

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Johnson v. Butula*,  
2013 BCSC 577

Date: 20130404  
Docket: S111390  
Registry: New Westminster

Between:

**Michael Johnson**

Plaintiff

And

**Marc Joseph Butula and Aaron Perreault**

Defendants

Before: The Honourable Mr. Justice Blok

## **Reasons for Judgment**

Counsel for the Plaintiff:

R. Davidson

Counsel for the Defendant, M. Butula:

P.G. Kent-Snowsell

Place and Date of Trial:

New Westminster, B.C.  
August 20, 2012 and  
February 15, 2013

Place and Date of Judgment:

New Westminster, B.C.  
April 4, 2013

**I. INTRODUCTION**

[1] Michael Johnson alleges that he was assaulted by both Marc Butula and Aaron Perreault on May 12, 2006. There is no question that an incident occurred that day and that the plaintiff was injured in that incident. The central question is whether Mr. Butula was part of it.

[2] Mr. Perreault did not file a statement of defence but he did give evidence as a defence witness as part of Mr. Butula's case.

[3] By consent, an order was made at a trial management conference on August 17, 2012 that the issues of liability and damages be severed. These reasons deal with liability only.

**II. WITNESSES**

**A. Michael Johnson**

[4] Michael Johnson is 30 years old and lives in Powell River. He is married and has three children. He said he is currently a stay at home father.

[5] On the day of the incident Mr. Johnson was living in an apartment in Powell River. He knew both defendants. He had known Marc Butula ten years by that point (Mr. Johnson was then 24). He said that they were "actually pretty good friends". He said that Mr. Perreault was more of an acquaintance and that he had known him for perhaps a year.

[6] Mr. Johnson testified that he was walking down Joyce Avenue, which is the main street in Powell River, heading to the 7-Eleven corner store. Mr. Butula pulled over in a pickup truck and got out of his vehicle. He asked Mr. Johnson if he wanted to take a quad ATV for a test drive. He had a fat marihuana joint in his hand and made a bit of a show of it. A new ATV was in the box of the pickup, still wrapped in plastic. Mr. Perreault was riding as a passenger in the truck. It all seemed like a good idea to Mr. Johnson so he joined them by getting in the rear seat.

[7] They headed towards West Lake, which is relatively close to town and can be reached in just a few minutes of driving. There are dirt roads in that area, as well as a “pole line”, apparently a hydro right of way of some sort.

[8] Mr. Johnson said there was no discussion on the way. He said he sensed “a weird vibe” and saw conspiratorial glances between the two men in the front seat. He said he tried to make small talk by saying that he had heard someone was looking for him because of a reported break and enter (the “B & E”). Mr. Johnson asked Mr. Butula if he had heard anything about that but Mr. Butula was standoffish. The plaintiff asked Mr. Butula if it was his house that had been broken into but he said no.

[9] The trip was a very short one, perhaps five minutes, and they were soon on a dirt road. The vehicle stopped near West Lake but not quite at the lake. The dirt road is fairly narrow. Mr. Perreault got out of the truck and Mr. Johnson went to exit but Mr. Perreault stood in his way. Mr. Johnson then moved past him. Mr. Perreault offered Mr. Johnson a cigarette but Mr. Johnson said he had his own. Mr. Butula then came around the truck, holding a stick, and said “this looks like a good beating stick”. The stick he was holding was a 2”x2” or similar to it, and it was two or three feet long. Mr. Johnson said it was like a homemade baseball bat.

[10] Mr. Butula asked Mr. Johnson what kind of “weed” he had and Mr. Johnson pulled out a small bag of his personal marihuana. Mr. Butula threw the bag into his truck but Mr. Johnson retrieved it and stuffed it back in his pants.

[11] Mr. Johnson said that Mr. Butula was holding the stick like a baseball bat. Mr. Johnson told Mr. Butula that he did not break into Mr. Butula’s house, that they had the wrong guy and that he was not leaving town, the implication apparently being that he would therefore be around to be held accountable. Mr. Butula told him that K.L., a local junkie, had broken into his house and that Mr. Butula knew that Mr. Johnson had sent him there.

[12] Mr. Johnson said he had few options and was looking for an escape, trying to talk him down. He was backing away, going around the door towards the front of the truck. Mr. Butula was on his right side.

[13] At some point both Mr. Butula and Mr. Perreault had sticks. He was still trying to talk his way out when he was hit with a stick by Mr. Perreault, the blow striking on the left side of his head above his ear. Mr. Perreault was holding a 1"x6" stick, or something like it. Mr. Johnson held his head in pain and as he did Mr. Butula came from the right and hit him across the mouth. Mr. Butula then asked Mr. Johnson what kind of watch he had but he only had a cheap \$12 quartz watch, which he took off and threw at Mr. Butula as a distraction. He then "ran like hell".

