

CANADA / JUDGMENT

R. v. Cador

2025 BCSC 1976

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Supreme Court of British Columbia

DECIDED

11 July 2025

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2025 BCSC 1976 R. v. Cador

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Cador,

2025 BCSC 1976

Date: 20250711

Docket: 114599-2

Registry: Kamloops

Rex

v.

Ryan Patrick Cador

Before: The Honourable Madam Justice Bennett

Oral Reasons for Judgment

Counsel for the Crown:

K.P. Melnyk

Counsel for the Accused:

L. Walker

Place and Date of Trial:

Kamloops, B.C.

June 24-27, 2025

Place and Date of Judgment:

Kamloops, B.C.

July 11, 2025

Introduction

- [1] Ryan Patrick Cador is charged with one count of aggravated assault of Calvin Lynn contrary to s. 268(2) of the Criminal Code, R.S.C. 1985, c. C-46 [Code]. The events that give rise to this charge occurred around 7:00 p.m. on May 3, 2024, in downtown Kamloops. Many of the circumstances surrounding the events are either agreed to, not in dispute, or are confirmed by the video evidence. They include:
- a) Just before the incident, Mr. Cador was sitting in the grassy area outside the B.C. Lottery Corporation office located at the corner of 1st Avenue and Victoria Street. This area of Kamloops is sometimes frequented by unhoused community members;
 - b) Mr. Cador had been conversing with one or two other individuals at a picnic table before he left the area and headed toward the intersection located at 1st Avenue and Lansdowne Street;
 - c) Just past the intersection is an underpass, and just beyond the underpass was construction equipment and machinery related to the road construction that was ongoing at the time;
 - d) Mr. Cador went under the underpass. He reappeared about a minute-and-a-half later and started walking east on Lansdowne Street when he was confronted by an individual (Calvin Lynn) and another unknown male. Both other males had approached from the same grassy area that Mr. Cador had left minutes earlier;
 - e) Mr. Cador tried to get away from the unknown males and in doing so he crossed over to the south side of the street. He then proceeded to walk south along 1st Avenue toward Victoria Street. The two males followed;
 - f) Mr. Cador was then approached by a third individual (Cody Sauls) who approached from the same grassy area;
 - g) Mr. Cador did not know any of these individuals;
 - h) Mr. Lynn and Mr. Sauls engaged with Mr. Cador and a scuffle ensued. Mr. Cador again tried to leave the conflict, this time in an easterly direction up Victoria Street, and as he did so the three individuals pursued him;
 - i) As Mr. Cador tried to flee the group, Mr. Lynn introduced and then threw a hatchet at Mr. Cador. Mr. Cador did a quick jump over the hatchet as it landed and skid along the road just in front of him;

- j) Mr. Cador bent over and grabbed the hatchet. He turned around with it in hand. As he did so, the others were still chasing him;
- k) Mr. Cador lunged toward the group and threw the hatchet back;
- l) The hatchet connected with the back of Mr. Lynn's head. Mr. Lynn slumped over a nearby patio railing before falling to the ground;
- m) Mr. Lynn sustained a traumatic brain injury;
- n) Mr. Cador did not have any weapons on him; and
- o) The hatchet was brought into play by Mr. Lynn.

Position of the Parties

- [2] The Crown argues that the evidence proves beyond a reasonable doubt that Mr. Cador committed the offence of aggravated assault. Defence concedes that the Crown has met its burden with regard to the essential elements of the offence, however, the defence asks the court to acquit Mr. Cador on the basis of self-defence. Counsel for Mr. Cador argues that there is an air of reality to Mr. Cador's defence as outlined in s. 34 of the Code, and submits that the Crown has failed to disprove the defence beyond a reasonable doubt.
- [3] In reply, the Crown argues that the evidence does not raise an air of reality. Alternatively, if the court finds it does, then the Crown argues that it has proven beyond a reasonable doubt that none of the s. 34(1) elements apply to Mr. Cador. Therefore, the Crown seeks a verdict of guilty.

