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(Thompson Centre)
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COURT OF KING'S BENCH OF MANITOBA

B E T W E E N:

HIS MAJESTY THE KING	)	Christian A. Vanderhooft
	)	for the Crown
- and -	)	
	)	Lionel R.R. Chartrand
JEREMIAH DUMONT-FONTAINE,	)	for the accused
	)	
accused.	)	Judgment Delivered:
	)	January 19, 2023

KROFT J.

I. INTRODUCTION

[1] The events in this case took place in Thompson, Manitoba.

[2] The accused, Cst. Jeremiah Dumont-Fontaine, is a member of the Royal Canadian Mounted Police ("RCMP"). On June 5, 2019, at around 6 p.m., Cst. Dumont-Fontaine attended the Thompson Inn bar in response to a report by bar staff that the complainant, Brian Halcrow, was causing a disturbance, including by attempting to force himself behind the bar and refusing to leave the premises.

[3] In the course of removing Mr. Halcrow, and in the circumstances described below, Cst. Dumont-Fontaine delivered punches to Mr. Halcrow's head, resulting in injury, including a significant laceration to Mr. Halcrow's forehead requiring medical attention.

[4] The Crown asks me to find Cst. Dumont-Fontaine guilty of assault causing bodily harm, pursuant to section 267(b) of the ***Criminal Code***.

[5] Constable Dumont-Fontaine says his conduct was justified under section 25 of the ***Criminal Code*** (protection of persons acting under authority) and/or he is not guilty of assault by virtue of section 34 of the ***Criminal Code*** (self-defence).

II. WITNESSES

[6] The Crown called: Nicole Moorehead, the Thompson Inn bar employee who called the RCMP; Sandra Moorehead, Nicole Moorehead's mother who was present at the bar when Cst. Dumont-Fontaine attended; Cst. Mark Sterdan, an RCMP officer who also responded to the call; Sarabjit (Scott) Kaler, an investigator with the Independent Investigation Unit of Manitoba (and former police officer); and, Sgt. Kelly Keith, a Use of Force expert engaged by the Independent Investigation Unit of Manitoba.

[7] Mr. Halcrow did not testify as he died prior to trial (from causes unrelated to the alleged assault). Based on his audio statement to Mr. Kaler, Mr. Halcrow had no recollection of the incident.[1]

[8] Constable Dumont-Fontaine testified in his own defence. He also called Cst. Jamie Harfield, an RCMP officer who attended the Thompson Inn bar approximately an hour and a half prior to the incident, as well as Sgt. Richard Pratch and Insp. Robert Bell, two RCMP Use of Force experts. Constable Dumont-Fontaine also filed, with the agreement of the Crown, a review opinion of Sgt. Pratch's report prepared by RCMP S/Sgt. Leonard McCoshen. Staff Sergeant McCoshen concurred with Sgt. Pratch's conclusions.

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[1] The statement was played at trial.

[9] The Crown and Cst. Dumont-Fontaine relied on video evidence recorded by cameras inside and outside the Thompson Inn bar. There was no audio.

III. LAW

[10] The parties agree on the ***Criminal Code*** sections and case law to be considered in this case.

[11] The ***Criminal Code*** sections are sections 25(1)(b), (3) and (4), and 34, more particularly:

> **Protection of Persons Administering and Enforcing the Law**
>
> **Protection of persons acting under authority**
>
> **25 (1)** Every one who is required or authorized by law to do anything in the administration or enforcement of the law
>
> **(b)** as a peace officer or public officer,
>
> is, if he acts on reasonable grounds, justified in doing what he is required or authorized to do and in using as much force as is necessary for that purpose.
>
> **When not protected**
>
> **(3)** Subject to subsections (4) and (5), a person is not justified for the purposes of subsection (1) in using force that is intended or is likely to cause death or grievous bodily harm unless the person believes on reasonable grounds that it is necessary for the self-preservation of the person or the preservation of any one under that person's protection from death or grievous bodily harm.
>
> **When protected**
>
> **(4)** A peace officer, and every person lawfully assisting the peace officer, is justified in using force that is intended or is likely to cause death or grievous bodily harm to a person to be arrested, if
>
> **(a)** the peace officer is proceeding lawfully to arrest, with or without warrant, the person to be arrested;
>
> **(b)** the offence for which the person is to be arrested is one for which that person may be arrested without warrant;
>
> **(c)** the person to be arrested takes flight to avoid arrest;
>
> **(d)** the peace officer or other person using the force believes on reasonable grounds that the force is necessary for the purpose of protecting the peace

