



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?

■ 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*.

■ Issues

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

■ 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):

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

excuse for carrying the knife. The onus is always on the Crown to prove, first, that the knife was a weapon and second, that it was possessed 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 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.

■ Questions and Activities

Knowledge/Understanding

1. (a) According to S. 2 of the *Criminal Code* what must be proven in order for the knife to be deemed a *weapon*?
 - (b) Does the offence with which Mr. Jimmy was charged (Section 88(1) of the *Criminal Code*, carrying a weapon for a purpose dangerous to the public peace) require either specific or general *mens rea* (intent)? Explain.
 - (c) Is self-defence considered a lawful excuse for carrying a knife under Section 88 of the *Criminal Code*?
 - (d) Suggest types of evidence the Crown might introduce to show that the knife is a weapon under Section 2 of the *Criminal Code*.
2. Why was it not necessary for the Crown to prove that Mr. Jimmy concealed the knife? What evidence existed that, in fact, he may have attempted to conceal it?

Thinking/Inquiry

1. (a) Interpret and explain the underlying message conveyed in *R. v. Sulland* (1982) regarding the legal policy on concealed weapons.
- (b) Compare the policy viewpoint expressed in *Sulland* with that of the Supreme Court of Canada in *R. v. Felawka* (1993), in which Justice Cory, for the majority, wrote:

All Canadians have the right to feel protected from the sinister menace of a concealed weapon. If it was ever thought that it was lawful to carry a concealed weapon more and more Canadians might come to believe it would be prudent for them to carry concealed weapons in order to defend themselves and their families. This might lead to a vigilante attitude that could all too readily result in an increase in violence in Canadian society.

- (c) In a 1-page essay defend the viewpoint that you consider to be the better one.
2. The Vancouver School Board adopted a policy entitled *Dangerous Weapons in the School*, which states in part:

A weapon is anything that is commonly used or designed to hurt someone or to put someone in fear. The policy of the Board of Trustees thus concurs with the definition of weapon in the *Criminal Code* of Canada, s.2....

Students (and parents) should be advised that weapons of any kind are prohibited on school premises, and students who are found with knives or other dangerous objects on their person or in their lockers will be subject to severe disciplinary action. As well, carrying a concealed weapon is contrary to the *Criminal Code* of Canada. Anyone convicted of such a charge is liable to imprisonment.

(Source: <http://www.vsb.bc.ca/board/policies/j/jfcdangerweapons.htm> Retrieved 15 March 2004.)

- (a) Does the Board's definition of a weapon in fact "concur" with Section 2 of the *Criminal Code* as claimed? Explain why or why not.
- (b) Outline some of the advantages and disadvantages of adopting such a Board policy.
- (c) Would a student who carried a replica toy gun in a knapsack at school be subject to discipline under the Board policy? To charges under the *Criminal Code*? Explain your answers.

Application

1. In considering whether a weapon is used for offensive or defensive purposes, *R. v. Nelson* (1972) articulated a series of guidelines: (a) nature of the weapon (b) circumstances under which the accused had it in his possession (c) his own explanation for that possession (d) how he actually used it.

(Source: *Regina v. Sulland* at <http://www.tamerlane.ca/library/cases/firearms/sulland.htm>. Retrieved 15 March, 2004.)

Read and analyze each of the following cases. Determine whether the accused would be guilty under Section 88 or any other section of the *Criminal Code* relating to weapons.

- (a) Alana was stopped by airport security after the “walk-through weapons detector” went off. A pair of hair scissors was found inside a thermos bottle in her carry-on case.
- (b) Harvey was stopped by a police officer at a bus stop on the way to his parents’ home when it appeared that he was concealing something under his jacket. When asked what he had, he showed the officer a partially empty beer can. Upon fully opening his jacket, the officer observed a knife in a small leather case that hung partway below the bottom of Harvey’s jacket. He said that he had used the knife earlier at work “to cut hose,” and it made him feel more secure at night in the event he “was attacked.”
- (c) Wayne, the accused, and his friend Elaine, had attended a paintball shooting event. They had taken a bus to return home. When Wayne got on the bus, the end of his paintball rifle, similar in appearance to a .22 calibre rifle, was observed wrapped in his jacket. Alarmed by what they saw, several passengers informed the bus driver, who immediately stopped his vehicle and inquired about the rifle. Wayne jokingly replied that he was going on a “killing spree.” The bus driver seized the paintball rifle and called the police, whereupon Wayne was arrested and charged.

Communication

1. Examine the definitions in Section 84 of the *Criminal Code*.
 - (a) Construct a graphic organizer to distinguish between (i) a *prohibited weapon* (ii) a *prohibited device* and, (iii) a *restricted weapon*.
 - (b) Determine where each of the following weapons would fall within one of the classifications listed in the *Code*. Place each on your organizer: switchblade, sawed-off shotgun, silencer, pellet gun, crossbow, revolver, antique firearm, starter pistol, tranquilizer gun, machine gun, ammunition clip, brass knuckles. Indicate any penalties associated with the possession of each.
2. Research one of the following cases involving the use of a weapon:
 - (a) Write a case brief outlining facts, issue(s), decision, and reasons.
 - (b) Outline in what respects it is factually and legally similar to or different from *R. v. Jimmy*.

Regina v. Blondell (1972): <http://www.tamerlane.ca/library/cases/firearms/blondell.htm>.
Regina v. Sulland (1982): <http://www.tamerlane.ca/library/cases/firearms/sulland.htm>.
Regina v. Archer (1983): <http://www.tamerlane.ca/library/cases/firearms/archer.htm>.
Regina v. Felawka (1993): http://www.lexum.umontreal.ca/csc-scc/en/pub/1993/vol4/html/1993scr4_0199.html. Retrieved 15 March 2004.
Regina v. Seguin (1994): www.tamerlane.ca/library/cases/firearms/seguin.htm.