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**Court of Appeal for Saskatchewan**

**Citation: *R v Maurer*, 2024 SKCA 20**

**Docket: CACR3699**

**Date: 2024-02-28**

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Between:

**Joel K. Maurer**

*Appellant*

And

**His Majesty the King**

*Respondent*

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Before: Caldwell, Schwann and Drennan JJ.A.

Disposition: Appeal dismissed

Written reasons by: The Honourable Mr. Justice Caldwell  
In concurrence: The Honourable Madam Justice Schwann  
The Honourable Madam Justice Drennan

On appeal from: Provincial Court (Sask), Regina  
Appeal heard: January 24, 2024

Counsel: Joel K. Maurer for himself  
Andrew Davis for the Respondent

## **Caldwell J.A.**

### **I. OVERVIEW**

[1] Joel K. Maurer has appealed against convictions that were entered after a trial in Provincial Court on charges that he resisted arrest (*Criminal Code*, s. 129(a)), wounded a law enforcement animal (s. 445.01(1)) and carried concealed weapons (s. 90). In the appeal hearing, Mr. Maurer confirmed that he has served the sentences imposed for the offences related to his arrest and that he has abandoned his appeal against those sentences.

[2] Mr. Maurer's appeal against his convictions on the arrest-related offences must be dismissed because there is no error in the trial judge's conclusion that his arrest was lawful. Mr. Maurer was not entitled to resist his arrest or to stab a police dog when doing so.

### **II. BACKGROUND**

[3] The Regina Police Service [RPS] received a complaint and other information implicating Mr. Maurer in a sexual assault. A police officer contacted him, ostensibly seeking an interview about the sexual assault allegation, and Mr. Maurer declined to cooperate. When officers went to arrest him, he fled, causing the police to deploy a law enforcement animal to apprehend him. As the dog took Mr. Maurer to the ground, he stabbed it twice causing it serious injuries.

[4] Mr. Maurer was tried on the sexual assault charge separately from the arrest-related charges. However, the same judge presided over both trials, which were held one after the other. Mr. Maurer testified in the sexual assault trial but not in the trial of the arrest-related charges. At the trial of his arrest-related charges, Mr. Maurer conceded that he had fled from the police when they attempted to arrest him. He further agreed that he had stabbed the law enforcement animal but argued that he had done so in self-defence. Mr. Maurer asserted that his arrest and the police dog's apprehension of him constituted an assault. Mr. Maurer further submitted that the police had negligently investigated the sexual assault complaint, resulting in unreliable information about his alleged involvement in that matter. He claimed that they had no grounds to arrest him on that charge. He further argued that, since the police dog had attacked him in an unlawful arrest, he was

entitled to fight back against it. On the charge under s. 90 of the *Criminal Code*, Mr. Maurer conceded that he had carried concealed knives on his person but argued that it was lawful to do so.

[5] The trial judge rendered a single, oral decision explaining the verdicts in the two trials. He acquitted Mr. Maurer of sexual assault and convicted him of resisting arrest, wounding a law enforcement animal and carrying concealed weapons.

### III. ISSUES

[6] The bottom-line issue in this appeal is whether the trial judge erred when he found that the police were acting lawfully and in the execution of their duty when they arrested Mr. Maurer. Put in terms of questions, the appeal asks:

- (a) Did the trial judge err when he found that the police had reasonable grounds to believe that Mr. Maurer had committed an indictable offence?
- (b) Did the trial judge err when he found that the police had used reasonable force to arrest Mr. Maurer?

[7] Mr. Maurer also sought to have this Court examine an unsupported allegation that an expert witness who testified in the sexual assault trial is not credible because she is employed by the Royal Canadian Mounted Police. Other than to identify it, I cannot give effect to this argument for several reasons, not the least of which is because it is wholly unrelated to Mr. Maurer's trial and convictions on the arrest-related charges.