[14] The blow to his mouth shattered his bottom teeth and tore his lip to such an extent that it required 13 stitches to close the wound.

[15] Mr. Johnson ran back towards town in the direction that they had come. He said his assailants chased him with sticks in hand. Mr. Butula connected with a blow to his back, saying "get back here, you bitch". Mr. Butula had to check his stride to do that so Mr. Johnson managed to get a bit of a lead and ran away. He knew it was Mr. Butula who had hit him because he had glanced back to see if he was being chased.

[16] The other two then got in their vehicle, yelling at him "you're fucking dead" and the plaintiff ran down a long driveway. Fortunately they had not driven too far into the bush, perhaps just one kilometre but probably less, and he went down the first driveway and got an older man to make a call for help. An ambulance arrived and he was taken to hospital.

[17] The plaintiff denied fighting with either of the other two men at any point.

[18] Photographs of the plaintiff's injuries were taken two days later. These show injuries to his mouth and head and bruising on his left arm. Mr. Johnson said he did not know how the large bruise on his left arm came about.

[19] In cross-examination Mr. Johnson conceded he was “possibly” coming from a course he was taking at Career Link at the time he was heading for the 7-Eleven store, as this had been on his schedule that day. He was expecting to catch a 7:00 p.m. bus to go home. He admitted that he had smoked a marihuana joint after getting out of the class. He denied having consumed any alcohol.

[20] He agreed that he made a mistake in his testimony about where he was living at the time, and he corrected that.

[21] On the date in question Mr. Johnson was subject to a 10:00 p.m. curfew as part of a sentence for assault causing bodily harm. This stemmed from a domestic dispute in which he was accused of burning his “ex” with a cigarette. He had also had several breaches while on bail, so he pleaded guilty to “cut a deal”. He received a 15-month conditional sentence after having been on bail for 15 months. There were a number of conditions to his conditional sentence and he was required to take the Respectful Relationships course.

[22] The plaintiff was taken through his other criminal convictions. He was convicted of mischief under \$5,000 at age 13. When he was 15 he was convicted of assault. When he was 23 or 24 he was convicted of the assault causing bodily harm charge described above. In 2010 and 2011 he was convicted of possession of marihuana.

[23] There was one other major criminal event. When he was 19 years old he was caught with 45 pounds of cocaine in the United States. He was with two other people who were transporting the drugs as “mules”. His muling career had started with marihuana but he had moved on to transporting cocaine. The three mules were stopped by a park ranger and ultimately handcuffed and shackled. Together they had 19 kilograms of cocaine, seven or eight kilograms each, with a value of about \$500,000. He spent a year in jail. He was looking at a sentence of 10 years to life but he “cut a deal”. He told the authorities the name or names of those who hired him and gave them the specifics of the marihuana smuggling he had done.

[24] Returning to the time of the alleged assault, Mr. Johnson said the two defendants lured him into the truck with the “fat joint” and the promise of a ride on a quad ATV. He denied that he told them he could not meet for long due to some drug-dealing commitments on his part. He said he would not have said that because he owed Mr. Butula \$100 at the time and so would not have said he had to buy cocaine when he owed Mr. Butula money. He said that the reason he could not go with them for long is because he had a curfew.

[25] Mr. Johnson said that he learned a couple of days earlier that two people were looking for him regarding the B & E.

[26] When it was put to him that the conversation in the truck was whether the he had marihuana to sell, Mr. Johnson said no because he was buying his marihuana from Mr. Butula.

[27] The plaintiff agreed that he had done work at Mr. Butula’s house because he owed Mr. Butula money and was working it off. He agreed that he was working in Mr. Butula’s house as recently as a week and a half before the incident, but later said he was not sure of the timing and said that it was at least a month or two before. He agreed that, while he was working at Mr. Butula’s house, Mr. Butula never accused him of arranging or carrying out the B & E. He also agreed that Mr. Butula never accused him of being behind the B & E at his house at any time prior to their arrival at the “pole line”.

[28] Mr. Johnson denied a long series of questions about a dispute with Mr. Perreault and its escalation. He disagreed that Mr. Butula tried to stop Mr. Perreault.

[29] Mr. Johnson agreed he gave a statement to the RCMP in which he said that Mr. Perreault “must have got three shots off”, or in other words, three blows. He disagreed that Mr. Perreault had hit him three or four times. He said his memory has lapsed.