Issues

- [4] I must decide the following:
 - a) Does Mr. Cador's defence have an air of reality?
 - b) If I accept that his defence has an air of reality, has the Crown proven beyond a reasonable doubt that Mr. Cador was not acting in self-defence?

The Evidence

- [5] The trial evidence consisted of:
 - a) An agreed statement of facts;
 - b) Various video recordings of the incident that led to the charges against Mr. Cador, taken from different downtown locations; and,
 - c) Viva voce evidence of two civilian witnesses who observed the altercation (but only from the point of Mr. Cador throwing the hatchet); various RCMP officers who were involved with Mr. Cador's arrest and with the investigation; and Mr. Cador.

Relevant Law

- [6] Defence has not raised any credibility issues with the Crown's witnesses. However, the Crown has raised credibility issues in relation to the testimony of Mr. Cador. This necessitates consideration of *R. v. W.(D.)*, [1991] 1 S.C.R. 742, 1991 CanLII 93 (S.C.C.) [W(D)]. Where self-defence is made an issue, as is the case here, a modified W(D) test must be applied: *R. v. Big Bull*, 2023 ABKB 605 at para. 27 per Price J. That modified test applied here is:
- a) First, if I believe the accused's evidence, and his evidence establishes a full defence to the charge, I must acquit;
 - b) Second, even if I do not believe the accused's evidence, but his evidence is such that it raises a reasonable doubt in my mind that he was acting in self-defence, I must acquit.
 - c) Third, even if do not believe and am not left in doubt by the accused's evidence, I must ask myself whether, on the basis of the evidence I do accept, if I am left with a reasonable doubt. If so, I must still acquit.
- [7] In carrying out the analysis, I must consider the relevant self-defence provisions and the evidence applicable to the modernized and simplified provisions of s. 34 of the Code; that is, Mr. Cador is not guilty of aggravated assault if all three of the following self-defence conditions as set out in s. 34 are present:
- a) He believed on reasonable grounds that Mr. Lynn was using force against him or that a threat of force was being made against him (s. 34(1)(a));
 - b) He used force against Mr. Lynn to protect himself from the use or threat of force (s. 34(1)(b)); and
 - c) Mr. Cador's use of force against Mr. Lynn was reasonable in the circumstances (s. 34(1)(c)).
- [8] To summarize, if I find that there is an air of reality to Mr. Cador's defence, then the burden shifts to the Crown to disprove beyond a reasonable doubt at least one of the three required elements set out in s. 34(1). If the Crown fails to do so, Mr. Cador must be acquitted. He is not required to prove the defence just as he is not required to prove his own innocence.
- [9] If the Crown can prove beyond a reasonable doubt that Mr. Cador's defence of self-defence is not established, it still must prove beyond a reasonable doubt that Mr. Cador committed aggravated assault. I have already noted that defence concedes this last point.
- [10] I will now turn to each issue in turn.

Issue #1 - Does Mr. Cador's defence have an air of reality?

- [11] The onus rests with an accused to establish that there is evidence upon which a properly instructed jury, acting reasonably, could acquit. The air of reality standard applies to each constituent element of self-defence as set out in s. 34, and the analysis requires the trier of fact to assume the evidence relied on by the accused to be true. At this stage of the analysis, the trier of fact does not make findings of fact, weigh the evidence, or determine issues like credibility: *R. v. Cinous*, 2002 SCC 29 at para. 93, as referenced in *Big Bull* at paras. 20-21.
- [12] The evidence on this issue includes:
- a) Mr. Cador had no weapons on him;
 - b) The initial confrontation and events that followed were not instigated by Mr. Cador, but rather by Mr. Lynn, or by Mr. Lynn and the other individuals;
 - c) The video evidence depicts Mr. Cador trying to separate himself from the conflict and, in particular, from Mr. Lynn and the two other males;
 - d) Mr. Lynn introduced the hatchet;
 - e) Mr. Cador's evidence that Mr. Lynn threatened to kill him;
 - f) Mr. Lynn threw the hatchet at Mr. Cador;
 - g) Mr. Lynn and Mr. Sauls continued to pursue Mr. Cador even after Mr. Lynn threw the hatchet; and
 - h) Mr. Cador's testimony that because of Mr. Lynn's utterance to kill him, and because Mr. Lynn introduced a hatchet, he felt threatened and scared for his life.
- [13] As I am required to assume at this stage that the evidence relied upon by Mr. Cador is true, I have no difficulty concluding that Mr. Cador's defence has an air of reality.