officer, the person lawfully assisting the peace officer or any other person from imminent or future death or grievous bodily harm; and

(e) the flight cannot be prevented by reasonable means in a less violent manner.

Defence of Person

Defence — use or threat of force

34 (1) A person is not guilty of an offence if

(a) they believe on reasonable grounds that force is being used against them or another person or that a threat of force is being made against them or another person;

(b) the act that constitutes the offence is committed for the purpose of defending or protecting themselves or the other person from that use or threat of force; and

(c) the act committed is reasonable in the circumstances.

Factors

(2) In determining whether the act committed is reasonable in the circumstances, the court shall consider the relevant circumstances of the person, the other parties and the act, including, but not limited to, the following factors:

(a) the nature of the force or threat;

(b) the extent to which the use of force was imminent and whether there were other means available to respond to the potential use of force;

(c) the person's role in the incident;

(d) whether any party to the incident used or threatened to use a weapon;

(e) the size, age, gender and physical capabilities of the parties to the incident;

(f) the nature, duration and history of any relationship between the parties to the incident, including any prior use or threat of force and the nature of that force or threat;

(f.1) any history of interaction or communication between the parties to the incident;

(g) the nature and proportionality of the person's response to the use or threat of force; and

(h) whether the act committed was in response to a use or threat of force that the person knew was lawful.

> **No defence**
>
> **(3)** Subsection (1) does not apply if the force is used or threatened by another person for the purpose of doing something that they are required or authorized by law to do in the administration or enforcement of the law, unless the person who commits the act that constitutes the offence believes on reasonable grounds that the other person is acting unlawfully.

[12] As for the case law considering these provisions, counsel rely on ***R. v. Nasogaluak***, 2010 SCC 6, [2010] 1 S.C.R. 206, ***R. v. Power***, 2016 SKCA 29 (CanLII), and ***R. v. Letkeman***, 2019 MBQB 124 (CanLII). The principles emerging from these cases can be summarized as follows:

- The Crown must prove, beyond a reasonable doubt, the essential elements of each charge are not justified under subsections 25(1)(b) and (3) or section 34 of the ***Criminal Code***. See ***Letkeman*** at paras. 3–4.
- To determine whether the officer's conduct is justified, the court must consider:
  - the accused's subjective perception of the risk they face when they used the force they did
  - whether the accused's perception of this risk was reasonable
  - whether the accused's response was more than reasonably necessary

  These last considerations are to be done on an objective basis, taking into account the nature of the threat, the overall circumstances, the force used in response to the threat, and the characteristics of the individuals involved. See ***Power*** at para. 35.

- Police engage in important, demanding and dangerous work that often requires quick reactions to emergencies. Their actions cannot be judged against a standard of perfection. See ***Nasogaluak*** at para. 35.

[13] The phrase "grievous bodily harm" used in section 25 is not defined in the ***Criminal Code***. The Supreme Court of Canada has ruled the phrase is not limited to describing harm or injury that is permanent or life-threatening; rather, it refers to harm or injury that is very severe or serious. See ***R. v. Paice***, 2005 SCC 22, [2005] 1 S.C.R. 339 at para. 41.

[14] Against this legal background, I turn to the facts.

IV. FACTS

[15] I will not simply summarize each witness's testimony. I will set out the material facts as I find them to be, identifying as I go those areas where I have preferred some evidence over other.[2]

[16] As noted in the introduction, on June 5, 2019, at around 6 p.m., the RCMP received a report that a person at the Thompson Inn bar was causing a disturbance, including by attempting to force himself behind the bar and refusing to leave the premises. Constable Dumont-Fontaine was on patrol at the time and attended the scene.

