

*Case Name:*

**R. v. S.L.**

**IN THE MATTER OF the Youth Criminal Justice Act, S.C.**

**2002, C. 1**

**Between**

**Her Majesty the Queen, and**

**S.L.**

[2013] O.J. No. 4514

Ontario Court of Justice

**Youth Justice Court - Scarborough, Ontario**

**K.L. Mulligan J.**

Oral judgment: May 15, 2013.

(24 paras.)

*Criminal law -- Criminal Code offences -- Offences against person and reputation -- Assaults -- Assaulting a peace officer -- Trial of young person who was charged with assaulting police officer -- Young person acquitted -- Crown alleged that young person became aggressive while officer was questioning him in interview room, grabbed officer by shirt and started to rise to feet, to which officer reacted by punching him in face -- Young person said that officer punched him after he called officer liar, made flippant remark and laughed at threat -- There was nothing in young person's testimony that raised credibility concerns.*

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Trial of a young person who was charged with assaulting a police officer. The young person was arrested for robbery. The Crown alleged that he became aggressive while the officer was questioning him in an interview room, grabbed the officer by the shirt and started to rise to his feet,

to which the officer reacted by punching him in the face because of the officer's belief that he was about to be hit. The young person said that the officer punched him after he called the officer a liar, made a flippant remark and laughed at a threat.

HELD: Young person acquitted. There was nothing in the young person's testimony that raised credibility concerns. The young person's written complaints about the incident were less detailed than what he said in court, but he believed the written version to be a summary and the missing details were corroborated by the officer. Although the young person said at a youth facility that he was punched, kicked and tazered by several officers, he readily admitted in court that this was a lie and it was told in order to make him look cool and appear tough in front of other inmates. There were troubling aspects to the officer's evidence. He did not bring a pen or paper to the interview room, did not turn on the audio and video and was loose with the truth when he spoke to the young person.

### **Statutes, Regulations and Rules Cited:**

Youth Criminal Justice Act, S.C. 2002, c. 1, s. 146

### **Counsel:**

J. Smith, Esq., Counsel for the Crown.

A. Page, Ms., Counsel for the young person.

## **REASONS FOR JUDGMENT**

**1 K.L. MULLIGAN J.** (orally):-- S.L. was tried before me on one count of assault police. The Crown called two witnesses -- the complainant, Detective Constable Aikman, and an officer who came to the assistance of Officer Aikman by the name of Detective Constable Function.

**2** S.L. chose to testify. In all there were nine exhibits filed.

**3** The theory of the Crown is basically that S.L. is a cocky young man, who, after being arrested and charged with a number of street level robberies, became aggressive with Detective Constable Aikman while being questioned in an interview room at 42 Division, Toronto Police Service. It is alleged that S.L. stood up a number of times, despite Officer Aikman's instructions to remain seated, ultimately grabbing the officer by the shirt, resulting in the officer being required to act in self-defence.

**4** S.L.'s version of the events has Officer Aikman becoming so annoyed by the youth's refusal to

be intimidated by the officer's attempts to get information from him regarding an unrelated and dated robbery, that he punches the youth in the face and then the groin in retaliation.

5 Looking at the evidence, it is not contested that Officer Aikman had been investigating a series of after school robberies of cell phones and other personal items in the McCowan and Finch area that had been occurring over the preceding three to four months. Detective Constable Aikman had received and reviewed several of the occurrence reports and had arrested a suspect that appeared to have been involved in at least two of the ten to twenty outstanding crimes.

6 On the date in question, that being October the 4th, 2012, he had participated in a meeting with his colleagues where four possible further suspects had been identified. As a result of that meeting, he and seven or eight other officers had been tasked to attend in the area of the McDonald's restaurant located at Woodside Mall at McCowan and Finch in order to set up surveillance that same day. Officer Aikman had descriptions of the four male suspects but no names. Through binoculars, Officer Aikman, dressed in jeans and a T-shirt or golf/polo shirt, observed a group of youths matching the descriptions provided to him at the meeting. The youths walked through the mall's parking lot, and stopped by a car parked therein facing out onto Finch Avenue. They all sat on the hood of the car. S.L. was amongst them. Detective Constable Aikman's attention was peaked when he saw one of the youths pull out a cell phone and furtively hand it to another youth. Just after 5:13 p.m., he saw two other youths walk by the group he was surveiling. It appeared to Officer Aikman that the two youths were called back by one or more of the group as they both stopped and walked towards the group of suspects. Detective Constable Aikman witnessed one of the suspects walk up to the two boys and go through one of those two boys' pockets. As Detective Constable Aikman testified, everyone was so calm, that he wasn't quite sure if what he was witnessing was actually a robbery or not. He saw nothing removed from the two boys' pockets.