Issue #2 - Section 34 Analysis

- [14] In *R. v. Khill*, 2021 SCC 37, the Supreme Court of Canada summarized the s. 34 inquiries as (1) the catalyst; (2) the motive; and (3) the response. I will consider each in detail.

Section 34(1)(a) - "the catalyst"

- [15] The first subsection poses the question of whether the accused believed on reasonable grounds that force was being used or threatened against them or another person. Unless the accused subjectively believed that force or a threat thereof was being used against himself or another person, the defence is unavailable.
- [16] This element of self-defence requires consideration of the accused's state of mind and his perception of the events that led him to act. Importantly, as the section stipulates, the accused's belief must be held on "reasonable grounds". As noted in *Khill* at para. 53, and quoting from *Cinous* at para. 121, the reference to reasonableness incorporates community norms and values in weighing the moral blameworthiness of the accused's actions. This test

of reasonableness is known as the modified objective standard. In other words, to determine whether Mr. Cador's belief was reasonable, I must consider whether the ordinary person with similar attributes, experiences, and circumstances would have shared that belief.

- [17] Mr. Cador subjectively believed that he was the subject of a threat. His evidence, which was not contradicted by the Crown's evidence, is that Mr. Lynn threatened to kill him. His evidence is that he saw Mr. Lynn with a hatchet as Mr. Lynn yelled the threat.
- [18] Video clip #24 shows Mr. Lynn pushing Mr. Cador, and it also shows Mr. Cador with his left arm out trying to keep a distance between himself and Mr. Lynn. Mr. Lynn held an aggressive and offensive stance, which is more readily apparent in video clip #33. In neither video does Mr. Lynn retreat. Rather, Mr. Lynn continues to confront Mr. Cador and brings out a weapon, the hatchet. Mr. Lynn then throws the hatchet at Mr. Cador by holding it in his right hand, bringing his right arm back, and throwing the hatchet forward toward Mr. Lynn.
- [19] It is objectively reasonable to conclude that Mr. Cador, who had recently arrived in town and was alone in the city, felt the threat of force in these circumstances. He was being pursued without provocation by three males that were unknown to him. He was also weaponless. He subjectively believed that the other homeless community members in the area carried weapons. Such a belief is objectively reasonable and likely held by many people in the community, and it was objectively reasonable for Mr. Cador to share the same view especially given his first-hand experience with a displaced lifestyle. Moreover, Mr. Cador's belief proved accurate. Not only did Mr. Lynn have a weapon, he had a serious weapon, a hatchet, and Mr. Cador's subjective belief that force or threat was going to be used against him also proved accurate when Mr. Lynn ultimately threw the hatchet at Mr. Cador.
- [20] In the circumstances, I conclude that Mr. Cador believed on reasonable grounds that force was being used or threatened against him. The Crown has not disproven the catalyst.

Section 34(1)(b) - "the motive"

- [21] The next subsection requires me to consider Mr. Cador's personal motive or purpose for the application of force and requires that his act of throwing the hatchet be for the purpose of defending himself or others from the threat of force: *Khill* at para. 59. This inquiry is subjective only.
- [22] The Supreme Court of Canada in *Khill* stressed that the accused's conduct is not to be assessed in discrete silos, but instead with appreciation of the full context of the confrontation, how it evolved, and the accused's role, if any, in bringing that evolution about.
- [23] Further, it is permissible for an accused's defence purpose to be layered with other emotions: *R. v. Zsombor*, 2023 BCCA 37 at para. 29.