[17] Upon arriving at the Thompson Inn, Cst. Dumont-Fontaine entered the bar through the Quartz Street doors and, while still very close to the entranceway, was met by Nicole Moorehead, the staff person who placed the call to the RCMP. While explaining the situation, Ms. Moorehead pointed to a nook, also near the Quartz Street entrance, where

[2] I make no further reference to the evidence of Sandra Moorehead and Cst. Harfield. I reviewed it and conclude it adds very little to the relevant issues.

Mr. Halcrow was crouched. As Cst. Dumont-Fontaine was concluding his discussion with Ms. Moorehead, Mr. Halcrow stood himself up. Constable Dumont-Fontaine approached Mr. Halcrow at the nook. There were only four people in the bar at the time, not including Cst. Dumont-Fontaine and Mr. Halcrow.

[18] Ms. Moorehead described Cst. Dumont-Fontaine's demeanour inside the bar as angry and upset. She testified Cst. Dumont-Fontaine was rough with Mr. Halcrow and placed him in handcuffs. Although Cst. Dumont-Fontaine admits inquiring of Ms. Moorehead whether the bar had served Mr. Halcrow too much alcohol, Cst. Dumont-Fontaine denies being angry or dealing with Mr. Halcrow in the manner alleged. Despite the absence of an audio recording, it is clear from the video evidence and other credible witnesses that at no point while Cst. Dumont-Fontaine was in the bar did he interact physically with Mr. Halcrow or place Mr. Halcrow in handcuffs. For this reason, coupled with other inconsistencies in Nicole Moorehead's evidence pertaining to events earlier in the afternoon, I find Ms. Moorehead's evidence unreliable and, insofar as events in the bar are concerned, I prefer the evidence of Cst. Dumont-Fontaine and his colleague, Cst. Sterdan. I now turn to that evidence.

[19] In response to Cst. Dumont-Fontaine's initial approach and inquiries, Mr. Halcrow took his hands from his pockets and told Cst. Dumont-Fontaine, "Don't fuckin' touch me." There is no dispute Mr. Halcrow was intoxicated. Despite intoxication and repetition of the phrase, "Don't fuckin' touch me", Mr. Halcrow acceded to Cst. Dumont-Fontaine's suggestion the two of them exit the bar. Constable Dumont-Fontaine described

Mr. Halcrow's physical conduct at that moment as matter-of-fact and non-aggressive. Constable Dumont-Fontaine saw no need to search, cuff, or arrest Mr. Halcrow.

[20] Constable Sterdan arrived at the scene just as or immediately before Cst. Dumont-Fontaine and Mr. Halcrow were advancing towards the Quartz Street doors such that there was no reason for Cst. Sterdan to proceed beyond the nook. Instead he followed Cst. Dumont-Fontaine and Mr. Halcrow as they proceeded towards the exit doors. Neither Cst. Dumont-Fontaine nor Cst. Sterdan had had any prior encounters with Mr. Halcrow.

[21] It was in the course of leaving the bar when the alleged assault occurred.

[22] The Quartz Street entrance/exit is comprised of two sets of double doors with a small vestibule in between. The vestibule is divided by a railing, so that from the vantage point of a person exiting the bar, there is one passage lane to the right exterior door and one passage lane to the left exterior door. Each of the exterior doors is opened by pushing against a waist-high, horizontal bar.

[23] As they walked towards the exit doors, Cst. Dumont-Fontaine and Mr. Halcrow were next to each other. Constable Dumont-Fontaine was to the right of the vestibule railing, heading towards the right exterior door. Mr. Halcrow was to the left of the vestibule railing, heading towards the left exterior door. Constable Sterdan was immediately behind Mr. Halcrow on the left. As he walked, Mr. Halcrow held a baseball cap in his left hand.