7 He radioed to other team members that he thought a robbery was in progress but he wasn't sure. It wasn't until he received information from a fellow officer who had interviewed the two boys after they had walked away from the suspect group, that he was told that a robbery or an attempt robbery had in fact taken place.

8 A decision was made to arrest the group, and at 5:32 p.m. Detective Constable Aikman arrested one of the co-accused. S.L. and the others were arrested by other officers. All were taken to 42 Division and S.L. was placed into an interview room upon his arrival. There were discussions amongst the officers as to whether these youths were responsible for the other robberies as well, especially in light of Officer Aikman's understanding that one of the arrested youths was found to be in possession of a cell phone associated with one of the other prior occurrences. This youth was not S.L.

9 Detective Constable Aikman had been given information that one of the suspects involved in the prior robbery lived on a certain street and he discovered that Mr. S.L. lived on that same street. Although Officer Aikman had never met or spoken to S.L. before, he had presented a photo line-up

to the elderly victim of that prior robbery that contained S.L.'s photograph. However, S.L. was not identified by the victim of that prior robbery as one of the boys who had ripped a necklace from her neck. So, armed with an occurrence report from that July 12, 2012 robbery, and having reviewed the surveillance video associated with that prior robbery, which led to the arrest by Officer Aikman of one person implicated therein, Officer Aikman decided to enter into S.L.'s interview room to ask him some questions. His other purpose for entering the room was to advise S.L. that he was also being charged with a number of robberies which the officer felt were related. In total, S.L. was to be charged with fourteen or fifteen further counts of robbery.

**10** After entering the interview room at approximately 9:30 p.m., Officer Aikman asked S.L. his name and S.L. provided his name. Officer Aikman told him he was investigating the earlier robbery from July, 2012. This agitated S.L., who was already protesting his arrest and supposed involvement in the robbery alleged to have occurred that day. Detective Constable Aikman responded by telling Mr. S.L. that he had seen him commit the robbery that day with his own eyes and that he had an inculpatory video of the July, 2012 occurrence. S.L. called the officer a liar and told him to 'fuck off'. Things went down hill from there. It is the events that followed that are contested.

**11** According to Officer Aikman's version, what occurred thereafter was that S.L. stood up, this being the third time he had done so, despite the officer's instructions to remain seated. Officer Aikman told him again to sit down, and S.L. did. The officer then stepped closer to S.L. in order to display the July, 2012 robbery occurrence report to S.L. S.L. reached out with his left hand, grabbed the officer by his shirt in the chest area, and started to rise to his feet, assuming as he did so a stance described as "blading". This led the officer to believe that he was about to be assaulted. When the officer saw S.L.'s right arm and shoulder move back, the officer reacted quickly and punched S.L. square in the face. He felt S.L.'s right arm come around his left shoulder and the officer punched at S.L. again but believed he missed. S.L. started falling to the floor but still had a hold of Officer Aikman's shirt, so the officer was pulled down as well. He punched S.L. again, this time connecting with the top of S.L.'s head, and yelled out for assistance from any officers who might have been within earshot. Detective Constable Function ran in and the two officers cuffed S.L., stood him up, and moved him face first into a corner of the interview room. Detective Constable Aikman told him he was now also under arrest for assault police, and S.L. told him to take off the cuffs so he could "pop" him. S.L.'s mouth was bloody and he was spitting blood out onto the wall. He was resisting, pushing away from the wall as the officers held him there while they waited to hear that a cell had been readied for S.L.

