

COURT OF KING'S BENCH OF MANITOBA
(CRIMINAL DIVISION)

B E T W E E N:

HIS MAJESTY THE KING,)	<u>Richard Lonstrup</u>
)	for the Crown
)	
)	
- and -)	
)	
EVAN RICHARD DICKHOUT,)	<u>Anthony Dawson</u>
)	for the accused
)	
)	
)	<u>Judgment delivered:</u>
)	December 11, 2025

LEVEN J.

SUMMARY

[1] The accused was charged under the ***Criminal Code***, R.S.C., 1985, c. C-46 (the "***Code***") with robbery [section 343(b)]; possession of a weapon for a dangerous purpose [section 88(1)]; and assault with a weapon [section 267(a)]. The accused chose not to testify. The complainant testified credibly. For reasons explained below, I find the

accused guilty as charged. The section 88(1) charge is stayed as per *Kienapple v. R.*, 1974 CanLII 14 (SCC) ("*Kienapple*").

FACTS

[2] This is not a comprehensive recitation of all evidence and argument; it is a concise summary of certain important matters.

[3] Jurisdiction and date (July 31, 2023) were admitted. A medical radiography report was tendered by consent, without the need to call the author. The report was based on a March 5, 2024 examination of the complainant. It said that the doctor's impression was "Nondisplaced nasal bone fracture". It referred to a "previous injury in august 2023".

[4] The parties also tendered a very brief video ("the Video") by consent. It was about four seconds long. They agreed that it would not be necessary to call the named individual who took the Video from a distance. The Video appears to show two individuals fighting with (or perhaps assaulting) a third individual. The faces are not visible. The resolution is not clear enough to reveal if any of the people in the Video are the accused or the complainant.

LC

[5] The witness LC testified. She did not know either the complainant, the accused or a third person nicknamed "Casper" (see below). She was sitting on her balcony on the evening of July 31, 2023. She heard people yelling the word "pussy". She saw four people (three males and one female)

on the street below. For ease of reference, I will call one of the males "the victim". The other people approached the victim. The female left. LC described the two males (not the victim) as tall, good-looking, well-groomed, and wearing sweatpants.

[6] LC went on to say that the two males shoved the victim until he fell on the ground. They both then punched and kicked the victim. LC phoned 9-1-1. (The Crown chose not to play the 9-1-1 call, and there were no agreed facts about what words were spoken to the 9-1-1 operator.)

[7] LC said that the three people moved onto the street under a streetlamp. LC estimated that it was about 9:30 p.m. LC described it as "twilight". LC didn't see the victim attack the other two people. She saw someone pull the victim's gym bag away from him. He tried to resist, but they got the gym bag. They walked away. They were smiling. LC could see their teeth. LC didn't see any weapons. LC said she didn't see either the victim or the two males in the courtroom. She thought the two males (not the victim) appeared to be "native".

RD

[8] Constable RD testified. On the night in question, at 0026 hours, she was called by police dispatch. She arrived at the incident scene quickly. The complainant waved her down. He had blood on his face. There were cuts on his face and his hands. He said he was attacked by "Kodak" and "Casper". The complainant never provided RD with real names for Kodak

and Casper. (The complainant would later testify that Kodak was the accused.)

[9] RD saw a set of black "brass knuckles" on the ground near the complainant. She took the brass knuckles with her, and they were tendered in court (there were no objections as to continuity). They were black.

[10] The complainant got into RD's cruiser car and RD took an unrecorded statement from him at 0038 hours. RD then took him to the police station for a recorded statement. RD took photos of the complainant's visible injuries, which photos were tendered without objection. They showed visible cuts and scratches to the complainant's face, hands, knees and upper chest. RD then took the complainant to the hospital.

[11] Talking to RD, the complainant described "Kodak" as an Indigenous male with short brown hair.

The complainant

[12] In July 2023, the complainant was in the business of buying and selling valuable running shoes. At the time, he was on several prescription medications. He listed the medications, but there was no evidence about the precise effects of each.

[13] The complainant knew both Kodak (the accused) and Casper. He had met both a few times. He had sold Kodak pants or shoes before.

[14] On the evening of the incident, the complainant and Casper spent some time together. The complainant was carrying some shoes for sale in a shopping bag. They walked around together for some time.

[15] They arrived at the scene of the incident. There was an apartment building with balconies at the site. Kodak was on one balcony.

[16] A few words were exchanged. The complainant got the impression that Kodak and Casper wanted to attack him. The complainant thought that the people on the balconies of the apartment building wouldn't want a fight to happen close to their homes, so he suggested that he, Kodak and Casper move to a field some distance away. The complainant admitted that he couldn't remember if he suggested moving to the field before or after Kodak came down from the balcony.