[24] According to Cst. Dumont-Fontaine, as Mr. Halcrow approached the door, and to Cst. Dumont-Fontaine's surprise, Mr. Halcrow slammed his hands against the push bar to

open it. The door did not open as anticipated, angering Mr. Halcrow somewhat as reflected in part by what Cst. Dumont-Fontaine described as an audible "Aargh". By the time the left door did open, Cst. Dumont-Fontaine had passed through the right door and pivoted left to face Mr. Halcrow as Mr. Halcrow was emerging from the left door. At that moment, Mr. Halcrow threw the baseball cap in Cst. Dumont-Fontaine's direction. The cap glanced off Cst. Dumont-Fontaine's face, ultimately landing close to Quartz Street, about fifteen feet away. In direct and immediate response to Mr. Halcrow throwing his cap, Cst. Dumont-Fontaine delivered a punch to Mr. Halcrow's face, followed by a second one. At trial, Cst. Dumont-Fontaine testified he does not think the second punch connected. After the second punch, Mr. Halcrow was taken to the ground by Cst. Dumont-Fontaine and Cst. Sterdan, handcuffed, arrested and charged for assaulting a police officer.

[25] Constable Sterdan's version of the three men exiting the bar was similar to that of Cst. Dumont-Fontaine. However, from Cst. Sterdan's vantage point, he could not say whether it was a cap or Mr. Halcrow's hand that hit Cst. Dumont-Fontaine's face. When Cst. Sterdan was asked whether he believed the strikes were the best option in the circumstances, he said no. However, he qualified his answer by saying his perspective from behind Mr. Halcrow may have been different from Cst. Dumont-Fontaine's perspective from the front. Constable Sterdan testified he would have restrained Mr. Halcrow by grabbing him or used some other form of "soft physical control". Constable Sterdan also testified there simply was no time for him to act between the

tossing of the cap and Cst. Dumont-Fontaine's punches. It all happened extremely quickly.

[26] According to Cst. Dumont-Fontaine, the punches were justified in the circumstances. With some exceptions, his direct evidence relative to this point was consistent with his four-page formal written statement dated August 14, 2019 ("Statement"), prepared with the assistance of legal counsel at the request of the Independent Investigation Unit of Manitoba, amplified somewhat at trial.

[27] Constable Dumont-Fontaine testified the situation was dynamic and his response was reflexive, though consistent with his training in the RCMP's Incident Management/Intervention Model. Constable Dumont-Fontaine perceived that the aggressive throwing of the cap by Mr. Halcrow, combined with the premise for Cst. Dumont-Fontaine attending the bar in the first place, the reputation of the Thompson Inn as a venue prone to fights, Mr. Halcrow's anger when the exit door did not open, Mr. Halcrow's size[3], the fact Mr. Halcrow was advancing towards Cst. Dumont-Fontaine once the door opened, Cst. Dumont-Fontaine's general work experiences and the possibility the cap throw was a distraction technique, amounted to assaultive behaviour justifying "hard physical control" in the form of punches. The second punch followed because, in Cst. Dumont-Fontaine's assessment, the first did not destabilise Mr. Halcrow or sufficiently reduce the risk of assault.

[3] Some evidence suggests Mr. Halcrow was approximately 5 feet 7 inches tall, weighing 150 pounds, and other evidence that he was closer to 6 feet tall, weighing 180 pounds (approximately the same size as Cst. Dumont-Fontaine and Cst. Sterdan).

[28] Much of the Crown's cross-examination of Cst. Dumont-Fontaine was directed at undermining the reasonableness of Cst. Dumont-Fontaine's claim to have acted reflexively, the reasonableness of his conclusion Mr. Halcrow posed a significant risk, and the reasonableness of responding with two consecutive punches.

