Court of Appeal for Saskatchewan **Citation: *R v Merasty*, 2025 SKCA 109**

Docket: CACR3794 **Date: 2025-10-31**

Between:

His Majesty the King

Appellant

And

Daniel Tracey Merasty

Respondent

Before:	Tholl, Bardai and Kilback JJ.A.
Disposition:	Appeal allowed
Written reasons by:	The Honourable Justice Naheed Bardai
In concurrence:	The Honourable Justice Jerome A. Tholl The Honourable Justice Keith D. Kilback
On appeal from:	Provincial Court (Sask), Prince Albert
Appeal heard:	September 17, 2025
Counsel:	Aaron Fritzler for the Appellant Estelle Hjertaas for the Respondent

Bardai J.A.

I. OVERVIEW

[1] Daniel Merasty came before the Provincial Court on a charge of robbery. Following a trial, the trial judge found Mr. Merasty guilty of common assault (*R v Merasty* (17 May 2024) (Sask Prov Ct)). The Crown appeals from the acquittal of the lesser included offence of assault causing bodily harm.

[2] For the reasons that follow, I find that the trial judge erred in his application of the definition of bodily harm to the facts. Accordingly, I would allow the appeal, vacate the conviction for assault, substitute a conviction for assault causing bodily harm, and remit the matter back to the trial judge for sentencing.

II. BACKGROUND

[3] The core facts were not in dispute. On June 6, 2023, Bobby Paul was riding a bicycle near the West Flat neighbourhood in Prince Albert when he came upon Mr. Merasty and another individual who were both on foot. After a brief discussion, Mr. Merasty asked Mr. Paul where he had gotten the bike. Before Mr. Paul could answer, Mr. Merasty punched or struck Mr. Paul, knocking him out. Mr. Paul fell to the ground at which point Mr. Merasty went through Mr. Paul's pockets and left with the bicycle. He was arrested shortly thereafter following a brief pursuit.

[4] The police officers who attended to Mr. Paul at the scene found him unconscious, confused and dizzy, with a one-inch laceration on the top right side of his head. Photographs taken at the hospital showed Mr. Paul's face covered in dried blood and his head wrapped in gauze.

[5] Mr. Merasty testified at trial that the bike was his. He admitted to striking Mr. Paul but said he did not expect to knock Mr. Paul out and that he was only defending his property. Mr. Paul did not testify at the trial.

[6] The Crown conceded that the bicycle had belonged to Mr. Merasty at some point, so the allegation of robbery had not been proven beyond a reasonable doubt. However, it argued that the

lesser included offences of common assault, assault causing bodily harm, and aggravated assault had been proven.

[7] The defence argued that Mr. Paul's physical condition prior to the altercation had not been established and accordingly, it had not been proven that the injuries described by police witnesses were caused by Mr. Merasty's single strike.

[8] The trial judge convicted Mr. Merasty of common assault but not of the more serious offences of aggravated assault or assault causing bodily harm. On that point, the trial judge found as follows:

> The evidence of the force used and the absence of evidence that Mr. Paul was injured prior to his interaction with Mr. Merasty convinces me that Mr. Merasty's actions were a significant contributing cause to the injury.
>
> Constable Burns described the injury as a one-inch laceration to the right top side of Mr. Paul's head. To be transient or trifling in nature suggest a very short period of time of an injury of a very minor degree, which results in a very minor degree of distress.
>
> I am mindful that the police found Mr. Paul to be unconscious when he was found on the ground. When he was observed at the hospital sometime later, he was conscious and pictures were taken of his condition. However, when it comes to whether this injury rises to the standard of bodily harm, I have no evidence as to how the injury suffered by Mr. Paul affected either his health or comfort beyond what is considered transient or trifling.
>
> I am mindful that Mr. Paul is injured and I saw pictures to that effect when gauze or some material was wrapped around his head and blood had stained his face.
>
> However, without further evidence as to how his health or comfort was affected, I am unable to determine or infer whether the injury he suffered equated to bodily harm according to Section 2. As such, I cannot find Mr. Merasty guilty of assault causing bodily harm beyond a reasonable doubt.

III. ANALYSIS

[9] The right of appeal and standard of review are not in dispute. Section 676(1)(a) of the *Criminal Code* provides:

> **Right of Attorney General to appeal**
> **676**(1) The Attorney General or counsel instructed by him for the purpose may appeal to the court of appeal
>
> > (a) against a judgment or verdict of acquittal or a verdict of not criminally responsible on account of mental disorder of a trial court in proceedings by indictment on any ground of appeal that involves a question of law alone;

[10] At issue in this appeal is whether the trial judge erred in concluding that the offence of assault causing bodily harm had not been proven beyond a reasonable doubt based on the facts he found. As the resolution of this issue turns on the legal effect of factual findings, it gives rise to a question of law that is reviewable for correctness. See *R v Dixon* (1988), 42 CCC (3d) 318 (BCCA); *R v Garrett*, 1995 ABCA 281, 169 AR 394; *R v McCraw*, [1991] 3 SCR 72; *R v B.(G.)*, [1990] 2 SCR 57; and *R v Shepherd*, 2009 SCC 35, [2009] 2 SCR 527.