[8] I further note that none of the grounds of appeal directly address the conviction on the weapons charge under s. 90 of the *Criminal Code*. At trial, Mr. Maurer conceded that he had concealed a knife on his person and that he had used it to injure a law enforcement animal. He puts the soundness of the verdict on the concealed-weapon charge at issue through his assertion that he was lawfully entitled to carry a knife and, because the arrest was unlawful, to use it when defending himself against the police dog. That is, his appeal against the s. 90 offence conviction is also related to the legality of his arrest.

#### IV. ANALYSIS

[9] In advancing this appeal, Mr. Maurer addressed comprehensively, through his written and oral submissions, the two questions I have identified. In doing so, he drew upon evidence in the sexual assault trial, where he was acquitted. Mr. Maurer also asserted in the appeal and through a fresh evidence application that RPS had negligently conducted his arrest and its investigation of the sexual assault complaint. Notably, the Crown has not appealed against the acquittal on the sexual assault charge, and Mr. Maurer's allegations of legal and factual error in that trial are not before this Court. Nonetheless, I have put the best light on his submissions in this regard and taken them into account when evaluating whether the trial judge erred by convicting Mr. Maurer of the arrest-related offences.

**A. Did the trial judge err when he found that the police had reasonable grounds to believe that Mr. Maurer had committed an indictable offence?**

[10] Mr. Maurer was arrested under the authority of s. 495(1)(a) of the *Criminal Code*. That provision authorises a peace officer to arrest a person without warrant where the officer believes, on reasonable grounds, that the person has committed or is about to commit an indictable offence. In a trial, whether an arresting officer had reasonable grounds to arrest is a question of law, and, when raised in an appeal, a trial judge's determination on that question is reviewed for its correctness (*R v Tim*, 2022 SCC 12 at para 25; *R v Nolet*, 2010 SCC 24, [2010] 1 SCR 851; *R v Shepherd*, 2009 SCC 35, [2009] 2 SCR 527; *R v Santos*, 2022 SKCA 50 at para 19, 413 CCC (3d) 229; and *R v Shinkewski*, 2012 SKCA 63 at para 12, 289 CCC (3d) 145). By virtue of s. 495(3) of the *Criminal Code*, "a peace officer acting under s. 495(1) is deemed to be acting lawfully and in the execution of his duty".

[11] This Court in *R v Shinkewski* (at para 13) and in *R v Santos* (at paras 26–29) made several observations about the legal standard that must be met for an arrest to be lawful under s. 495(1)(a) of the *Criminal Code*. In straightforward terms, s. 495(1)(a) states that an arresting officer must have *reasonable grounds* to believe that a person to be arrested has or is about to commit an indictable offence. This means the officer must hold something more than a hunch or a suspicion about the commission of an indictable offence, but they do not have to believe that it is more

probable than not or beyond a reasonable doubt that an indictable offence has or is about to be committed. A peace officer must assess the reasonableness of their belief based on the information available to them before acting on the authority of s. 495(1)(a). As part of the requisite belief, the officer must identify a criminal offence and understand it to be an indictable one. The officer's belief about its probable commission by the person in question must be drawn from all reliable, incriminating and exonerating information that the circumstances reasonably permit, and the officer may disregard information that they have reason to believe may be unreliable.

[12] When reviewing an arrest made under the authority of s. 495(1)(a) of the *Criminal Code* for its lawfulness, a court, whether at trial or on appeal, must determine whether there were objectively reasonable grounds to believe at the time of arrest that the person whom the police arrested had committed or was about to commit an indictable offence. The reviewing court is not required to decide whether the available information established beyond a reasonable doubt that an offence was committed but only that there were objectively reasonable grounds to believe that one had been or was about to be committed. The court must assess the evidence available to the arresting officer cumulatively and not in a piecemeal fashion, applying the standard of reasonable grounds contextually. This requires the reviewing court to have regard for the circumstances in their entirety, viewed from the perspective of the arresting officer, to determine whether the grounds for arrest articulated by the officer justified the arrest from an objective standpoint. That is, the reviewing court determines whether the factors articulated by the officer who made the arrest could support the officer's belief that the person arrested had committed or was about to commit an indictable offence. Put yet another way, the reviewing court decides whether someone in the position of the arresting officer could have reasonably concluded that there were sufficient grounds to believe at the time of arrest that the person who was arrested had committed or was about to commit an indictable offence.

