

# Regina v. N.J.P.

"Client found not guilty in stabbing after Trial Judge accepted argument that client acted in self defence."

[COMMENTS BY RICHARD NEARY]

R. v. N.J.P.

Between  
Regina  
v.  
N.J.P.

[2007] B.C.J. No. 1498

2007 BCPC 215

Western Communities Registry No. 2585-1

British Columbia Provincial Court

(Youth Justice Court)  
Western Communities, British Columbia  
Chaperon Youth Ct. J.

Heard: January 18, 2007 (Colwood).

Oral judgment: January 18, 2007.

(29 paras.)

Criminal law — Offences — Offences against person and reputation — Assault — Weapons offences — Possession for dangerous purpose — Accused was acquitted of assault and possession of a weapon dangerous to the public peace — Accused was being held by the shirt and punched in the face when he stabbed his assailant three times in chest area and arm — Assailant required stitches — Accused suffered broken nose and required surgery — Court accepted accused's argument that he used only such force as was proportionate to assault he was trying to end — Where accused had previously been robbed and assaulted, carrying knife for protection was not a purpose dangerous to the public peace.

Criminal law — Defences — Self-defence — Accused was acquitted of assault and possession of a weapon dangerous to the public peace — Accused was being held by the shirt and punched in the face when he stabbed his assailant three times in chest area and arm — Assailant required stitches — Accused suffered broken nose and required surgery — Court accepted accused's argument that he used only such force as was proportionate to assault he was trying to end — Where accused had previously been robbed and assaulted, carrying knife for protection was not a purpose dangerous to the public peace.

Trial of accused young person, who was charged with assault and possession of a weapon for a purpose dangerous to the public peace — Accused became involved in altercation with his former friend, KB, in a mall — Accused spat blood at KB before KB left — Accused then followed KB back to school — Accused had knife on him which he carried as a form of protection, having been assaulted and robbed on several prior occasions — Upon meeting up with KB, KB ran toward accused, tackled him and began punching him — Witnesses confirmed accused was trying to avoid blows and get away, but KB was holding him by the shirt and punching his face — Accused then stabbed KB three times in chest area and arm — KB required stitches — Accused suffered broken nose, requiring surgery — Relying on s. 37 of Criminal Code, accused argued he was being assaulted, he used force only to defend himself, and force he used to do so was proportionate to assault he was trying to end — HELD: Accused was acquitted — Court was required to acquit if it accepted evidence that accused was being assaulted by KB and not doing much to defend himself — Even if Court did not accept evidence, but it raised a reasonable doubt, Court had to acquit — KB's own evidence indicated that accused did

not do much to defend himself — Merely carrying a knife for protection was not an activity prohibited by s. 88 of Code, and KB knew accused carried knife — Approaching KB with knife in hand to dissuade KB from hitting him was not a purpose dangerous to the public peace.

Statutes, Regulations and Rules Cited:

Criminal Code, s. 37, s. 88

Counsel:

Counsel for the Crown: S. Salmond.

Counsel for the Defendant: R. Neary.

1 CHAPERON YOUTH CT. J. (orally):— The accused, C., is charged with one count of assaulting K.B. with a knife and one count of possession of a weapon, that same knife, for a purpose dangerous to the public peace.

2 C. and the complainant, K.B. and one of the Crown witnesses, J.F., were all very good, indeed best, friends on May 16th, 2006. All three were 15 years old at the time.

3 In the early afternoon of May 16th the three youths were in a local shopping mall, sitting on a bench in front of a jewellery store. An argument broke out between C. and K.B. Insults were exchanged. K.B. says to C., "I should hit you for that." C. replies, "You think you can take me?" To which K.B. says, "I know I can."

4 At this point K.B. dares C. to hit him and C. then slaps at K.B.'s face with a partially closed hand. Thereafter K.B. begins punching C. He pushes him to the ground and lands up to seven blows. C.'s attempts to defend himself are ineffective and he lands no blows other than the initial slap.

5 At the end of the altercation C.'s face and his mouth and nose are bloody. The altercation only stops because an adult in the mall tells them to stop. At this point I find C. does spit blood, the blood in his mouth, at K.B., who then disowns him as a friend, and K.B. and J. leave the mall to return to school.

6 C. testified that he felt upset and hurt that he had been abandoned by both his friends and about what had happened. At this point he leaves the mall and follows K.B. and J. He testified that he wanted to know why K.B. and J. had done what they had done, namely why K.B. had assaulted him and why K.B. and J. had both left him. He testified that he felt hurt, upset and abandoned by both his friends.