[29] It was put to Cst. Dumont-Fontaine that numerous portions of the Statement suggest forethought on his part and are inconsistent with acting reflexively. According to the Crown, the following is but one example:

> I opened the other door and walked outside first while watching Mr. HALCROW. Behind Mr. HALCROW was Constable Mark STERDAN. My intention at this point was to speak with Mr. HALCROW and other witnesses to determine a course of action.
>
> As the three of us walked outside, I turned around to speak with Mr. HALCROW who was standing maybe 3 feet away from me. Before I could say anything, Mr. HALCROW attacked me by aggressively removing his ball cap from his head and forcefully throwing it at my face at a high velocity while blading himself in a fighting stance. In my already heightened state of vigilance and believing that Mr. HALCROW's intention was to further assault me, I immediately engaged with Mr. HALCROW by throwing a right-handed strike at his face. I then quickly attempted to grab him and bring him to the ground but could feel Mr. HALCROW tense up and keep his feet underneath him. Believing that he was attempting to continue his confrontation with police, I delivered another strike at his face that caused him to assume a more submissive role by tucking his chin in and backing up. This gave me the opportunity to take him to the ground and safely arrest him for assaulting a police officer.
>
> [Statement, pages 2 to 3]

[30] In response, Cst. Dumont-Fontaine testified that when he prepared the Statement, his intention was to describe not only what happened in the moment but also, with hindsight and in the context of the RCMP's Incident Management/Intervention Model, how and why things happened. The last six paragraphs of the Statement in particular go beyond a strict recital of events, introducing analysis of the situation consistent with his training.

[31] As for Cst. Dumont-Fontaine's risk assessment, the Crown put to the constable that it was not reasonable given the Thompson Inn bar was close to empty, Cst. Dumont-Fontaine saw no need to search or handcuff Mr. Halcrow while inside the bar, Mr. Halcrow listened to Cst. Dumont-Fontaine and agreed to leaving the bar, Mr. Halcrow was not armed, the item thrown at Cst. Dumont-Fontaine was merely a baseball cap, Cst. Sterdan was right behind Mr. Halcrow, there were no crowds outside the bar, and there existed a number of alternative, less physical ways to manage the situation. Specifically, in respect of the second punch, it was put to Cst. Dumont-Fontaine that the video showed Mr. Halcrow's head snapping back following the first blow, rendering a second one unnecessary.

[32] Related, but separate, the Crown put to Cst. Dumont-Fontaine that between the incident and trial, Cst. Dumont-Fontaine embellished facts to justify the punches to Mr. Halcrow's head or diminish the severity of the blows. For example:

- It was not until trial that Cst. Dumont-Fontaine stated the second punch may not have struck Mr. Halcrow at all. Both in his Statement and a report written closer to the event, Cst. Dumont-Fontaine reported two punches.
- It was not until writing the Statement that Cst. Dumont-Fontaine described Mr. Halcrow standing in a bladed stance[4]. The Crown put to Cst. Dumont-Fontaine the bladed stance simply was Mr. Halcrow's resting position after throwing the baseball cap, not a pre-assaultive threat.

[4] A bladed stance is a pre-assaultive position where the body is turned at a 45-degree angle. See ***R. v. Woodhouse***, 2015 MBQB 120 (CanLII); ***R. v. Cochrane***, 2016 ABQB 535 (CanLII).

- It was not until writing the Statement that Cst. Dumont-Fontaine referenced his attempt between punches to grab Mr. Halcrow, whereupon Mr. Halcrow tensed up and remained steady on his feet.
- It was not until trial that Cst. Dumont-Fontaine mentioned Mr. Halcrow sloughed off Cst. Dumont-Fontaine's hand from his shoulder following the first punch.
- In a supplemental internal RCMP report prepared by Cst. Dumont-Fontaine, Cst. Dumont-Fontaine used the word "jab", which the Crown suggests was done to minimize the force used.

[33] Constable Dumont-Fontaine stood by his evidence respecting his risk assessment and his response despite the Crown's alleged inconsistencies and despite admitting the possibility alternative, softer physical measures might also have resolved the situation. He maintained events happened over mere seconds, overall Mr. Halcrow's behaviour became assaultive, the situation was dynamic, and he acted reflexively, consistent with his training.