[13] In this case, there is no question that the offence of sexual assault under s. 271 of the *Criminal Code* is an indictable offence. To believe that that offence has been committed, a peace officer must have reason to believe that the elements of sexual assault have occurred. In simple explanation, those elements are an unwanted sexual touching accompanied by the intention to touch, knowing of (or being reckless about or willfully blind to) a lack of consent to the touching by the person being touched (see: *R v Ewanchuk*, [1999] 1 SCR 330 at paras 23–31). Therefore, to

lawfully arrest Mr. Maurer for the offence of sexual assault, the officers in this case had to have reasonable grounds to believe that he had intentionally touched the complainant in a sexual manner when he did not have her consent to do so.

[14] In the trial decision, after referring to the acquittal verdict in the sexual assault trial, the trial judge explained that, even though he held a reasonable doubt about whether Mr. Maurer had sexually assaulted the complainant, he concluded that the police had reasonable grounds to believe that Mr. Maurer had done so when they arrested him. Because the police had failed to secure Mr. Maurer's cooperation with their investigation prior to his arrest, the trial judge found that they were justified in arresting him.

[15] Given what was known to the police *at the time of Mr. Maurer's arrest*, I agree with the trial judge's conclusion that the arrest was lawful. In this case, the police had a specific, detailed complaint and other information, which alleged that a sexual assault had occurred and implicated Mr. Maurer in its commission. The information was that the complainant, who does not reside in Regina, did not return to her hotel, where her mother and children were staying. She said she had been drinking at a local pub and had little memory of what happened. She thought she had met Mr. Maurer at the pub. She did not know if she had been drinking with him there, but she recalled going to and drinking at his house. She stated that she woke up completely naked in his bed and realised that something sexual had occurred. She texted her mother, using Mr. Maurer's phone, writing "mama help mr [*sic*]...Me...please" and "I'm scared". She left Mr. Maurer's house for a smoke and went to a house in the neighbourhood, where she waited for someone to pick her up. As she had texted someone a pin-location for Mr. Maurer's house, her cousin attended there, spoke to Mr. Maurer and obtained his name and telephone number. The cousin told the police that Mr. Maurer said that the complainant had been there with him but had left earlier. The cousin then drove around the neighbourhood and found the complainant. The complainant was taken to a hospital for a sexual-assault examination, which revealed bruises on her legs and genitals. The police were at the hospital when the sexual-assault kit was administered.

[16] In this regard, the police had a first-hand opportunity to assess the complainant's credibility and the reliability of her allegation. On the other hand, Mr. Maurer had declined to cooperate with the investigation into the complaint. Having no reason to discount the complainant's statement or

that of her cousin, I conclude that the police had reason to believe that Mr. Maurer had committed an indictable offence.

[17] In saying this, I accept Mr. Maurer's submission in the appeal hearing that a video recording shows a man, who is not Mr. Maurer, interacting with the complainant at a local pub. I agree that, based on that video, the timeline and other evidence, the police could have inferred that the unknown man had sexually assaulted the complainant—i.e., that she might have, for one reason or another, misidentified Mr. Maurer as the person who had assaulted her. It is true that there are inferences other than Mr. Maurer's guilt to be drawn from the evidence adduced in the sexual assault trial—that is precisely the reason why the trial judge entered an acquittal in that trial.

[18] Nonetheless, the evidence in the sexual assault trial, even though it preceded the trial on the arrest-related charges, does not assist in the evaluation of the lawfulness of Mr. Maurer's arrest. That is because s. 495(1)(a) is satisfied when the police establish that the information at their disposal *at the time of arrest* was rationally capable of supporting the inference that the arrested person had committed an indictable offence. They do not have to be satisfied that it is the *only* reasonable inference to be drawn from the available information—which is to say that they do not have to dispel the reasonableness of exculpatory inferences before arresting under the authority of s. 495(1)(a) (*R v Santos* at para 29(d); *R v Gunn*, 2012 SKCA 80 at para 22, 291 CCC (3d) 265).

