

IN THE COURT OF APPEAL OF MANITOBA

Coram: Madam Justice Diana M. Cameron
Mr. Justice Christopher J. Mainella
Mr. Justice David J. Kroft

BETWEEN:

<i>HIS MAJESTY THE KING</i>	)	<i>M. Venuto</i>
	)	<i>for the Appellant</i>
<i>Respondent</i>	)	
	)	<i>D. Sahulka</i>
<i>- and -</i>	)	<i>for the Respondent</i>
	)	
<i>MALCOLM WILLIAM JUNIOR MCLEOD</i>	)	<i>Appeal heard and</i>
	)	<i>Decision pronounced:</i>
<i>(Accused) Appellant</i>	)	<i>September 25, 2026</i>

CAMERON JA (for the Court):

[1] The accused raises three issues in support of his appeal of his convictions for the offences of aggravated assault and break and enter a dwelling-house and commit the indictable offence of robbery with a firearm after trial in the Provincial Court.

[2] First, the accused's assertion that the trial judge demonstrated a reasonable apprehension of bias by confirming, at the outset of the trial, the status of the charges of the co-accused on the same information as the accused is without merit. The inquiry by the trial judge was procedural in nature and justified, given that the accused was jointly charged with the two others. His inquiry did not comprise actual or invoke perceived bias as defined in *Yukon*

Francophone School Board, Education Area #23 v Yukon (Attorney General), 2015 SCC 25 at paras 20-26 and *R v S (RD)*, 1997 CanLII 324 at para 141 (SCC).

[3] Next, we are not convinced that the trial judge misdirected himself or that his decision was so clearly wrong as to amount to an injustice when he exercised his discretion in determining that a *Vetrovec* warning was not required for the witness Robert Menow (Menow), who provided crucial evidence regarding the identity of the accused (see *Vetrovec v The Queen*, 1982 CanLII 20 (SCC)). The trial judge correctly outlined the factors to be assessed in reaching such a determination. While he agreed that Menow's identification was central to the case, he found no evidence that Menow had participated in the offences and noted that Menow had no criminal record, was currently employed, volunteered in his community and supplemented his income by providing rides to people in the community for money. He considered any inconsistencies in Menow's evidence to be minor and unimportant.

[4] Finally, the accused's contention that the investigating officer tainted the evidence resulting in an unreasonable verdict bears some comment. The officer identified the accused by name to some of the witnesses. When speaking with Menow, the officer indicated that a gun and a knife were used in the commission of the offences. In each of these instances, the information was provided by the officer prior to the witnesses providing their own independent recollections.

[5] In circumstances such as this, police officers should exercise due care or bear the risk of tainting the evidence. However, in this case, the trial

judge was alive to the issue. He carefully considered the evidence of each witness, disregarding the evidence of identification of one of them. He concluded that the disclosures and suggestions made by the officer did not affect the credibility or reliability of the witnesses whose testimony the trial judge examined in detail, reaching independent findings of reliability and credibility for each of them. As no palpable and overriding error has been demonstrated, these findings are entitled to deference (see *R v BW*, 2024 ONCA 412 at para 42).

[6] In the result, the appeal is dismissed.

Cameron JA

Mainella JA

Kroft JA