[17] Kodak came down, and then Kodak and Casper confronted the complainant. Kodak threw the first punch. The complainant did not want to fight. The complainant was holding his shopping bag, so he had only one free hand. The complainant ducked the punch and started to leave. While leaving, the complainant said "fuck you!"

[18] Kodak and Casper punched and kicked the complainant. He fell down, and they kicked him while he was down. They had brass knuckles, and they used them to punch the complainant. The complainant said the punches felt heavy, and he "saw stars"

[19] Casper pulled the earrings out of the complainant's ears. (There was no evidence about the composition or value of the earrings.)

[20] Kodak had a knife. The complainant said he would call the police. Casper told Kodak to throw the knife at the complainant. Kodak was about 12 feet away from the complainant. Kodak threw the knife three times. The knife hit the complainant's upper chest. (One of the photos taken by RD shows what appears to be a fresh scratch on the complainant's upper chest.)

[21] The complainant looked at the Video. He testified that he recognized Casper and Kodak assaulting him in the Video.

[22] After taking the complainant's earrings and bag (with the shoes), Kodak and Casper left. The police arrived. The complainant recalled talking to the police and being taken to the hospital. He was very tired. After a few hours, he left the hospital on his own initiative.

[23] The complainant later saw Kodak on a Crime Stoppers video, which provided Kodak's real name (the name of the accused).

[24] It was mentioned in passing that "Casper" is now deceased.

[25] On one occasion after the incident, the complainant saw the accused at the local courthouse. It was not the preliminary inquiry. The two were together in an elevator. The accused called the complainant a "fucking rat".

[26] The complainant identified the accused in the courtroom. He said he was 100% certain that the accused was one of the two men who assaulted and robbed him.

[27] In cross-examination, the complainant was asked about his police statement. At one point, he was asked about the names "Kodak" and "Casper". He said, "I keep getting their names mixed up but they were both there."

[28] The complainant was asked if he had met Kodak two times or three times prior to the incident. He agreed that he was not sure if it was two or three times. He said that his "numbers could have been off".

[29] The complainant was cross-examined about his medications and his health conditions. He listed various conditions including a herniated disk. He testified that he was taking gabapentin and Tylenol 3 pills for his back. He was asked why he never mentioned this to the police. He explained that he felt that his back was a pre-existing condition (so it was not a police matter).

[30] The complainant mentioned that he had concussions from playing football in the past. He admitted that he was never formally diagnosed.

LAW

[31] Relevant sections of the ***Code*** include:

Parties to offence

21 (1) Every one is a party to an offence who

(a) actually commits it;

(b) does or omits to do anything for the purpose of aiding any person to commit it; or

(c) abets any person in committing it.

(emphasis added)

Common intention

(2) Where two or more persons form an intention in common to carry out an unlawful purpose and to assist each other therein and any one of them, in carrying out the common purpose, commits an offence, each of them who knew or ought to have known that the commission of the offence would be a probable consequence of carrying out the common purpose is a party to that offence.

...

Possession of weapon for dangerous purpose

88 (1) Every person commits an offence who carries or possesses a weapon, an imitation of a weapon, a prohibited device or any ammunition or prohibited ammunition for a purpose dangerous to the public peace or for the purpose of committing an offence.

...

Assault

265 (1) A person commits an assault when

(a) without the consent of another person, he applies force intentionally to that other person, directly or indirectly;

(b) he attempts or threatens, by an act or a gesture, to apply force to another person, if he has, or causes that other person to believe on reasonable grounds that he has, present ability to effect his purpose; or

(c) while openly wearing or carrying a weapon or an imitation thereof, he accosts or impedes another person or begs.

...

Assault with a weapon or causing bodily harm

267 Every person is guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years or is guilty of an offence punishable on summary conviction who, in committing an assault,

(a) carries, uses or threatens to use a weapon or an imitation thereof,

...

Robbery

343 Every one commits robbery who

...

(b) steals from any person and, at the time he steals or immediately before or immediately thereafter, wounds, beats, strikes or uses any personal violence to that person;

...

ARGUMENT

[32] The Crown submitted that it met its onus of proving the accused guilty beyond a reasonable doubt. It submitted that the complainant was generally credible and reliable. It submitted that there is a difference between comportment and credibility. The fact that the complainant's comportment was "sassy" should not diminish his credibility.

[33] The Crown relied on section 21 (parties to an offence) of the **Code**. Even if it was Casper (rather than the accused) who took the complainant's earrings and shoes, the accused would still be guilty of robbery.

[34] The Crown observed that the accused called the complainant a "rat". The choice of words is telling. The accused did not call him a "liar". Calling him a rat implied that the complainant told the police the truth about the accused, but that the complainant broke a street code of conduct.