[19] In the context of this case, it is irrelevant that the evidence adduced in the sexual assault trial did not prove Mr. Maurer's guilt on that offence beyond a reasonable doubt. Even if the information upon which the police had grounded their belief was later—at anytime after the arrest—shown to be incomplete, inaccurate or even wholly incorrect, that occurrence could not undermine the objective reasonableness of the grounds for arrest at the time of the arrest.

[20] For these reasons, I find that the trial judge correctly determined that the police were acting lawfully and in the execution of their duty when they arrested Mr. Maurer.

**B. Did the trial judge err by finding that the police had used reasonable force when arresting Mr. Maurer?**

[21] In the course of carrying out a lawful arrest, the police are entitled to use as much force as necessary to effect their lawful purpose (*Criminal Code*, s. 25). As I understand his arguments,

Mr. Maurer complains that the police in this case were overly and unreasonably prepared, resulting in excessive force being used to effect his arrest, namely, the deployment of a law enforcement animal.

[22] In straightforward terms, when Mr. Maurer fled from the uniformed police officers who had identified themselves and advised him that he was under arrest, he gave them sufficient reason to deploy a law enforcement animal to effect his arrest. I agree with the trial judge that the force used by the police in this case was reasonable and necessary.

[23] As background to this conclusion, the police had initially contacted Mr. Maurer by telephone to ask him to turn himself in. As noted, he declined to do so. Police officers also attended at his house, but he was not home. Being unsuccessful in these attempts to speak with Mr. Maurer, the police planned to arrest him. However, they had assessed him as presenting a high arrest risk, because they knew that he possessed firearms, and they believed him to hold an animus towards law enforcement and that he had fortified his house. The police also believed that he had a history of being aggressively uncooperative when being arrested. Based on this intelligence, the police planned to arrest Mr. Maurer while he was walking to work, using multiple uniformed officers and having a law enforcement animal available, so as to contain him if he became uncooperative. In effecting their plan, uniformed police officers approached Mr. Maurer and told him that he was under arrest and instructed him to go to the ground or a police canine would be sent to apprehend him. When he attempted to flee, they deployed a law enforcement animal. Mr. Maurer escaped from the police dog by stabbing it and continued to run from the police. Officers had to physically tackle him to effect his arrest.

[24] Bluntly, it was not for Mr. Maurer to self-declare that the arrest was unlawful and to resist it. While it might seem to countermand liberty interests, if Mr. Maurer had concerns with the lawfulness of his arrest, he should have submitted to it and then disputed its lawfulness. If it came to it, he could have sought an appropriate remedy, civil or criminal, under the *Charter*. Although he disputed its lawfulness, Mr. Maurer was obliged to submit to the arrest—his personal belief that it was unlawful did not entitle him to resist arrest.

[25] All told, regardless of whether the intelligence upon which the police had planned the arrest was accurate (and the fresh evidence establishes that some of it was not), Mr. Maurer's actions



during the arrest manifested a risk that gave the police sufficient reason to deploy a law enforcement animal to apprehend him in the lawful execution of their duty. Importantly, the police utilised the dog only after Mr. Maurer had resisted his arrest by fleeing. At bottom, I am unable to conclude that the trial judge erred when he found that the force exerted by the police was reasonably necessary to effect Mr. Maurer’s lawful arrest.

## V. CONCLUSION

[26] In summary, the police had reasonable grounds to believe that Mr. Maurer had committed an indictable offence, which justified his arrest without a warrant. They were lawfully entitled to use the force necessary to carry out his arrest, and Mr. Maurer’s flight from police officers gave them a reason to deploy a law enforcement animal to effect his lawful arrest. Mr. Maurer was, therefore, properly convicted of resisting arrest, injuring a law enforcement animal and carrying concealed weapons.

[27] I would dismiss this appeal.

“Caldwell J.A.”

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Caldwell J.A.

I concur.

“Schwann J.A.”

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Schwann J.A.

I concur.

“Drennan J.A.”

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Drennan J.A.