[30] When referred to the photographs of his injuries he agreed that he had a bruise below his left eye, an abrasion under his left cheek, another bruise at a 45° angle from that abrasion, a cut on his lip going over to the side, a cut on his scalp above his left ear, a large bruise on his left arm and a large bruise on the left side of his back. He agreed that he had no injuries on the right side of his face. He also agreed that Mr. Perreault was always on his left side.

[31] The plaintiff was asked about his current employment and employment history. At present he helps out his mother, who has a serious illness. His wife, who formerly worked at a dollar store, is not presently working. He is not working now either. His last full-time work was four years ago, working at McDonalds, where he worked for a year but was fired for being late. Before that he did seasonal work on a prawn boat for a couple of months. Before that he lived in Surrey and worked for three years at two different mills.

[32] He is 30 now and his sole source of income is the child tax credit of about \$1,000 per month. His only asset is a car.

[33] His understanding is that Mr. Perreault is on disability. He agreed that Mr. Butula has a decent-paying job, has a nice truck, had a lot of cash in his wallet and owns a house.

[34] Mr. Johnson has run across Mr. Butula on a number of occasions subsequent to the subject incident. He denied demanding \$2,000 from him. He said he ran into Mr. Butula at Walmart once and asked Mr. Butula if he had figured out who had done the B & E at his house and Mr. Butula said "you". Mr. Butula then offered him \$3,000 to back off.

[35] Asked if he said on one occasion "I am going to get a house out of this", Mr. Johnson admitted that he made that statement. He denied ever threatening to blow up Mr. Butula's house or truck.

[36] Asked about the dirt road in question, he agreed that anyone could have come along but there are several routes to West Lake and the one they were on was the less travelled route.

[37] Asked about what marihuana he was smoking he said it was "regular stuff". He said that he smokes marihuana 8-10 times a day and is used to it. He admitted that it has definitely affected his memory in that it makes it harder to remember but it does not make him remember things that did not happen.

**B. Michael Garabits**

[38] Mr. Garabits is 38 years old and lives in Powell River. He is a hospital worker but is currently on disability. In May 2006 he lived in an apartment building in the Townsite area of Powell River. He lived on the second floor of a four floor building. He was acquainted with Mr. Johnson as they lived in the same apartment building. They occasionally talked in the hallways. Subsequently they have become friends.

[39] In May 2006 Mr. Garabits did not know either of the defendants.

[40] One day he was sitting with a friend in the living room of his apartment. There was a knock at the door and then two men rushed inside. Mr. Garabits, who is a big man, stood up to keep them from coming in any further. Both of the intruders were carrying sticks. He said Marc Butula was one of them. He found out later that the other guy was Aaron Perreault.

[41] When the two entered they said "where is Mike?" and Mr. Garabits said "right here", since his name is Mike too. They said "wrong guy" and were then apologetic. Mr. Garabits said he could not recall who they said they were looking for.

[42] Later he saw Mr. Johnson in the parking lot and he told him that someone was looking for him. This probably happened the next day or two days after.

[43] Asked when he learned the identity of the people who had rushed into his apartment, he said that his buddy told him who they were, at that time.

[44] In cross-examination, Mr. Garabits agreed that he was unable to say what exact day the apartment incident occurred. He was able to say that it happened in the early afternoon but he was not sure of the day of the week. Mr. Garabits had not consumed any drugs that day.

[45] When asked about such things as specific facial features or eye colour, Mr. Garabits agreed that he could not identify these things in the people that came into his apartment. He did say that the first guy had red hair and the second guy had dark hair, almost black. He agreed that he had never seen them before.

[46] Since that incident “things have changed” and he has seen both Mr. Butula and Mr. Perreault in various places in Powell River.

**C. Marc Butula**

[47] Mr. Butula owns his own general contracting company. Formerly he worked as a finishing carpenter. He was born in Powell River, graduated in 1999 and took some college courses at Langara College. He then moved back to Powell River. He owns two houses and owns his business. His mother is a kindergarten teacher and his father works for an industrial company on Texada Island.

[48] He came to know Mr. Johnson in high school, at about middle school age. He also bumped into him when they lived in the Lower Mainland. They hung out and Mr. Butula would buy his “weed” from the plaintiff when they were in high school. Mr. Butula said he used to smoke it quite a bit.

[49] As to the incident in question, the last time Mr. Butula had seen Mr. Johnson was a week prior. The plaintiff was cleaning out Mr. Butula’s basement to work off a \$100 debt that the plaintiff owed to him. This work was being done while Mr. Butula was at work. Mr. Butula had no concerns about having Mr. Johnson at his house. He said he had no bad feelings about Mr. Johnson at all. He had had him in his home perhaps five times and had never had any concerns about him being in his home.