[34] Both the Crown and defence rely on experts opining as to the reasonableness of the force used by Cst. Dumont-Fontaine in the circumstances. The experts' qualifications were not challenged. With leave of the court, each expert, except for S/Sgt. McCoshen, attended during some or all of the trial.

[35] Before addressing the expert evidence, I pause to make certain findings in respect of the Statement. As noted, the Crown submits the Statement is to be read as describing events as they happened on June 5, 2019, and the real-time conscious thinking of

Cst. Dumont-Fontaine. In contrast, Cst. Dumont-Fontaine submits he prepared the Statement as an amalgam of a description of events as they happened and post-event analysis (or reflection) drawing from the RCMP's Incident Management/Intervention Model in accordance with his training. I find a fair reading of the Statement in the context of the evidence as a whole, including Insp. Bell's testimony about the intended use of the RCMP's Incident Management/Intervention Model and constable training, supports Cst. Dumont-Fontaine's characterization of the Statement. The fact the Statement was prepared with legal advice does not change my view, nor does the fact it is described (perhaps inaccurately) as a "statement". The document's title should not trump its content.

[36] My characterization of Cst. Dumont-Fontaine's Statement materially impacts my assessment of Crown expert Sgt. Keith's opinion, which relies heavily thereon.

[37] In lines 146 to 164 of Sgt. Keith's report, he notes an encounter involving a sudden, unanticipated attack at close proximity can result in an officer responding reflexively with force where they do not have the benefit of time, distance or forethought prior to the assault to choose what, in hindsight, might have been a more appropriate response. In those circumstances, the more forceful response may not be unreasonable (even if based on some erroneous assessments of facts). Despite this acknowledgment, Sgt. Keith rules out applying that scenario to Cst. Dumont-Fontaine based on his view Cst. Dumont-Fontaine's Statement is proof positive of conscious anticipation. As evident from paragraph 35 of these reasons, my assessment of the Statement is opposite to

Sgt. Keith's, significantly undermining the weight I give to his opinion that Cst. Dumont-Fontaine's use of force was unreasonable.

[38] Constable Dumont-Fontaine relies on expert evidence from Sgt. Pratch (as reviewed by S/Sgt. McCoshen) and the oral testimony of Insp. Bell at trial. They concluded the force used by Cst. Dumont-Fontaine against Mr. Halcrow was reasonable in all the circumstances and was consistent with RCMP training and policy. In the "Opinion" section of Sgt. Pratch's report, he notes, among other things:

- Cst. Dumont-Fontaine's risk assessment would have included factors leading up to the actual assaults, both mitigating and aggravating. However, no situation is ever routine.
- Despite having gained compliance from Mr. Halcrow, Mr. Halcrow's behaviour changed as he was exiting the bar, including when he threw his cap at Cst. Dumont-Fontaine. From the time Cst. Dumont-Fontaine turned to face Mr. Halcrow outside the bar to when Cst. Dumont-Fontaine threw his second punch, only two seconds had lapsed. In other words, Cst. Dumont-Fontaine had two seconds to determine/perceive there was a threat, try to protect himself, and try to neutralize the threat.
- The fact the throwing of the baseball cap was unprovoked is a material "threat cue" and a recognized distraction technique, which, in police experience, often is followed by some form of assaultive behaviour. A split-second decision was required. Where there is assaultive behaviour, a strike is one of the appropriate methods to control a subject.

- Once the threat was neutralized, Cst. Dumont-Fontaine stopped.
- The throwing of the baseball cap by Mr. Halcrow did raise tactical considerations as did the fact Mr. Halcrow was within the confines of a doorway.