- [24] In considering the full context of the confrontation, I have considered the events in the short time frame leading up to the confrontation. Mr. Cador's evidence was that, just prior to the hatchet incident, he was hanging out and having a cigarette at the picnic table. His evidence is consistent with the video evidence which depicts him having what appears to be a carefree and jovial conversation with another individual at the picnic table. He testified that he decided to go for a walk in the nearby park. This evidence also aligns with the video evidence. Video Clip #29 shows Mr. Cador leaving the grassy area after about 13 minutes of conversation and heading north toward Riverside Park. The same video shows Mr. Cador turning around at the crosswalk as he walks through the intersection of 1st Avenue and Lansdowne Street. While turned, he can be seen offering a friendly farewell wave to the person that he had just been talking to. His demeanor is relaxed. He shows no signs of aggression or unruliness.
- [25] Mr. Cador testified that as he walked under the underpass, he tripped and fell as he was walking past the 12-foot fences. He referenced his tall frame. He testified that when he fell into the fence his big size caused it to fall right over. He tried to pick up the fence and as he did so people began yelling and swearing at him. He continued to pick up and reset the fencing, and then walked toward downtown.
- [26] Although the fenced area was out of view of the video cameras, some of this evidence aligns with what can be seen on the video footage. The video shows Mr. Cador heading toward and under the underpass in the area of the fencing. He reappears less than two minutes later and walks eastbound up Lansdowne Street.
- [27] As he proceeded eastbound, Mr. Cador was confronted by the two individuals. Mr. Cador testified that they were yelling and pushing him, and that he just kept walking. He said he kept moving away and did not want anything to do with them. This testimony is also consistent with the video evidence.
- [28] Mr. Cador testified that one of the individuals confronting him pulled out a hatchet. He testified that the same individual was yelling that he was going to kill him. Mr. Cador testified that he was "freaked out". He said he was afraid for his life. He testified that he was nervous and paranoid.
- [29] The video clips depict these changes to Mr. Cador's demeanor. He went from having a relaxed demeanor as he left the picnic table area to one of panic and defensiveness once the confrontation began. He can be seen pushing the men away from him, changing his direction of travel, walking, and then speeding up his walk only to push the men away again when they continue to pursue him.

- [30] The video evidence makes it apparent that Mr. Cador was trying to repel the unknown males from the moment they approached him. At one point he outstretched his left arm trying to hold them at bay. It is reasonable to infer from this movement that he did not want trouble. He pushed Mr. Lynn but Mr. Lynn did not back off. In that moment, Mr. Lynn introduced the hatchet. Video clip #33 shows Mr. Cador ducking down as he runs off. It is at this point that Mr. Lynn throws the hatchet.
- [31] When the hatchet misses but remains within Mr. Cador's reach, he reaches down to pick it up. Mr. Lynn and Mr. Sauls do not stop. They both continue to chase Mr. Cador even after this moment. They get very close to him. In doing so, they continue to escalate a serious situation that is already intimidating.
- [32] When these events are looked at as a whole, and given how the entire transaction unfolded within seconds and with incredible speed, benefit of the doubt should be accorded to the accused. Mr. Cador acted to protect himself from the force or threat of force by Mr. Lynn. His overarching purpose in this unprovoked confrontation during which a hatchet was thrown at him was self-preservation. The Crown has not disproven the motive.

Section 34(1)(c) - "the response"

