Citation: R v Linklater, 2025 MBCA 104
Date: 20251128
Docket: AR25-30-10206

IN THE COURT OF APPEAL OF MANITOBA

Coram: Madam Justice Diana M. Cameron
Madam Justice Lori T. Spivak
Mr. Justice David J. Kroft

B E T W E E N:

	)	***A. L. Sansregret, K.C.***
HIS MAJESTY THE KING	)	*for the Appellant*
	)	
Respondent	)	***D. Sahulka***
	)	*for the Respondent*
- and -	)	
	)	*Appeal heard and*
NATHANIEL IVAN LINKLATER	)	*Decision pronounced:*
	)	***November 21, 2025***
(Accused) Appellant	)	
	)	*Written reasons:*
	)	***November 28, 2025***

CAMERON JA (for the Court):

[1] The only issue in this one-witness trial was the identity of the accused as the perpetrator of the offences of aggravated assault and robbery against the complainant. After hearing from the parties, we allowed the appeal, quashed the convictions and entered acquittals. These are our reasons for doing so.

[2] The accused and the complainant were unknown to each other prior to the evening of the incident.

[3] The trial occurred approximately a year and one-half after the incident. During his testimony, the complainant stated that he first met the

accused when he, along with others, went to his girlfriend's aunt's (the aunt) residence for supper and drinks. Without any prompting, the complainant immediately gestured towards the accused and identified him as someone he had met at the aunt's house that evening. At the time, the accused was seated in the prisoner's dock in the courtroom.

[4] The complainant stated that the accused was introduced to him by the name of Nathaniel and/or the nickname Eskee (phonetic). The complainant described the accused as being a "normal person" and clarified that the accused was "tall" but not "chubby." He said that the accused had shorter hair than he did on the day of the trial. Other than that, he described no other identifying features of the accused.

[5] The complainant testified that, at about 12:00 a.m. or 1:00 a.m., he went for a walk with his girlfriend's cousin (the cousin) and the accused. He said that, while he could not recall, he had probably consumed about five or six beers prior to that time. During the walk, he stated that the cousin broke a window, after which they returned to the aunt's residence. The accused and the cousin ran ahead of the complainant, arriving a couple of minutes before him.

[6] The complainant said that he was stepping over a fence to enter the aunt's yard when the accused hit him one time in the head with an object made of steel. The accused demanded money from the complainant; the cousin told the complainant to comply with the accused's demands. The complainant stated that he gave them his money.

[7] The complainant testified that he was one hundred per cent certain that it was the accused that hit him with the steel object.

[8] After the assault, the complainant went to the bathroom of the aunt's residence to clean himself up. He stated that the cousin assaulted him at that time and that both parties were threatening him not to disclose what they had done to him. After he agreed not to tell, the complainant went to the hospital. As a result of the blow, he suffered a concussion and a laceration to his head, which required about a dozen staples to close.

[9] No further evidence was called at the trial.

[10] The accused argued that the uncorroborated in-dock identification by the complainant was not sufficient to prove his guilt beyond a reasonable doubt. He referred to jurisprudence underscoring the frailties of eyewitness identification and the risk of wrongful convictions. He emphasized that even where a witness is confident in their belief, that does not necessarily make their identification accurate.

[11] In convicting the accused, the trial judge found the complainant to be a credible witness, noting that he "testified in a straightforward consistent manner", he was "unchallenged on cross-examination" and he was "candid and forthright" when he was asked "tough" questions about alcohol and drug abuse. She said he did not "tailor his answers in any way to cast himself in a more favourable light".

[12] Regarding identification, she stated:

> [The complainant] was clear that the person who harmed him was *in his presence for several hours* on the night in question. He was unequivocal in his evidence and when providing an in-dock identification of [the accused] that he is, and I quote, "*one hundred percent certain*" that [the accused] attacked him and further, and I

> quote, "*that there was zero percent*" that it could have been someone else.
>
> [emphasis added]

[13] She convicted the accused immediately thereafter.

[14] We agree with the accused's submission that the trial judge erred by not cautioning herself about the frailties of eyewitness identification and that the verdict was unreasonable.