[39] During cross-examination, both Sgt. Pratch and Insp. Bell readily acknowledged other, less forceful measures might have been attempted to de-escalate Mr. Halcrow's conduct. However, they both maintained that the possibility a less forceful measure might have subdued Mr. Halcrow, or that another officer might have made a different choice, did not render Cst. Dumont-Fontaine's actions unreasonable. Both experts also rejected the Crown's suggestion their opinions were skewed towards the subjective assessment made by Cst. Dumont-Fontaine and failed to sufficiently address whether Cst. Dumont-Fontaine's perception of the risk and the force used was objectively reasonable. The Crown also put to Sgt. Pratch and Insp. Bell that because they too are members of the RCMP, the objectivity and reliability of their assessments are questionable. In other words, the RCMP should not be investigating their own.

V. ANALYSIS

[40] There is no contesting the Crown has established the essential elements of assault causing bodily harm. The question in this case is whether the Crown has established, beyond a reasonable doubt, Cst. Dumont-Fontaine's conduct was not justified under section 25 of the ***Criminal Code*** or did not constitute self-defence under section 34 of the ***Criminal Code***. As such, I will consider the factors referenced by me in paragraph 12 of these reasons.

A. Accused's Subjective Perception

[41] I am satisfied that, at the material time, Cst. Dumont-Fontaine subjectively perceived the throwing of the baseball cap by Mr. Halcrow combined with the surrounding circumstances gave rise to a level of risk justifying his punches. To me, this case turns on whether that perception and the force used also were objectively reasonable.[5]

B. Reasonableness of the Perception

[42] During cross-examination and its submissions, the Crown, with considerable initial impact, systematically broke events down into individual fragments of time, suggesting there was no one act or moment, or combination thereof, that could give rise to a reasonable perception of risk. Despite the first blush effectiveness of the Crown's position, I fear subdividing the relatively short period of time into moments risks materially underestimating the risk presented to Cst. Dumont-Fontaine. The Crown submits its position is bolstered by Cst. Sterdan's testimony he did not perceive the level of risk to be particularly high. However, I also must take into account that Cst. Sterdan qualified his answer by pointing out he and Cst. Dumont-Fontaine observed events from different vantage points. In other words, one officer's assessment may be different from another's.

[43] Overall, I am left with reasonable doubt about whether Cst. Dumont-Fontaine's perception of the risk was objectively unreasonable.

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[5] Re: ***R. v. W.(D.)***, [1991] 1 S.C.R. 742 — Because the legal test in this case is subjective and objective, even if I believe Cst. Dumont-Fontaine in respect of his subjective assessment, that does not end the matter. I must still consider whether his perception and actions were objectively reasonable.

C. The Accused's Response

[44] I share the Crown's concern that all of Cst. Dumont-Fontaine's use of force experts are also RCMP officers. The fact the RCMP is reviewing its own personnel undermines the objectivity (in reality and appearance) and hence credibility of the opinions. That said, I find the Crown's expert report also is flawed although for different reasons. As previously noted, in my view, Sgt. Keith relied on a mischaracterization of Cst. Dumont-Fontaine's Statement. By relying heavily thereon, I have concerns about the accuracy of Sgt. Keith's conclusions such that reasonable doubt exists. Does that doubt disappear when I add in all the other evidence, including the video footage?

[45] No. When I consider the overall circumstances, the nature of the force used, and the characteristics of Cst. Dumont-Fontaine,[6] reasonable doubt remains as to whether Cst. Dumont-Fontaine's response was objectively unreasonable. Once again, the fact Cst. Sterdan reacted or perceived matters differently does not carry the day for the Crown.

VI. CONCLUSION

[46] To conclude, I find the Crown has not proved, beyond a reasonable doubt, the force applied against Mr. Halcrow was not justified under subsections 25(1)(b) and (3) and section 34 of the ***Criminal Code***. The charge of assault causing bodily harm cannot stand.

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[6] All are described earlier in these reasons. To be clear, in making my assessment I specifically took into account the factors enumerated in section 34(2) of the ***Criminal Code*** (reasonableness of the self-defence) reproduced in paragraph 11 of these reasons.

[47] My ruling should not be interpreted as approval of the force exercised by Cst. Dumont-Fontaine. My conclusion might well have been different had the onus of proof been a balance of probabilities rather than beyond a reasonable doubt.

_____J.