



CASE 3

R. v. Jimmy

[2003] SKPC 112, Information No. 30983797
Saskatchewan Provincial Court

■ Introduction

When is a knife not a knife but a dangerous weapon? Is it legal to carry a knife to protect yourself? The accused, Mr. Jimmy, was charged with carrying a weapon for a purpose that was dangerous to the public peace. He carried a knife to protect himself because he felt threatened by a gang. Mr. Jimmy had not used the knife to injure anyone and the Crown had no way of knowing whether he would ever actually use the knife if confronted by an attacker. Was Mr. Jimmy guilty of anything other than being afraid?

MR SUBJECTIVE
INTENT
WRT
PURPOSE &
USE

■ Facts

When the police were called to investigate a reported disturbance in an apartment building they came across the accused, Mr. Jimmy, and a companion in the building. The accused was carrying a 12-pack of beer and an open bottle of vodka in his left hand but appeared to the police to be concealing his right side and hand. As they approached the two men, the police heard a noise that sounded like something being dropped and noticed a large knife on the floor next to the accused's right foot. When asked by the police why he was carrying the knife Mr. Jimmy responded that he was carrying it to protect himself from a gang that was after him. The police charged Mr. Jimmy with carrying a weapon for a purpose dangerous to the public peace, contrary to Section 88 of the *Criminal Code*.

trigger of
SD (subjective)

■ Issues

1. Was the knife a weapon?
2. Was the knife's intended use for a purpose that was dangerous to the public?
purpose of possession

■ Held

Not guilty.

■ Judicial Reasoning

Section 2 of the *Criminal Code* defines "weapon" as follows:

"Weapon" means any thing used, designed to be used or intended for use

- (a) in causing death or injury to a person, or
 - (b) for the purpose of threatening or intimidating any person,
- and, without restricting the generality of the foregoing, includes a firearm

The offence of carrying a weapon is set out in Section 88(1):

Knowledge/intent/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.

There is no reason to doubt Mr. Jimmy's explanation that he was carrying the knife for self-protection. A person caught with a knife, however, is not required to provide a lawful

implied
in SD

excuse for carrying the knife. The ^①onus is always on the Crown to prove, first, that the knife was a weapon and second, that it was ^②possessed for a purpose dangerous to the public peace.

The first issue is whether the knife was a weapon. The answer always depends on the alleged weapon's intended use. A knife is a utilitarian instrument not designed for use as a weapon. The surrounding circumstances of the possession of the knife must always be considered. For example, in the case of a young woman who carried a filleting knife in her sock while in a restaurant in downtown Regina, the court could draw no other reasonable conclusion but that she intended to use it as a weapon, since the circumstances were so far removed from the knife's primary purposes of filleting and skinning fish. Certainly the accused's explanation for carrying the knife is also a relevant consideration. Mr. Jimmy was not carrying the knife for a peaceful, utilitarian purpose—such as slicing bread—but for self-protection.

The question remains, whether a knife becomes a weapon under Section 2 of the Code when it is intended for self-protection rather than to attack someone. The dictionary definition of "weapon" does include the use of an instrument where the intention is defensive. The definition in Section 2 of the Code includes use of an instrument to threaten or intimidate a person. A person acting in self-defence may produce a knife with the intent of threatening or intimidating the attacker. However, acting in self-defence may be lawful if the intent is innocent. The court can only speculate as to Mr. Jimmy's intended use of the knife in the event he was actually confronted by the gang, i.e., whether he intended to use it to inflict injury or merely to intimidate. On the very limited evidence in this case it is impossible to conclude that Mr. Jimmy's intent was not innocent and the court is unable to conclude therefore that the knife was a weapon.

Having ruled that it has not been proven that the knife was a weapon, it is unnecessary to consider the second issue: whether it was possessed for a purpose dangerous to the public peace. Nevertheless, the court should discuss this issue in case it is mistaken in its ruling on the first issue. Other courts have held that Section 88 does not prohibit possession of a knife for purposes of self-defence. For example, in *R. v. Sulland* (1982), 2 C.C.C. (3d) 68, the British Columbia Court of Appeal stated at pp. 71-72:

... one does not commit the offence with which we are concerned if one carries a weapon for self-defence that is an appropriate instrument with which to repel, in a lawful manner, the type of attack reasonably apprehended and the person carrying it is ... likely to use it responsibly. In the absence of other circumstances, such as conduct calculated to provoke an ^{vs} attack, the purpose is unlikely to be dangerous to the public peace. That an attacker might be repelled forcefully, and even injured, is not a danger that the section refers to. In that case the attack, not the response to it, breaches the public peace.

It might be unwise to defend yourself or even prepare to defend yourself. The presence of a weapon might result in greater injury. In the secure surroundings of a courthouse we might think it better that people be beaten or raped than that they, or their assailant be injured with a weapon. But those who must walk unsafe streets ... might feel quite differently. They might not be prepared to accept a beating. Some might choose to defend themselves, and they might carry something with which to defend themselves. A woman might have a hat-pin and no hat. Is she, without more, guilty of this crime? Surely not.

On the basis of the very limited evidence of Mr. Jimmy's intention and the understanding that Section 88 does not prohibit carrying a knife for self-defence, the court concludes that he was not in possession of the knife for a purpose dangerous to the public peace.

RATIO

offensive vs.
defensive
INTENTION

KNIFE NOT
WEAPON

NOT NECESSARY
TO CONSIDER
② if ① not
proven

a response to
an attack is
not a danger
referred to
in s. 88