- [33] Given that the Crown has not proven beyond a reasonable doubt the first two parts of the self-defence test, I now turn to the question of whether the Crown has proven beyond a reasonable doubt that Mr. Cador's actions were not reasonable. The determination of reasonableness requires both a subjective and objective analysis. The key question is what would an ordinary person with Mr. Cador's attributes, experiences, and circumstances have done in his position. This analysis also requires me to consider the eight factors set out in s. 34(2).
- a) Section 34(2)(a): the nature of the force or threat:
- i. the confrontation went from a 2:1 to a 3:1 ratio which escalated in seriousness when Mr. Lynn introduced a hatchet.
 - ii. again, Mr. Cador was weaponless. He was not dressed in any kind of protective clothing. He had only an extra black jacket on his person.
 - iii. he testified that when he saw the hatchet, he feared for his life. That is a reasonable conclusion; the force of an impact with a hatchet would cause considerable damage. Moreover, Mr. Cador's evidence that Mr. Lynn was yelling and threatening to kill Mr. Cador amplified the intensity of the situation and confirmed Mr. Cador's fear.
 - iv. Mr. Lynn and Mr. Sauls ran toward Mr. Cador quickly while Mr. Lynn threw the hatchet, after Mr. Lynn threw it, and even after Mr. Cador picked it up.
 - v. in the circumstances, I conclude that the force or threat level faced by Mr. Cador was high.

- b) Section 34(2)(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:
- i. The encounter involving the introduction of the hatchet by Mr. Lynn, and the throwing of the hatchet by both Mr. Lynn and subsequently by Mr. Cador took place within a time frame of approximately nine seconds. The threat of force was present from the moment Mr. Lynn introduced the hatchet, and it was imminent from the moment Mr. Lynn threw the hatchet. The threat of force continued even after Mr. Lynn threw the hatchet by way of Mr. Lynn and Mr. Sauls' continued advance on Mr. Cador. Their continued advance did not allow the situation to de-escalate even once Mr. Cador had the hatchet in hand;
- ii. The Crown argues that the situation changed once Mr. Cador had the only weapon in hand. The Crown argues that the situation also changed when the two men backed away from Mr. Cador after he gained control of the hatchet. While the Crown acknowledges that Mr. Cador did not have a positive duty to retreat, it argues he could have chosen differently at that point; Mr. Cador could have continued running; he could have left the area; and Mr. Cador did not need to run towards Mr. Lynn. Moreover, the Crown argues that Mr. Cador did not have to direct the throw at the back of Mr. Lynn's head at a point when Mr. Lynn was already running away;
- iii. In addressing the option of retreat, the case authority confirms there is no obligation on an accused person to retreat. However, the possibility of retreat is a relevant factor when assessing the reasonableness of an accused's actions. Additionally, this factor is not to be evaluated in the abstract detached from the realities of the situation: *R. v. Lockhart*, 2024 ABKB 237 at para. 108; *R. v. Robinson*, 2019 ABQB 889 at para. 27;
- iv. In response to the Crown's argument that Mr. Cador had the only weapon at play, and while it may be that the RCMP found no other weapons at the crime scene, that is not to say that the other men who pursued Mr. Cador were, in fact, weaponless. Mr. Cador's evidence is that he believed all of the men had weapons whether he had seen them or not, and his belief proved accurate at least with respect to Mr. Lynn. On that basis, it is reasonable that he remained fearful even with the hatchet in hand.
- v. In response to the Crown's argument that Mr. Cador could have continued running, that is questionable. In assessing the realities of the situation, I refer back to video clip #24. It shows oncoming westbound traffic along Victoria Street as the scuffle moves into the middle of the street and as Mr. Cador is being chased. Two vehicles appear to slow down and do a U-turn in the middle of the street as the hatchet is thrown and as Mr. Cador picks up the hatchet. The effect is that Mr. Cador's ability to distance himself from the ongoing pursuit appears to be restricted at the very moment in which he had to decide how to respond;
- vi. Mr. Cador had to make decisions quickly, and I find his decision to respond with force was imminent as other options were not reasonably feasible.
- c) Section 34(2)(c): the person's role in the incident:

