

IN THE COURT OF APPEAL OF MANITOBA

Coram: Mr. Justice Michel A. Monnin
Mr. Justice William J. Burnett
Madam Justice Jennifer A. Pfuetzner

BETWEEN:

<i>HER MAJESTY THE QUEEN</i>)	<i>B. F. Greenberg</i>
)	<i>for the Appellant</i>
)	
<i>Respondent</i>)	
)	<i>J. W. Avey</i>
<i>- and -</i>)	<i>for the Respondent</i>
)	
<i>C. D. J. M.</i>)	<i>Appeal heard and</i>
)	<i>Decision pronounced:</i>
<i>(Young Person) Appellant</i>)	<i>May 1, 2019</i>

NOTICE OF RESTRICTION ON PUBLICATION: No one may publish any information that could identify a person as having been dealt with under the Youth Criminal Justice Act (see section 110(1)).

BURNETT JA (for the Court):

[1] The young person appeals his convictions for aggravated assault, possession of a weapon (a machete) for a dangerous purpose and carrying a concealed weapon.

[2] He was sentenced to two years’ supervised probation on each count, to be served concurrently. There is no sentence appeal.

[3] The charges arose in the context of a brawl on the front steps of a Winnipeg school. During the course of the altercation, the young person took

a machete from his backpack and struck the victim, causing a laceration to his arm requiring 22 stitches.

[4] The Crown conceded that force had been used against the young person and that the force used by the young person was in response to the force used against him. The sole issue for the trial judge was whether the force used by the young person was reasonable in the circumstances.

[5] The young person raises three issues on appeal, specifically that the trial judge failed to consider the evidence in totality, that he misapprehended material evidence, and that he erred in his decision regarding self-defence.

[6] We are all of the view that there is no basis for appellate intervention.

[7] The Crown correctly observes that it was unnecessary for the trial judge to review each piece of witness testimony that accorded with or diverged from the evidence which he did accept.

[8] We are not persuaded that the trial judge failed to consider all of the evidence, that he misapprehended the evidence, or that he erred in his decision regarding self-defence. His finding that the young person “used force more than necessary at a time where he could have stepped away and avoided the aggravated assault” was fully supported by the evidence.

[9] In our view, the conviction for aggravated assault was clearly one that a properly instructed jury, acting reasonably, could have rendered.

[10] The appeal is therefore dismissed.

Burnett JA

Monnin JA

Pfuetzner JA