[50] Mr. Johnson lived in an apartment in the Townsite area of Powell River. Mr. Butula said he had been to Mr. Johnson's apartment and was aware of both the floor and apartment number of that apartment. As for Mr. Garabits, Mr. Johnson absolutely denied ever attending at his apartment wielding sticks, and said that he had never seen Mr. Garabits before seeing him at trial.

[51] Mr. Butula said that he has never had the belief that Mr. Johnson broke into his home. There had been a break and enter at his home about three weeks prior to the incident in question. Dvds and cds were taken, with a value of about \$500. He did not at any time think that the plaintiff had anything to do with it.

[52] On May 12, 2006, Mr. Butula worked that day as a carpenter and finished at 4:30 p.m. or so. He then drove home and had a shower. His vehicle then was a 1999 Dodge Ram quad cab truck.

[53] At home he picked up a message from Mr. Perreault, who wanted help to move a new ATV from Canadian Tire to his house. Mr. Butula called Mr. Perreault and told him that he would meet him at Canadian Tire in 15 minutes. When he arrived at Canadian Tire Mr. Perreault was there with his foster mom. The quad ATV was outside. They put it into the bed of the truck using the quad ramp. Mr. Butula then went to the A&W drive-through next door and got a hamburger, french fries and a root beer. The plan was to go to West Lake, which was very close to Mr. Perreault's house, and take the ATV for a ride. He said that Mr. Perreault seemed normal. Mr. Butula was aware that Mr. Perreault had some mental problems but he was normal for him that day.

[54] His pickup truck has a bench seat in the back and bucket seats with a middle seat in the front. There are "suicide doors" for access to the back seat.

[55] Mr. Butula said he was not looking for Mr. Johnson that day. He saw him walking on the sidewalk on Joyce Avenue, which is the busiest street in town. Mr. Butula was heading south. He pulled over but was still in a traffic lane so traffic would have had to go around him. When they saw Mr. Johnson they figured he

might have some marihuana. Mr. Butula said he did not get out of the truck. He also said he did not have a "fat joint" in his hand because if he did he would not have had to speak to Mr. Johnson. He indicated that the location was much too public to have been waving a joint around.

[56] They asked Mr. Johnson if he had any "weed" for sale and he said yes. They showed him the new quad ATV and said they were taking it for a test drive.

Mr. Perreault then got out of the truck and let the plaintiff in the back. The seats are not electric (as had been suggested by the plaintiff) and there was no adjusting done to it. Mr. Butula testified that the plaintiff smelled of both smoked marihuana and booze.

[57] Mr. Butula asked the plaintiff what kind of "weed" he had, and so on. Mr. Perreault was going to pay for it and they were going to smoke it at the lake. Mr. Johnson told them that he had to sell a "dime bag", buy a gram of cocaine and catch a 7:00 p.m. bus back to Townsite.

[58] Mr. Butula described the route they took. It does not take very long to get to the edge of town and at the location in question there are still people around, walking dogs, that sort of thing. They pulled into one of the entrances to the lake and drove in perhaps 200 metres, which took perhaps minute. They were right close to Padgett Road.

[59] Mr. Perreault got out but did not block Mr. Johnson's way. Although they were going to unload the ATV in the back, Mr. Butula stayed in the cab to eat his food. The plan was to unload the ATV, smoke a joint and then cruise around on the ATV.

[60] Mr. Butula said he never had a stick in his hand, never accused Mr. Johnson of involvement in the B & E and had never heard of K.L.

[61] The two other men got out of the truck to smoke cigarettes. Mr. Butula then saw both of them with sticks in hand, "going at it". Mr. Perreault hit the plaintiff in the

mouth. Mr. Butula told them to stop. The plaintiff then took off and Mr. Butula went after him for perhaps ten steps, telling him to stop, but he did not chase him.

[62] When Mr. Butula saw the fight he got out of the truck and grabbed Mr. Perreault, who was hitting the plaintiff in the face with a stick. Mr. Perreault then had a major anxiety attack and was “dry-heaving” by the side of the road. Mr. Perreault told Mr. Butula what had happened. Mr. Perreault had a 2”x6” in his hand which had blood on it. Mr. Butula was trying to calm him down.

[63] Mr. Perreault wanted to go to his house, which was just 30 seconds down the road. They got to his house and sat on the grass and tried to recover from the incident and calm down. Mr. Perreault had slivers in his hand and his foster mom helped take these out. He said that Mr. Perreault was in a “weird state”. Mr. Butula then decided to go home, but Mr. Perreault said that he wanted to come too. He had been at the house for about 30 to 45 minutes. Mr. Butula’s house was just five minutes away. When Mr. Butula arrived at his house there were three police cars there and he was arrested.

[64] Mr. Butula said that he was not aware of the plaintiff’s injuries and while he definitely thought he would have some injuries he did not know that his teeth had been damaged.