**12** According to S.L., after he called Detective Constable Aikman a liar, he made a rather flippant remark that made Officer Aikman turn red and caused him to threaten Mr. S.L., with words to the effect that if he said something like that again, he would kill him. S.L.'s testimony was that he laughed like "an asshole" at the absurdity of the threat, and Detective Constable Aikman then punched him square in the face. After being punched, S.L. stood up and Officer Aikman took up a boxer's stance, looking as though he was readying to punch S.L. again. S.L. said he grabbed Officer

Aikman's wrists to avoid a second assault and Officer Aikman maneuvered out of his grasp and grabbed S.L. by the shirt and neck area so that they were now standing face-to-face. He pushed S.L. back against the wall, dragging him towards the corner of the room, and punched him in the groin. S.L. dropped to his knees in pain. Detective Constable Aikman then grabbed his left arm and put it behind his back and rendered S.L. face-first, flat on the ground. At some point Officer Aikman punched him in the forehead. Another officer, he said, rushed in and the two stood up Mr. S.L. and kept him face-first in the corner until he was taken to a cell. S.L. initially thought that the second officer was going to assault him as well, so he did initially tense up and resist. S.L. was crying and spitting out blood that was filling his mouth. He agreed he was calling the officer on and that he was suggesting that they fight a fair fight instead of one that started with "a sucker punch to the face of a kid." He also kept saying that he couldn't believe Detective Constable Aikman had punched him in the face in the first place.

**13** Once he arrived at the youth detention facility, he initiated a complaint at the suggestion of a staff member who, S.L. said, viewed his considerable facial swelling and bruising upon admission and expressed concern.

**14** Of the two versions I just went through, the only commonality is that S.L. was acting like a smart Alec, and that at some point Detective Constable Aikman punched him in the face.

**15** As I mentioned, there was testimony from another witness. Detective Constable Function also testified as part of the Crown's case. Unfortunately, from a fact finding point of view, he came on scene just as the incident between Officer Aikman and S.L. was winding down. He testified that when he heard Detective Constable Aikman's call for help, he went to the interview room, which was located just steps from his desk. At the time he was working overtime and was finishing paperwork. The interview room door was slightly open. He had heard no commotion prior to hearing his colleague's call out for help. When he entered the interview room, he saw S.L. lying face-down on the floor with his head facing the doorway. The way that the interview room door opened inward meant that the upper portion of S.L.'s body was obscured by the door as it opened. He saw Detective Constable Aikman was kneeling on S.L.'s lower body around the left thigh or leg area. He heard Detective Constable Aikman telling S.L. to stop resisting. He saw that Detective Constable Aikman had Mr. S.L.'s left arm, and it looked to him as though S.L. was trying to use his hands to push himself to a standing position. Detective Constable Function grabbed S.L.'s right arm and the two lifted him up and moved him into the corner of the room. It was then that he saw that S.L. was sobbing, visibly upset, and bleeding. He heard S.L. tell Detective Constable Aikman to take off the cuffs so he could "pop him", and he kept saying to Detective Constable Aikman, "you and me", as though he wanted to fight Officer Aikman. Detective Constable Function also testified that S.L. complained that he couldn't believe he had been punched in the face for just standing up a few times, though unlike Mr. S.L.'s other utterances, Detective Function didn't have that utterance in quotes in his notebook.

**16** In examining the evidence, it is not enough for me to simply decide whose version of events I

prefer. I must look at all the evidence and apply the test as laid out in W.D. and the Queen to determine whether the Crown has proven the allegations beyond a reasonable doubt.

**17** Looking at S.L.'s evidence, there is nothing that makes me question his credibility or the reliability of his evidence. Though the Crown highlighted the fact that his complaint upon admission to the youth detention facility and the written reports penned by S.L. referred to in cross-examination and contained in Exhibit #9, do differ in their account of the type and number of physical blows suffered by S.L., supposedly at the hands of Detective Constable Aikman, I accept S.L.'s explanation that he was of the impression that what he was providing was a summary of the complaint and that he assumed that he would appear at a more formal hearing down the road to give his full version as he did in court. It is true that S.L.'s version in court was more detailed than any written version of his complaint, but some of those missing details were in fact corroborated by Detective Constable Aikman's own account, and so I know for sure that just because certain things weren't included in Mr. S.L.'s written complaints, doesn't mean that I can assume that they did in fact not occur.

