both parties agree that this appeal may be determined on the basis of written materials filed, without an oral hearing being held (see r 37.3 of the MB, *Court of Appeal Rules*, MR 555/88R).

[5] The accused was involved in a high-speed chase with members of the Winnipeg Police Service (WPS) after he failed to stop the vehicle he was driving when they attempted to pull him over. After the accused momentarily stopped the vehicle, the WPS officers blocked him in by positioning their police vehicle parallel to the accused's vehicle. As attested by one of the officers, the accused began slowly reversing and then driving forward, "kind of like a car on car grinding to just basically make space and create any distance in between [them] and him to make good on his escape." The accused was able to manoeuvre the vehicle out of its position but, while doing so, the rear bumper of the vehicle was ripped off and the front push bar of the WPS vehicle was slightly damaged. The WPS officers were not injured.

[6] In convicting the accused, the trial judge stated: "I convict him of the balance of the charges on the docket, that is to say the assault police officer with a weapon for the grinding incident wherein there was damage to the police vehicle".

[7] After reviewing the evidentiary record, we are satisfied that the verdicts are unreasonable. While there was evidence of force applied to the WPS vehicle, there was no evidence, or any basis to infer, that force to the police officers was applied, attempted or threatened.

[8] Accordingly, the appeal is allowed. The convictions for the two charges of assaulting a peace officer with a weapon are quashed and acquittals are directed.

Pfuetzner JA

Chartier CJM

Cameron JA