[65] There were subsequent interactions between Mr. Butula and Mr. Johnson after the incident in question. The plaintiff called him and left messages. Mr. Butula asked him why he was accusing him and Mr. Johnson said that he wanted money. He told Mr. Butula that if he gave him money he would say that he made a false statement.

[66] Mr. Butula has also run into the plaintiff a handful of times at Walmart. On one occasion Mr. Johnson was belligerent and drunk. Mr. Butula said it was often hard to tell what the plaintiff wanted because he seemed “out of it”, but generally he was looking for money because of the incident.

[67] Asked if the plaintiff has made threats, Mr. Butula said that there have been multiple threats. In the last six months there was a time at Walmart when there was a somewhat civil conversation where Mr. Butula asked Mr. Johnson how much money would make it go away, suggesting “a couple of grand”, and the plaintiff said that he would “piss on a couple of grand” and that he would get \$84,000 with the help of his “corrupt Paki dentist”. He also said that he would blow up Mr. Butula’s truck.

[68] Three years ago there was an interaction at a bar in nearby Westview. Mr. Johnson told Mr. Butula that he was going to get his “crooked lawyer” get his money. Mr. Butula told him that he was not the person who hit him and the plaintiff said that he knew he wasn’t but he was going to get money anyway. Another time the plaintiff “egged on” Mr. Butula to hit him, but Mr. Butula did not do so.

[69] Asked if there were more secluded areas where they could have gone, Mr. Butula said “absolutely” because they could have gone “way into the alpine” on logging roads. He added that if he wanted to beat up the plaintiff he would not have stopped just 200 metres along the dirt road and would have instead driven for miles into the woods. He emphatically denied having any plan in place to take Mr. Johnson “to the boonies” and beat him. He said that he never laid a hand or a stick on him.

[70] In cross-examination, Mr. Butula was asked questions relating to his knowledge of Mr. Perreault’s mental problems. Mr. Butula agreed that he knew the plaintiff had been struck in the face and was injured. He agreed that he felt shocked and was frightened and disturbed by what had happened, that they went to Mr. Perreault’s home to calm down, and Mr. Perreault was still acting very strangely, and yet a few minutes later he left with Mr. Perreault to go to Mr. Butula’s house. Mr. Butula said he let him come because Mr. Perreault said he wanted to come to his house.

[71] Mr. Butula repeated that he never knew Mr. Perreault was going to hit the plaintiff. He did see Mr. Perreault beat him up but said that this whole incident is the worst thing that has ever happened to him.

**D. Aaron Perreault**

[72] Mr. Perreault was born in 1985, moved to Powell River when he was 10 and left school after Grade 11. He has had psychiatric difficulties since elementary school, which manifest themselves in manic and psychotic symptoms. He worked for a couple of years at a window-making firm but because of his psychological difficulties he could not continue and has therefore lived on disability since the age of 18.

[73] In 2005 he had a run-in with another patient at Riverview Hospital. He kicked another patient in the face and although the patient did not want to press charges the police did anyway and he was convicted of assault. He had been put in Riverview because of his odd behaviour, which included disordered and delusional thoughts, manic behaviour and depression.

[74] He said he was put on one medication that increases levels of aggression. This resulted in a couple of other incidents, including throwing a cup of boiling water on one patient, with a fight ensuing, kicking another patient in the face, and having a fist fight with yet another patient. All of these occurred in a two-week period and all of these occurred prior to the incident involving Mr. Johnson.

[75] He has had numerous admissions to Powell River Hospital and he had two long-stay admissions to Riverview Hospital prior to May 2006.

[76] He has been under the treatment of a psychiatrist for 10 or 11 years. He still sees him every two to four weeks. He is presently in remission and is on a variety of medications.

[77] As a result of the May 12, 2006 incident involving Mr. Johnson, Mr. Perreault was charged with assault but was found not criminally responsible due to a mental

disorder. As a result of that he was required to attend for treatment at Riverview. From May to June 2006 he was in the psychiatric ward at Powell River Hospital, from June to August 2006 he was treated at Riverview Hospital and thereafter, in September, he was treated at the forensic psychiatric facility in Coquitlam. He was released to the care of his psychiatrist.