**18** I am also mindful of the fact that with respect to the report written on the day he S.L. was admitted to the youth facility, that he did so after an extremely long day, and after spending more than six hours in police custody. As S.L. indicated, he was tired and it was late.

**19** Likewise, though S.L. admitted in cross-examination that he did tell Ms. Cunningham, a female staff member at the youth facility where he was detained, that he had been punched and kicked and in fact tazered by Officer Aikman and other officers, that S.L.'s credibility is not diminished as a result. S.L. readily admitted in court that the version he gave to Ms. Cunningham was a lie. Though that might normally cause the court to question S.L.'s overall credibility, S.L. further testified that he did that as this discussion with Ms. Cunningham occurred in a public area of the youth facility in front of other inmates. He lied, in other words, in order to look cool and appear tough because, as S.L. put it, he was in custody on fifteen counts of robbery and had no idea how long he was going to remain at the facility. He knew enough at his young age to try to create a persona that might make his time in custody safer and make him less prone to being picked on by others. I entirely accept that explanation.

**20** There was nothing in his testimony or cross-examination that caused me to question S.L.'s reliability, nor credibility. His version of events certainly created a reasonable doubt in my mind as to his guilt as charged.

**21** Having said that, I just wish to say the following about Officer Aikman's evidence: Even if I had rejected S.L.'s version, I am not so sure that I would have been persuaded that the Crown had satisfied its burden of proof. I found it troubling that Detective Constable Aikman entered into the interview room to interview a youth without going through the processes and requirements of the Youth Criminal Justice Act, necessary when interviewing or speaking with accused youths in custody. The officer's explanation was that he really didn't think he was going to get a statement

from S.L., and that he was really just going in for the "hail Mary". That is concerning. It is this kind of police/youth interaction that Parliament was specifically aiming to address in enacting provisions of s. 146 of the Youth Criminal Justice Act. The fact that Officer Aikman didn't even bring a pen or paper makes this assertion that he just wanted to hear what the youth had to say, questionable. Presumably, had S.L. said something of import, the officer would have wanted to have accurately preserved the details and recorded them for future follow up, even if he wasn't intending on collecting S.L.'s statements to be used against him at a trial.

**22** I also note that the interview room was equipped with continuous video and audio recording ability. However, Officer Aikman chose not to turn it on, nor even have the equipment prepped and ready to go in the more than four hours that S.L. spent waiting in that room before Detective Constable Aikman entered. Why he made this decision in light of all the case law dealing with the recording of police interaction with accused persons during interrogation and questioning is beyond me in the year 2013. If Detective Constable Aikman had felt intimidated by S.L., as he testified, and if, as he testified, S.L. kept standing up and began to behave aggressively, I cannot imagine why the officer wouldn't want the exchange to be recorded, for the officer's own protection. Such a recording would have effectively put to rest S.L.'s allegations if the meeting went as Detective Constable Aikman described. As well, Detective Constable Aikman's full out punch to S.L.'s face seems to me to be a disproportionate response to S.L.'s supposed "bladed" stance as described by Detective Constable Aikman. I do find that Detective Constable Aikman was loose with the truth when he spoke to S.L. in that interview room. Telling S.L. that he had a video of the robbery from the July, 2012 incident was untrue. Telling S.L. that he saw him commit the attempted robbery of the two students that very day was also untrue, or at its very highest not entirely accurate. If a Detective Constable with twenty-two years experience is of the opinion that mere presence at a robbery is enough to accuse S.L. of being guilty of that robbery, then it is no wonder that S.L. was frustrated and incredulous by Officer Aikman's continuous accusations that he had robbed someone that day, as well as on prior occasions.

**23** Finally, Officer Aikman's explanation that he moved closer to S.L. after S.L.'s behaviour, according to him, had become confrontational, and while S.L. was repeatedly calling him a liar, to simply "Show S.L. the July robbery occurrence in his hand to prove it was real and that he was in fact the suspect" rings hollow to me. Moving in closer to the understandably. confrontational youth smacks more of the officer's mounting frustration or aggression than of desire to simply educate S.L. as to the veracity of his suspect status.

**24** As I have said, I cannot find that S.L. assaulted Detective Constable Aikman, and as a result, S.L., I find you not guilty.

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