[11] In order for this Court to intervene and allow the appeal, the Crown must satisfy the Court that the trial judge erred in law and that the error had a material bearing on the acquittal (*R v Graveline*, 2006 SCC 16 at para 14, [2006] 1 SCR 609).

[12] The parties agree that both assault and assault causing bodily harm, are lesser offences included in the robbery charge that Mr. Merasty faced at trial, as it had been drafted. Section 265(1)(a) defines an assault as:

> **Assault**
> **265(1)** A person commits an assault when
>
> (a) without the consent of another person, he applies force intentionally to that other person, directly or indirectly;

[13] Bodily harm is not required for an assault to be established. As noted in *R v Cuerrier*, [1998] 2 SCR 371 at para 10, "Force", within the meaning of s. 265(1)(a), "can include any touching, no matter the degree of strength or power applied, and therefore is not only those physical acts designed to maim or cause injury". See also *R v Burden* (1981), 64 CCC (2d) 68 (BCCA) at para 18; *R v Ewanchuk*, [1999] 1 SCR 330 at para 28.

[14] An assault can occur even where there is no lasting injury or even when a trivial injury is inflicted. However, in order to be guilty of the more serious offence under s. 267(b), the Crown must prove that the accused's assault caused bodily harm to the victim. In that respect, s. 267(b) provides:

> **Assault with a weapon or causing bodily harm**
> **267** Every person is guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years or is guilty of an offence punishable on summary conviction who, in committing an assault.
>
> (b) causes bodily harm to the complainant.

[15] To explain why the facts found by the trial judge established bodily harm at law, and why he erred in law by not convicting Mr. Merasty of that offence, it is helpful to consider (a) what constitutes bodily harm within the meaning of the *Criminal Code*; and (b) what evidentiary threshold is required to prove bodily harm.

[16] Section 2 of the *Criminal Code* defines bodily harm as:

> ***bodily harm*** means any hurt or injury to a person that interferes with the health or comfort of the person and that is more than merely transient or trifling in nature;

[17] In *R v Androsoff*, 2023 SKCA 42, 424 CCC (3d) 475, this Court provided guidance on the threshold that must be met to satisfy the definition of bodily harm:

> [41] … bodily harm in s. 267(b) is defined as meaning "any hurt or injury to a person that interferes with the health or comfort of the person and that is more than merely transient or trifling in nature" (*Criminal Code*, s. 2). As the Crown observes, this definition sets a low threshold for a finding that a person has suffered bodily harm (see *R v Bulldog*, 2015 ABCA 251 at para 44, 326 CCC (3d) 385, and *R v Dixon* (1988), 1988 CanLII 2824 (BC CA), 42 CCC (3d) 318 (BCCA) at 332). Put differently, there is a great range of possible bodily harms because, by definition, the term excludes only transient and trifling injuries (see *R v Gejdos*, 2017 ABCA 227, 351 CCC (3d) 460; *R v Saulis*, 2020 NBCA 36; and *R v A.(J.)*, 2010 ONCA 226 at para 106, 253 CCC (3d) 153).

[18] In *R v Bulldog*, 2015 ABCA 251, [2015] 12 WWR 140, the Alberta Court of Appeal also considered the "bodily harm" threshold, finding:

> [44] Section 2's definition of "bodily harm" states a low threshold: *R v Dorscheid*, 1994 ABCA 18 at para 11, [1994] AJ No 56 (CA). It means something more than "a very short time period and an injury of very minor degree which results in a very minor degree of distress": *R v Dixon* (1988), 1988 CanLII 2824 (BC CA), 42 CCC (3d) 318 at 332, [1988] 5 WWR 577 (Esson JA, as he then was, concurring). Not surprisingly, then, indisputably minor injuries have been found to constitute "bodily harm": *R v Rabieifar*, [2003] OJ No 3833 (QL) (CA) (scratches and abrasions of less than one inch on the complainant's body, and some bruising and swelling on her face, thigh and hand); *R v CK*, 2001 BCCA 379 at para 3, [2001] BCJ No 1119 (QL) (small bruise on the complainant's right calf, a small anal tear, and a deviated septum that resulted in some bruising and swelling, all of which was said by a physician to be "not serious and … expected to resolve itself within a few days"); *R v Moquin*, 2010 MBCA 22 at paras 32-33, 251 Man R (2d) 160 (several bruises lasting 11 days, a sore hand and a sore throat); and *Dorscheid* (scrapes, lacerations and bruises).