[78] On the day in question Mr. Perreault had purchased a quad ATV from Canadian Tire in Powell River and wanted to pick it up. He purchased it by using a co-signed credit card, the co-signer being his foster mother. He contacted Mr. Butula about moving the ATV, leaving a message on his answering machine. Mr. Butula got back to him and arrangements were made to meet at the Canadian Tire store. Mr. Butula had a truck with two metal ramps and the two of them wheeled the ATV onto the truck. They were going to go out to West Lake for a first run. On the way they went to the A&W drive-through and Mr. Butula bought some food for himself. They then went down Joyce Avenue, the main street in Powell River, and they saw Michael Johnson on the street. They asked him if he wanted to come with them to check out the ATV and he accepted the invitation. Mr. Butula's truck had suicide doors for the rear passenger compartment so Mr. Perreault got out so that Mr. Johnson could get in the back seat.

[79] They proceeded up Duncan Street, which runs perpendicular to Joyce Avenue, and then onto Padgett Road to the "pole line", which is a road that heads up the West Lake. The drive took about three minutes. They went perhaps 100 to 150 metres up the pole line road.

[80] Mr. Perreault got out of the truck and Mr. Johnson got out after him. Mr. Butula stayed in the cab, eating his food. Mr. Perreault asked Mr. Johnson if he wanted a cigarette and he said he did, so Mr. Perreault pulled out a cigarette package but a \$50 bill also came out with it. Mr. Johnson then grabbed the \$50 bill with the cigarettes and started running away. Mr. Perreault pursued him, saying "I'll ring your neck" or words to that effect. Mr. Johnson got scared, picked up a stick by the side of the road and swung it at Mr. Perreault, who fell onto a pallet, breaking it.

The sides of the pole line road were full of garbage like that. Mr. Perreault grabbed a stick and swung back at Mr. Johnson with the flat side of the board, hitting Mr. Johnson on the top of his head. This did not seem to affect him. Mr. Johnson again swung his stick, but missed, so Mr. Perreault turned his 1" x 6" board on its side for greater hitting power and took swings at him repeatedly.

[81] Mr. Perreault said he felt intimidated at the time because Mr. Johnson had stopped and grabbed a stick to swing at him.

[82] Mr. Perreault said he swung his stick for perhaps 45 seconds or a minute before the 1" x 6" broke in half, lengthwise. He then heard "no, stop" and Mr. Butula grabbed him from behind. Mr. Johnson turned and ran. Mr. Perreault threw the half-broken stick at Mr. Johnson and it struck him in the back from about 10 feet away.

[83] Mr. Butula pursued Mr. Johnson telling him to stop and asking him if he was okay, but Mr. Johnson kept running. Mr. Perreault proceeded to have a severe anxiety attack and started to throw up and dry heave. He explained to Mr. Butula what had happened. He said Mr. Butula "took my side".

[84] Mr. Perreault's house was close by, only 300 metres away on Padgett Road, so they went there, staying for 45 minutes or an hour, trying to sort out what had happened and calm down. Mr. Perreault was then made aware, through his foster mother, that someone had heard his name on the scanner and that the police were looking for him. Mr. Butula decided to go home and Mr. Perreault asked to go with him, so they drove to his home. When they got there three police cars were waiting and they were both arrested.

[85] Mr. Perreault said that Mr. Butula never had a stick in his hand and never struck Mr. Johnson at any time.

[86] In cross-examination, Mr. Perreault said that he was still living at his foster mother's house although by that time he was renting from her (he was 21 by then). They were going to run the ATV at West Lake because there are "tons of trails there". There is no actual parking lot at the lake but there is an open space where

people park, located about one kilometre farther than where they were. They stopped at the location they did because that was where all the trails start.

[87] Mr. Perreault said that he had known Mr. Johnson for two years or less. The first time he met Mr. Johnson he asked him for marihuana and Mr. Johnson became his marihuana dealer. When Mr. Perreault got into cocaine, Mr. Johnson became his cocaine dealer.

[88] Mr. Perreault said when they saw Mr. Johnson on Joyce Avenue they got it in mind to buy marihuana from Mr. Johnson because they expected he would have some and because Mr. Perreault had some money. While they were in the truck on Joyce Avenue Mr. Johnson made them aware that he had “weed to sell” and Mr. Perreault made him aware that he had money. However, they had not discussed any actual “weed deal” at the time Mr. Johnson grabbed the \$50 bill and so Mr. Perreault concluded that he was stealing it. Mr. Perreault was certain that Mr. Johnson was stealing the money because he had snatched it out of his hand. There had also been a discussion in the truck of Mr. Johnson buying cocaine later and Mr. Perreault thought that Mr. Johnson was going to go back into town to do that.

[89] Mr. Perreault estimated that he might have swung his stick at Mr. Johnson 10 to 15 times. Most were swung at Mr. Johnson’s head although some were swung at his body.

[90] While waiting at his house after the incident Mr. Perreault fully expected the police to arrive. They stayed there 45 minutes to an hour but the police did not attend there. Mr. Butula said he wanted to leave and since Mr. Perreault is a friend of his he went with him. There was no intention of escaping as there is no real place to escape in Powell River.