- i. This factor requires me to consider whether Mr. Cador played any part in initiating, provoking, or contributing to the confrontation. These circumstances are somewhat in dispute;
 - ii. The Crown alleges that the other male individuals including Mr. Lynn heard banging noises coming from the underpass and that they left the area to investigate the sounds. The Crown alleges they believed Mr. Cador had been interfering with the equipment and that some of the people in the area were yelling at Mr. Cador to stop touching the equipment and fencing. However, these allegations are not grounded anywhere in the evidence. Further, Mr. Cador's evidence that he inadvertently fell into the fencing was undisputed;
 - iii. Regardless, and even if Mr. Cador had been disruptive or destructive, which he was not, that would not justify Mr. Lynn and the others from interfering as they did;
 - iv. There is no evidence upon which I can conclude that Mr. Cador instigated or otherwise provoked these events. To the contrary, the evidence supports that he was doing his own thing, and not bothering any of the others involved when they approached and confronted him. He tried to repel them at least twice to no avail. Further, he had nothing to do with the introduction of the weapon.
- d) Section 34(2)(d): the use or threatened use of a weapon:
- i. Again, the evidence is undisputed that Mr. Cador was weaponless and that Mr. Lynn introduced not only a serious weapon but a hatchet of significant size;
 - ii. An ordinary person in Mr. Cador's position would have considered this a high threat of danger. Responsibility of this factor rests solely with Mr. Lynn.
- e) Section 34(2)(e): the size, age, gender, and physical capabilities of the parties to the incident:
- i. Both Mr. Cador and Mr. Lynn were 44 years of age at the time of the events. The Crown argues that Mr. Cador was taller than Mr. Lynn and admittedly athletic and physically talented. The Crown led no evidence regarding Mr. Lynn's size or capabilities. It is evident from the video clips that both men were mobile and capable of running. There was no evidence that either had physical limitations. Mr. Lynn clearly was not afraid of confrontation, and if his athletic abilities fell short of Mr. Cador's, he appeared to make up for it through his intrepidity.
- f) Section 34(2)(f) and (f.1): 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, and any history of interaction or communication between the parties to the incident.
- i. Given that the parties were not known to each other at the time, I find these factors to be neutral.

- g) Section 34(2)(g): the nature and proportionality of the person's response to the use or threat of force:
- i. This factor is what this case really turns on. The Crown argues that Mr. Cador did not act proportionately in his response to the perceived threat. Defence disagrees and argues that Mr. Cador's resort to using the weapon in the manner that he did was proportionate to the actual threat of having that same weapon thrown at him seconds earlier;
 - ii. In Lockhart at para. 129, with reference to R. v. Kong, 2005 ABCA 255 at paras. 208-210, the Court explained that a tolerant approach needs to be taken when assessing the nature and proportionality of a person's actions in self-defence (or defence of another). Lockhart also references R. v. Robinson, 2019 ABQB 889 at para. 28, which further acknowledges that individuals who perceive themselves to be in danger do not have the luxury of full deliberation and may make errors in judgment. The Court in Robinson directed that when evaluating this factor it is essential to consider the entire context taking into account both the factual circumstances and the totality of the evidence;
 - iii. The Crown argues that in the entire context of the events, Mr. Cador did have the opportunity to deliberate before he threw the hatchet back. More specifically, and as I already alluded to, the Crown submits that Mr. Cador had the opportunity to fully de-escalate the situation by removing himself from the area once he grabbed the only weapon at play, but that he chose not to;
 - iv. Defence argues that Mr. Cador was acting in the heat of the moment and could not be expected to precisely calculate the necessary degree of force or anticipate all the consequences;
 - v. In considering all the circumstances and the totality of the evidence, I have considered the unprovoked circumstances of why the confrontation occurred in the first place. The circumstances after Mr. Sauls arrived on scene unfolded very quickly. Nothing could have prepared Mr. Cador for the next nine seconds;
 - vi. The introduction of the hatchet was unexpected, and disproportionate toward anything else that may have triggered the initial confrontation;
 - vii. From out of nowhere, three men unknown to Mr. Cador chased him in hot pursuit. When his attempts to push them away did not work, he ran, and it was at that point when Mr. Lynn introduced and threw the hatchet at Mr. Cador;
 - viii. Mr. Lynn may not have thrown the hatchet with the same athletic prowess as Mr. Cador, but the video evidence confirms that he nonetheless threw it in a manner intended to cause harm. Once Mr. Lynn threw the hatchet, he did not stop. He did not turn away. Instead, he gave chase to Mr. Cador even after Mr. Cador had the hatchet in hand;
 - ix. Mr. Cador did not have the time for calm deliberation in the face of the assault and therefore could not be expected to weigh with nicety the exact measure of force that was necessary to defend himself: R. v. S.L., 2016 BCPC 0002;