[15] While it is not impossible to convict an accused based on the evidence of a single eyewitness, the law is replete with cautionary warnings regarding the frailties of eyewitness identification evidence and the dangers of conflating the distinction between the credibility of a witness and the reliability of their evidence (see e.g. *R v Morin*, 2024 MBCA 85 at paras 23-25 [*Morin*]; *R v Hay*, 2013 SCC 61 at paras 40-41 [*Hay*]). Wrongful convictions "arising from faulty but apparently persuasive eyewitness identification" are well-documented (*R v Hibbert*, 2002 SCC 39 at para 51). It is for this reason that triers of fact must be given a special caution regarding the "weak link between the confidence level of a witness and the accuracy of that witness" (*ibid* at para 52).

[16] Specific to in-court identification, in *R v Clark*, 2022 SCC 49, Karakatsanis J, writing on behalf of the Court, substantially adopted the reasons of Leurer JA in dissent in *R v Clark*, 2022 SKCA 36 [*Clark SKCA*], wherein he would have overturned the accused's conviction for murder because the jury was not sufficiently instructed on the issue of the inherent frailties of such an identification. In *Clark SKCA* at para 80, Leurer JA observed:

> Since *Hibbert*, appeal courts have emphasized that a caution – going beyond a general one relating to the frailties of eyewitness identification evidence, and instead specifically directed to instructing jurors as to the dangers of placing reliance on *in-court* identification testimony – is required in cases where the in-court identification is suspect.
>
> [emphasis in original]

[17] Where the evidence presented by the Crown consists "solely of eyewitness testimony that would necessarily leave reasonable doubt in the mind of a reasonable [trier of fact], the trial judge must direct an acquittal upon a motion for a directed verdict" (*Hay* at para 41).

[18] In *Morin*, this Court affirmed that appellate review pursuant to section 686 of the *Criminal Code*, RSC 1985, c C-46, of a conviction based on identification evidence "turns on a cumulative assessment of four categories of factors: (1) whether the person identified was a stranger; (2) the circumstances surrounding the identification; (3) the pre-trial identification process; and (4) the existence of other evidence tending to confirm the identification" (*Morin* at para 26).

[19] We are of the view that none of the four categories have been satisfied.

[20] First, as earlier stated, the accused was unknown to the complainant prior to the evening of the incident.

[21] Regarding the circumstances surrounding the identification, the trial judge's comment that the complainant was in the company of the accused for "several hours" on the night of the incident is questionable. There is no

evidence as to when the complainant arrived at the aunt's residence, when the accused arrived there or even the amount of time the two spent together while at the aunt's residence. The only detailed evidence from the complainant regarding their interaction is that they spent about half an hour together when they went for a walk outside. Furthermore, even if the complainant was not intoxicated by his estimate, he had been drinking. He was unable to give a detailed description of the accused either at the time of the incident or at the trial. He suffered a concussion after the event.

[22] There was no pre-trial identification process.

[23] Importantly, there was no evidence that could be considered confirmatory of the identification of the accused. There was no police evidence as to how they came to believe that it was the accused who had committed the offences, thereby causing them to arrest him. None of the persons who were at the aunt's residence on the evening in question were called to confirm his presence. Despite the complainant choosing not to proceed with charges against the cousin, the cousin did not testify.

[24] Acknowledging that trial judges are presumed to know the law (see *R v GF*, 2021 SCC 20 at paras 74, 111), the analysis conducted by the trial judge demonstrated that she failed to instruct herself regarding the frailties of eyewitness identification evidence and the danger of convicting based on such evidence. Rather, her comments evidenced that she fell into the classic error of conflating the credibility and certainty of the complainant with the accuracy of his identification. As is evidenced from the application of the four-factor analysis enunciated in *Morin*, the conclusion she reached was one that no jury reasonably instructed could have arrived at and is thus unreasonable (see

R v RP, 2012 SCC 22 at para 9; *R v Sinclair*, 2011 SCC 40 at paras 4, 16, 19-21).

[25] In the result, we allowed the appeal and quashed the convictions. Given that no reasonable trier of fact could have convicted based on the record that was before this Court, we entered verdicts of acquittal (see *R v Turner*, 2023 MBCA 40 at para 54; *R v Ostrowski*, 2018 MBCA 125 at paras 18-26).

Cameron JA

Spivak JA

Kroft JA