**III. SUBMISSIONS**

**A. Plaintiff**

[91] The plaintiff maintained that he was assaulted with sticks by both Mr. Butula and Mr. Perreault. He relied heavily on the evidence of Mr. Garabits, who was described as independent and believable. The plaintiff submitted that it was just too coincidental that people with sticks arrived at Mr. Garabits's apartment to beat up "Mike" and then Mike Johnson was beaten with sticks a short time later. In any event, Mr. Garabits identified one of those mistaken intruders as Mr. Butula.

[92] The plaintiff challenged the credibility of Mr. Butula, saying that the latter's evidence was "too good to be true". He also made much of the fact that after the assault Mr. Butula allowed Mr. Perreault to come with him to his house despite Mr. Perreault's crazy and violent behaviour back on the pole line road. He was also critical of Mr. Butula in that Mr. Butula knew that Mr. Johnson was injured but did not follow up.

[93] As for Mr. Perreault, the plaintiff submitted that the injuries suffered by Mr. Johnson were simply not consistent with the numerous blows Mr. Perreault said he landed.

**B. Mr. Butula**

[94] Mr. Butula submitted that he did not participate in the assault and that it was committed entirely by Mr. Perreault. There were only four witnesses called at the trial and only three people were present at the time of the assault. Two of those three testified that only Mr. Perreault assaulted Mr. Johnson. The third witness was impaired by marihuana use at the time and has memory problems as a result of heavy long-term marihuana use.

[95] Mr. Butula challenged Mr. Johnson's credibility, describing him as an odd witness who spoke over counsel and embellished things. Much was made in argument concerning Mr. Johnson's criminal record as well as the evidence showing ongoing drug-dealing. Mr. Butula said that even if one were to accept the evidence

that two people with sticks arrived at the Garabits apartment looking for Mike Johnson, this might not be such a surprising event given that Mr. Johnson is a drug dealer and no doubt has disputes associated with that trade. In any event Mr. Butula was well aware of the location of Mr. Johnson's apartment and would not have made such an error.

[96] Mr. Butula noted that: (1) Mr. Johnson has made statements post-incident that indicated a strong, if not improper, money motivation; (2) there is an inconsistency in the plaintiff's case insofar as Mr. Butula had Mr. Johnson working in his home at a time he is said to have suspected him of involvement in the B & E; and (3) the location in question was a very public place to "lay a beating" on Mr. Johnson and there were much better and more remote alternatives if that had been Mr. Butula's plan.

#### **IV. DISCUSSION**

##### **A. Credibility**

[97] This case turns on credibility. I therefore begin with observations on the credibility of the witnesses.

##### **1. Mr. Johnson**

[98] I agree with the defence that Mr. Johnson was an odd witness. He had difficulty staying on topic and often blurted out everything that was on his mind in response to questions, even questions that were specific or narrow in scope. He admitted that his heavy, long-term marihuana use has impaired his memory. He also seemed prone to exaggeration. Two examples of that were the seemingly unlikely public display by Mr. Butula of a fat marihuana joint on the main street of town, though perhaps stranger things have happened, and Mr. Johnson's evidence of conspiratorial glances between Mr. Butula and Mr. Perreault and the "weird vibe" in the truck as they drove to the pole line road. He also admitted he made one post-incident statement that suggests a strong or excessive financial motivation.

[99] Significantly, shortly after the incident Mr. Johnson told police that Mr. Perreault “got three shots off”, meaning blows, yet at trial he denied this happened. It is also significant that he smoked marihuana just prior to the incident, which no doubt impaired his perceptions, though in his testimony he asserted that he only feels the effects for thirty minutes post-consumption.

[100] Mr. Johnson’s serious criminal record is hardly a mark in his favour either, though none of his convictions related to fraud, perjury or matters of that sort.

[101] In short, there were many problems with Mr. Johnson’s credibility.

## **2. Mr. Garabits**

[102] I found Mr. Garabits to be a reasonably credible witness insofar as he was honest in conveying his recollection to the best of his ability. Whether his evidence is reliable or accurate may be another issue. I will discuss that later.

## **3. Mr. Butula**

[103] I found Mr. Butula to be reasonably credible. He gave his evidence in a straightforward and forthright manner. I will discuss the alleged inconsistencies in his evidence later.

[104] I appreciate that Mr. Butula presents much differently than Mr. Johnson. Mr. Butula is well-spoken, clean-cut, hard-working and financially successful, whereas Mr. Johnson is very unsophisticated, is not self-supporting, has a long history of drug use and has a serious criminal record. While it may be tempting to draw credibility conclusions based on these superficialities, I have done my utmost to disabuse myself of these and, instead, to base my conclusions on substantive factors.