- x. In consideration of the entire context of these events, viewed tolerantly, and considering the factual circumstances (many of which are not in dispute) and the totality of the evidence, I find Mr. Cador's actions in picking up the hatchet and returning an overhand throw, as Mr. Lynn had done to him, to be proportional in all the circumstances. Had Mr. Lynn's throw connected with Mr. Cador, Mr. Lynn could have easily been the person on trial. Mr. Lynn missed. Mr. Cador did not. That is what brings Mr. Cador before the court;
- xi. Mr. Cador's testimony that he continued to fear for his life even after he threw the hatchet also aligns with his evidence that he ran into a nearby restaurant immediately after the fact to seek help but nobody came to assist him so he left. He then grabbed discarded BBQ tongs from a garbage bin and kept running until he was arrested by police. This post-offence conduct aligns with his evidence that he felt an ongoing fear and continued need to defend himself even after he threw the hatchet.
- h) The last factor as set out in s. 34(2)(h) is not applicable in this case.
- [34] These circumstances are unlike any of the other cases relied upon by the Crown. Mr. Cador did not initiate the physical confrontation. He was weaponless. There was an air of reality to his defence. This was not a situation where an instigating complainant became disabled because an accused, instead of retreating, chose to apply excessive and continuing force beyond when the complainant was already physically restrained and/or disabled.
- [35] In considering all the s. 34(2) factors, I find that Mr. Cador acted reasonably in the circumstances. The Crown has not disproven the response.

Presumption of Innocence and Credibility Issues

- [36] The burden of proof rests solely with the Crown and never shifts. An accused person is not required to prove his innocence, even when he testifies.
- [37] In this case, Mr. Cador did testify in his defence, and in doing so raised issues regarding the credibility of his evidence. In particular, the Crown argues that Mr. Cador's explanations of his movements (how he positioned himself and how he threw the hatchet) do not accord with the video evidence. The Crown argues that Mr. Cador's explanations as to why he threw the hatchet were inconsistent. Additionally, the Crown points to the conflicts in Mr. Cador's evidence regarding his level of impairment. For instance, Mr. Cador testified that he had only two beers that day and no drugs, but his evidence conflicts with Cst. Boulianne's assessment of Mr. Cador on arrest.
- [38] Defence concedes that there are some issues with Mr. Cador's credibility. For instance, the defence acknowledges that Mr. Cador's testimony during cross-examination about how he threw the hatchet was inconsistent with his actions on the video.

[39] Further, I find that Mr. Cador's evidence of having only "two beers", even on an empty stomach, does not explain his oscillating and impaired-like behaviour that Cst. Boulianne described.

[40] Notwithstanding these credibility issues, the material parts of Mr. Cador's testimony are either undisputed or corroborated by the video surveillance.

Conclusion

[41] There is no dispute that Mr. Lynn suffered traumatic and irreparable injuries as a result of these events. I understand that it is because of his injuries that he was not competent to testify at this trial.

[42] I am sorry for Mr. Lynn's suffering. His life will be forever altered, but those alterations are a result of his direct involvement in the May 3, 2024 events.

[43] My role is to decide Mr. Cador's guilt or innocence based on his involvement in the events. Given the evidence that I do accept, I find myself somewhere between the first and second prong of the modified W(D) test. That is, even if I do not fully believe all the evidence of the accused, the evidence that I do accept leaves me with reasonable doubt.

[44] The Crown has not disproven self-defence beyond a reasonable doubt and, therefore, I must acquit.

"L. Bennett J."

L. BENNETT J.

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