[19] The case law demonstrates that the low bar of bodily harm can be cleared where a complainant suffers:

(a) scrapes, lacerations, bruising and the pulling out of hair. See: *R v Dorscheid*, 1994 ABCA 18;

(b) superficial bruising and abrasions. See: *R v Rabieifar*, 2003 CanLII 22353 (Ont CA);

(c) a sore neck and injuries that clear up in a week. *R v Giroux*, 1995 ABCA 393;

(d) a series of small injuries, each of which may be described as trifling but together amount to bodily harm. See: *R v Moquin*, 2010 MBCA 22, 253 CCC (3d) 96; and

(e) fainting as a result of being forced to stand under cold water. See: *R v A.N.*, 2015 QCCA 1109.

[20] Mr. Merasty submits that, in this case, the limited evidence before the trial judge concerning the injuries suffered by Mr. Paul clearly did not amount to bodily harm. He contends the Crown failed to prove beyond a reasonable doubt that the harm to Mr. Paul interfered with his health or comfort and that the injuries sustained were more than merely transient or trifling in nature.

[21] The difficulty I have with Mr. Merasty's argument is that Mr. Paul suffered an injury that was obviously more than trifling based on uncontroverted evidence. He was knocked unconscious and left dizzy and confused. The trial judge accepted as fact that, before the assault, Mr. Paul was conscious and that after the assault he was not. The trial judge also found that Mr. Merasty's assault had caused a one-inch laceration to Mr. Paul's face that resulted in significant bleeding, and that these consequences had arisen from what the trial judge described as a "a fairly powerful punch".

[22] Testimony from Mr. Paul's treating physician was not required to establish that Mr. Paul had suffered bodily harm, because the evidence accepted by the Court proved that Mr. Paul was knocked out and left with a cut that caused significant bleeding. It does not take the testimony of a person with medical training to describe a bruise, a cut, or that someone was found unconscious. It does not take evidence from a medical expert, or even the complainant, to conclude that these injuries affected the health and comfort of Mr. Paul and were more than trifling in nature. Bodily harm can be inferred from the nature of the injuries sustained which, in this case, were proven beyond a reasonable doubt by the evidence.

[23] Simply put, expert evidence or medical evidence is not required before making a finding of bodily harm. See *Giroux* at para 3; *R v Douglas*, 2020 SKQB 155 at paras 16–17, 64 MVR (7th) 62; and *R v Stonechild*, 2016 SKQB 130 at paras 29 and 32.

[24] The trial judge accepted that Mr. Merasty's actions were a significant contributing cause to Mr. Paul's injuries and that he was knocked unconscious and left with a one-inch laceration resulting in bleeding that stained his face. As a matter of law, these factual findings met the legal standard of bodily harm.

[25] The trial judge therefore erred in failing to find Mr. Merasty guilty of assault causing bodily harm given the facts he accepted as having been proven. The defence concedes that if the trial judge erred, such an error had a material bearing on the acquittal.

[26] Having determined that the trial judge erred, the question becomes one of remedy. In these situations, this Court's power is set out in s. 686(4) of the *Criminal Code*, which provides:

> **Appeal from acquittal**
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> **686**(4) If an appeal is from an acquittal or verdict that the appellant or respondent was unfit to stand trial or not criminally responsible on account of mental disorder, the court of appeal may
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> (a) dismiss the appeal; or
>
> (b) allow the appeal, set aside the verdict and
>
> (i) order a new trial, or
>
> (ii) except where the verdict is that of a court composed of a judge and jury, enter a verdict of guilty with respect to the offence of which, in its opinion, the accused should have been found guilty but for the error in law, and pass a sentence that is warranted in law, or remit the matter to the trial court and direct the trial court to impose a sentence that is warranted in law.

[27] The parties are on common ground that should this Court find that the offence of assault causing bodily harm was proven on the facts found by the trial judge, a conviction should be entered for that offence, and the matter should be remitted to the trial judge for the purposes of sentencing. Mr. Merasty was not present at the appeal hearing and his counsel asked that he be present for any sentencing submissions, noting that it is much easier for Mr. Merasty to attend court closer to his home community. For its part, the Crown indicated that it may be necessary to re-weigh the evidence, file a victim impact statement and determine if notice of a potential lifetime

firearms ban was served on the defence, all within the context of a sentencing hearing. These arguments weigh in favour of remitting the matter to the trial judge for sentencing.

IV. CONCLUSION

[28] In the end result, I would allow the appeal, vacate the conviction for assault, substitute a conviction for assault causing bodily harm, and remit the matter back to the trial judge for sentencing.

"Bardai J.A."

Bardai J.A.

I concur. "Tholl J.A."

Tholl J.A.

I concur. "Kilback J.A."

Kilback J.A.