## **4. Mr. Perreault**

[105] Mr. Perreault, for all his past mental difficulties, came across as quite a good witness. I had the impression that while the burden of being a witness was taxing for him, he was giving an honest account of what happened. I certainly found it credible

that he would “fly off the handle” if he thought somebody was stealing from him, particularly given the other incidents in which he was involved around this same time.

**B. Analysis**

[106] I am satisfied that the assault took place in a location that was not particularly remote or private. It was perhaps 200 to 300 metres from Mr. Perreault’s own house, and perhaps closer to other houses, including the house to which Mr. Johnson ran after the incident, it was a location where people might walk their dogs, and it was on a route people used to access a recreational area. I agree with the submission of the defendant that it would be a very unlikely spot to choose for a pre-planned beating.

[107] It also seems unlikely that Mr. Butula would have had Mr. Johnson working in his home just the week before if he suspected Mr. Johnson of being involved in the earlier B & E. On this point I note that it was Mr. Johnson’s initial evidence that he was working there a week and a half before the incident in question, a time frame that was consistent with the evidence of Mr. Butula, though he later reconsidered this evidence and said he was not sure of the timing and perhaps it was a month or two before.

[108] Assuming for the sake of the analysis that Mr. Butula suspected Mr. Johnson of being involved in the B & E, I find it odd that Mr. Butula, who was said by Mr. Johnson to be a “pretty good” friend of his, would go straight to a violent beating with no discussion, lead-up or confrontation beforehand, in fact nary a mention to Mr. Johnson and with no hint of animosity while the latter was working in the Butula home the week before. Perhaps this is normal enforcement behaviour in some circles, but it struck me as doubtful given the people involved here.

[109] While perhaps a small point, I note also that both Mr. Butula and Mr. Perreault testified that Mr. Butula had purchased fast food just prior to encountering Mr. Johnson on the street and so he stayed in his truck to eat it after the other two got out.

[110] Generally, the version of events given by Mr. Perreault and Mr. Butula makes sense, or is at least understandable in the factual context, whereas the version given by Mr. Johnson does not.

[111] Mr. Johnson argued that Mr. Perreault's evidence about the number of swings or blows was not credible because Mr. Johnson would have suffered far more severe injuries or not remained standing had that been the case. I do not see that this is necessarily so. In a melee it is entirely possible some efforts, perhaps even most efforts, will not result in telling blows. In any event, the injuries seem to be evidence of a fair number of blows; what the exact number might be would be impossible to say without expert evidence.

[112] Mr. Johnson also submitted that Mr. Butula's credibility suffered when he testified that he allowed Mr. Perreault to go with him to his house after the assault, arguing that Mr. Perreault's "crazy behaviour" made this unlikely. But the evidence indicates that Mr. Perreault and Mr. Butula were friends, Mr. Butula was aware that his friend had mental difficulties, there had been an identifiable trigger for the "crazy behavior" (the apparent theft of the \$50) and Mr. Perreault had been in considerable distress afterwards. In these circumstances I do not find it at all unbelievable that Mr. Butula would allow Mr. Perreault to accompany him back to his home.

[113] This brings me to the evidence of Mr. Garabits. It does indeed seem a strange coincidence that there would be people with sticks harbouring apparent grudges against Mr. Johnson at different times, assuming of course that the "Mike" being sought in the Garabits encounter was in fact Mr. Johnson. On this point I note that Mr. Garabits testified that he could not recall who the intruders said they were looking for, other than "Mike". I agree with the defence argument that one answer might well be that such an event is less coincidental when one is engaged in the drug trade. But leaving that aside, I note that Mr. Garabits did not know Mr. Butula at the time the stick-wielding pair entered his apartment, and he had to rely not on any knowledge of his own but on an identification made by his companion. He only came to know who Mr. Butula was later on.

[114] Given the frailties in this identification, and given the fact that Mr. Butula knew very well where Mr. Johnson's apartment was because he had been there (a fact that Mr. Johnson did not dispute), I find it unsafe to conclude that it was Mr. Butula who entered the apartment of Mr. Garabits, looking for a "Mike" to beat up.

[115] For those reasons, and in light of my assessment of the credibility of the witnesses, I conclude that it is more likely that the event in question took place as described by both Mr. Butula and Mr. Perreault than as described by Mr. Johnson. It follows that the claim against Mr. Butula must be dismissed.

## **V. CONCLUSION**

[116] The action against Mr. Butula is dismissed. Should counsel wish to make submissions on costs they may do so, but in the absence of submissions Mr. Butula will have his costs on the ordinary scale.

"Blok J."