[35] Defence counsel did not argue self-defence. He admitted that, if everything the complainant said was 100% accurate, the elements of the charged offences would have been established.

[36] Defence counsel correctly pointed out faces were not visible in the Video.

[37] Defence counsel correctly pointed out that LC testified that she did not see any weapons.

[38] Defence counsel observed that the complainant was sometimes combative on the witness stand.

[39] Defence counsel observed that the complainant admitted that he didn't remember whether or not he spoke to RD in the police car.

[40] Defence counsel noted that the complainant could not remember if he told the accused to fight him in the field, before or after the accused came down from the balcony.

FINDINGS

[41] This case turns almost entirely on the credibility of the complainant.

[42] The Video, which was very brief, and which was taken from some distance, was too unclear to assist the Crown in proving guilt. Faces are not at all visible.

[43] I found RD to be completely credible and reliable. Her testimony was helpful in that she confirmed that the complainant had what appeared to be fresh cuts when she arrived at the crime scene and found him there. She testified reliably that she arrived shortly after midnight. That helps firm up the timing of the incident.

[44] LC appeared to me to be sincere and eager to assist. However, she could not identify the accused by appearance.

[45] It is also clear from the evidence of RD that the altercation happened around midnight. LC testified that the altercation happened around 9:30 p.m. or around twilight. She was mistaken. RD reliably established that the incident was around midnight. If LC had been a key witness, her error might have been more important. However, she could not identify the accused so, at the end of the day, her evidence was essentially neutral.

[46] That leaves the complainant. He was not a perfect witness. He was neither articulate nor sophisticated in terms of courtroom procedure. When defence counsel quite properly cross-examined him in a forceful way, he seemed to be personally offended. He was not good at remaining calm while being vigorously challenged in cross-examination. To be fair to the complainant, some of the defence counsel's questions were somewhat confusing.

[47] The complainant obviously garbled some trivial details about the events immediately before and after the altercation. Again, he was not very articulate. Furthermore, I accept his explanation that he was significantly affected by the physical injuries he just sustained. The credible, reliable testimony of RD made it clear that the complainant had significant physical injuries at the time in question.

[48] However, the complainant's account of the essential elements of the criminal charges was consistent and unshaken. The complainant was never evasive about the essential elements. He testified credibly that Kodak and Casper began a physical altercation with him; punched and kicked him; stole his belongings; participated in throwing a knife at his chest multiple times; and left a

set of "brass knuckles" behind on the ground. He testified credibly that the accused in the courtroom was one of the two men who assaulted him. That assertion was unshaken.

[49] The complainant incorrectly recalled the colour of the "brass knuckles". He did not correctly remember that they were black. To be fair, it was dark out and he was in the process of being badly punched and kicked. He testified that he "saw stars" when being assaulted. In court, he said he felt dizzy when talking to the police. He honestly admitted that he didn't recall talking to RD in a police car that evening. Some imperfections in his memory are not surprising.

[50] Similarly, little if anything turns on the fact that the complainant described Kodak (the accused) to the police as being "native". When questioned about this in court, the complainant said that he thought the accused looked "Metis". Not surprisingly, no one pursued this topic further. Generalizations about racial or perceived racial appearances are inappropriate. A court cannot make any generalizations about what a "Metis" person looks like. In the end, the crucial fact is that the complainant saw the accused in the courtroom, and he identified the accused with certainty.

[51] I accept the credible testimony of the complainant that the accused called him a "rat" on one occasion in the courthouse (after the incident). There is some logic to the Crown's submission that the choice of word was significant. The accused did not call the complainant a "liar" or words to that effect. Rather, the accused called him a "rat", implying that the complainant gave the police accurate

information about the accused's crimes, but that the complainant violated a street code of conduct by doing so. However, in the grand scheme of things, this is not a crucial element of the Crown's case.

[52] Courts have warned about the limits of using demeanor to assess credibility. However, that does not mean that demeanor has no value at all. I found that the complainant's demeanor supported his credibility. He was not very articulate and not very good at keeping calm on cross-examination, but he looked and sounded essentially sincere about the crucial facts supporting the charges against the accused.

[53] The complainant's imperfect memory about trivial details is not fatal to the Crown's case. The complainant had no trouble remembering the crucial facts (i.e. that the accused participated in assaulting and violently robbing him, using a weapon and causing bodily harm). At a minimum, the accused was a party to the offences.

[54] Defence counsel conceded that, if the complainant's version of events were accurate, the elements of the offences would be established

[55] I find that the accused is guilty of all charges. The possess-weapon charge (section 88) is stayed as per ***Kienapple***.

[56] I thank counsel for agreeing about matters such as jurisdiction, and for their courtesy.

_____.J.