7 From some distance away he sees the two ahead. He yells at them to "get back here". At this point C. has a knife in his hand. The evidence of K.B. and J., as well as that of C., was that C. often carried a knife for protection since he had been assaulted and robbed on a number of occasions prior to this.

8 K. B. and J. say they did not see any knife in C.'s hand. C. said he had it out and visible so he could talk to K.B. without getting beaten up again.

9 C. continued walking towards K.B. and J. K.B. says to C., "Do you really want to do this, C.?" C. says nothing; he continues walking towards K.B. and J.

10 K.B. throws down his hat and his bag and sprints toward C. He hits C. at least twice and pushes him against the fence. The evidence of all the witnesses is not consistent about how many blows K.B. struck, but there were at least two, possibly as many as four or five.

11 At this point C. brandishes the knife and stabs K.B. three times in the chest area and arm. K.B., feeling the knife wounds, stops hitting C.

12 By now other students in the area are starting to take note of what is happening. Four of them were called as Crown witnesses. Of the four, the witnesses K. and M., were the most useful. Both described how K.B. was the one doing the punching and that the other kid, C., was trying to avoid the blows, get away.

13 K. described K.B. as holding C. by the shirt and punching his face. M. described C. as just trying to protect himself and as the one who was getting the worst of it.

14 I note that M.'s evidence, from his own memory at the time of trial, was not that clear. But upon the defence lawyer producing his statement, given a mere handful of hours after the assault, he agreed that indeed C. was the one getting the worst of it in this altercation.

15 Neither of the witnesses saw C. hit K.B. Both described K.B.'s reaction after he had been stabbed as surprise that he had been stabbed. Neither witness saw the knife.

16 After the altercation ends, the witnesses describe K.B. as taking off his shirt, wrapping his friend J.'s shirt around his arm, and C. as walking or backing away. The witnesses had different recollections of how C. left.

17 Someone calls 9-1-1, a teacher on a nearby playing field takes K.B. to the school office to wait for the ambulance, which takes him to hospital where his wounds require stitches to close. C. has suffered a broken nose and he will also require medical attention and eventually surgery for this.

18 C. walks to another part of the school grounds, throws the knife under a bush and waits for police. When they arrive he shows them where the knife is.

19 C. says that s. 37 of the Criminal Code applies here and that he was being assaulted by K.B. and used force only to defend himself and that the force he used to do so was proportionate to the assault he was trying to end. He says the knife he was carrying was for his protection only and not for any dangerous purpose.

20 Section 37 can apply to an accused, even one who has provoked an assault. Its only elements are that an accused used force to defend himself that was not disproportionate to the assault he himself was facing. It is not up to the accused to prove self-defence. Rather, once the defence has been raised in the evidence, it is up to the Crown to prove that the defence should not succeed.

21 If I accept the evidence which supports the defence of self-defence, this being principally the evidence of C. himself and that of K. and M., that C. was being assaulted by K.B. and not doing much to defend himself, I must acquit. Even if I do not accept the evidence, but it raises in my mind a reasonable doubt about the defence, I must acquit.

22 In my view, however, it is not only the evidence of C., K. and M. which tends to support this defence, but also that of K.B. and J. Both J. and K.B. describe K.B.'s behaviour during both incidents in a similar way, that he really does not do much to defend himself either time beyond some ineffectual pats.

23 K.B. denies seeing the knife before he hits C. C. insists he should have seen it; he saw it, and even commented, "What are you going to do, stab me?"

24 Whether or not K.B. did see the knife or not is irrelevant to my finding that when C. used it, he used it to stop K.B.'s assault. Even if I disbelieved C.'s evidence, there is sufficient other evidence to raise the requisite reasonable doubt which must be resolved in C.'s favour.

25 I accept that C., in approaching K.B. at the skateboard park, was angry and upset, but also I accept that he was hurt that his friends had treated him badly, as he saw it. As odd as it might seem to an adult, I believed him when he said he wanted to talk to them, to ask why this had happened, why they had left him, why K.B. had assaulted him.

26 Regarding Count number 2, after R. v. Sulland, [1982] B.C.J. No. 2125, it is clear that merely carrying a knife for protection is not an activity prohibited by s. 88 of the Code. C. had been assaulted and robbed on several occasions prior to May 16th and and subsequently had taken to carrying a knife to protect himself. K.B. knew it. J. knew it.

27 The Crown says that by approaching K.B. with the knife in his hand in order to dissuade K.B. from hitting him, that the knife that he had then became something that was carried for a purpose dangerous to the public peace. I do not agree. I accept that C. carried the knife to dissuade K.B. from assaulting him.

28 There will be an acquittal on both Count number 1 and Count number 2.

29 MR. NEARY: Thank you, Your Honour.

(REASONS FOR JUDGMENT CONCLUDED)