

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** *R. v. Cloud*, 2025 NSSC 91

**Date:** 20250311

**Docket:** CRH No. 527536

**Registry:** Halifax

**Between:**

His Majesty the King

v.

Chris Scott Cloud

<b>Decision</b>
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**Judge:** The Honourable Justice John A. Keith

**Heard:** February 14, 2025, in Dartmouth, Nova Scotia

**Counsel:** Jonathan Gavel and Chloe Jardine, for the Crown  
Self-represented, for the Defendant

**By the Court:**

**BACKGROUND AND ISSUE**

[1] Chris Scott Cloud stands charged with:

1. Aggravated assault contrary to section 268(1) of the *Criminal Code*;
2. Threatening to or using a weapon to harm contrary to section 267(a) of the *Criminal Code*; and
3. Carrying a weapon for a dangerous purpose contrary to section 88(1) of the *Criminal Code*.

[2] The charges stem from a physical confrontation between Mr. Cloud and the complainant, Byron O'Brien, in the early hours of September 11, 2023, on the upper level of a rooming house located at 6273 North Street, Halifax, Nova Scotia.

[3] Mr. Cloud is alleged to have unlawfully beaten Mr. O'Brien with part of a tree branch about 2" in diameter that had been partially de-barked, roughly smoothed and cut into a 3' wooden baton or bar.

[4] Mr. Cloud insists that he acted in self-defence. He says that Mr. O'Brien deliberately threatened him with a baseball bat immediately prior to the alleged assault.

[5] Police arrived on the scene almost immediately after the alleged assault. Mr. O'Brien was lying face first in the hallway, lying on top of a baseball bat. Mr. Cloud was on top of Mr. O'Brien, pinning his arms to the floor.

[6] Mr. Cloud was immediately charged and taken into custody. Mr. O'Brien was taken to the hospital. Among other things, Mr. O'Brien suffered a fractured jaw and a significant laceration on the top of his head. Both injuries were allegedly suffered when Mr. Cloud struck Mr. O'Brien at least twice in the head with his wooden baton described above.

[7] About an hour after the police first arrived at the rooming house, Detective Constable Kevin Doucette of the Halifax Regional Police ("HRP") Forensic Identification Section attended at the rooming house to begin the process of taking

photographs and collecting evidence. By that time, both Mr. Cloud and Mr. O'Brien were gone. Detective Constable Doucette did not personally observe any of the injuries suffered by Mr. O'Brien and never spoke to Mr. Cloud or Mr. O'Brien about the alleged assault.

[8] The charges against Mr. Cloud proceeded to trial before judge and jury beginning February 10, 2025.

[9] Detective Constable Doucette was the last Crown witness to testify. The jury had already heard from:

1. The complainant Mr. O'Brien, who described the alleged assault and related injuries;
2. The police officer (Constable Meech) who arrested Mr. Cloud and took him into custody;
3. The police officers who interviewed the complainant Mr. O'Brien at the hospital; and
4. An emergency room physician and a radiologist who diagnosed Mr. O'Brien's injuries.

[10] As part of his testimony, Detective Constable Doucette reviewed the photographs he took at the scene a few hours at the alleged assault and, as well, the photographs he took of certain pieces of evidence (e.g. the wooden baton and the jean shorts worn by Mr. Cloud) collected from the scene. Among other things, Detective Constable Doucette referred to red stains located:

1. On the walls to the hallway of the rooming house where the alleged assault occurred;
2. On the carpet of the rooming house where the alleged assault occurred; and
3. On the jean shorts Mr. Cloud wore at the time of the alleged assault; and
4. On Mr. Cloud's wooden baton.

[11] Detective Constable Doucette variously described the red stains as "blood"; or said that they "appeared to be blood"; or simply identified them as "red stains", without elaboration.

[12] No expert opinions were tendered regarding either:

1. Whether the red stains were blood; or
2. If the red stains were blood, whether it was blood that belonged to the accused or the complainant.

[13] Shortly after the jury was selected, Mr. Cloud terminated the retainer with his lawyer and chose to represent himself. Mr. Cloud did not object to Detective Constable Doucette's various descriptions of the red stains. However, I was concerned by the various ways in which Detective Constable Doucette described the red stains for the jury.

[14] In the absence of the jury, I questioned whether, in the circumstances, Detective Constable Doucette could offer an opinion as to whether the red stains were "blood" and implicitly suggest that he was in a position to provide positive evidence as to the nature and source of the red staining (i.e. it was the complainant's blood).

[15] I made the bottom line decision that identifying the red stains as "blood" was not within the scope of lay opinion that Detective Constable Doucette could offer and that he should limit his descriptions to "red stains". I instructed the jury accordingly.

[16] Subsequently, during Detective Constable Doucette's cross-examination, Mr. Cloud asked that certain digital photographs taken at the scene be expanded on the large, in-Court display monitors so that he could draw the jury's attention to a number of black marks (or scribbles) located near red stains on the walls. While not explicitly communicating his underlying purpose, Mr. Cloud impliedly connected all of these markings (the red stains and the black scribbles) with the alleged assault.

[17] Having re-opened the issue as to the nature and origin of the stains on the walls, I reminded the jury that they had heard evidence from earlier witnesses (not Detective Constable Doucette) which included:

1. The accused (Mr. Cloud) and the complainant (Mr. O'Brien) engaged in a physical struggle through the narrow hallways of the rooming house;
2. Mr. Cloud had the wooden baton. Mr. O'Brien had a baseball bat. Mr. O'Brien said he had the bat for protection and that Mr. Cloud ambushed

him with the wooden baton. Mr. Cloud said that Mr. O'Brien threatened him with the baseball bat and that he armed himself with the wooden baton in self-defence;

3. At one point, Mr. Cloud hit Mr. O'Brien on the top of his head with the wooden baton. The strike opened a significant cut and caused the baton to break into three pieces. The cut produced a significant amount of blood, some of which was visible on Mr. O'Brien's head and face;
4. After Mr. Cloud's wooden baton broke, the two men fought for control over Mr. O'Brien's baseball bat. As they wrestled in the narrow hallway, the bat twisted and scraped against the walls;
5. Mr. O'Brien eventually tripped and fell face-first onto the carpeted floor of the hallway. He fell on top of his baseball bat. Mr. Cloud jumped on Mr. O'Brien's back and pinned his arms to the floor. They were in this position when the police (not Detective Constable Doucette) arrived; and
6. Red stains were subsequently observed on the walls and carpet around the area where the two men fought. Red stains were also observed on Mr. Cloud's baton and denim shorts. In addition, black marks or "scribbles" were found on the walls just above the red staining and in the same area where the men grappled over the bat.

[18] I told the jury that, with this evidence and based on their own common experiences and wisdom, they might draw factual inferences around the source and nature of the red stains on the walls – including both the source of the red stains and the black markings directly above the red stains. However, any such factual determinations must not be based on Detective Constable Doucette's views as to the nature and source of the red staining. Detective Constable Doucette was only in a position to confirm (through photographs) the black scribbling and the red stains. He could not opine or provide conclusory comments regarding the origin or source of the red staining because the supporting facts that would underpin these inferences came from other witnesses – not Constable Doucette.

[19] I indicated that more complete reasons would be provided in due course. These are my reasons.

## ANALYSIS

[20] Lay persons may offer opinions based on common sense and ordinary human experience related to certain rudimentary and distinctive physiological responses to physical trauma. Thus:

1. The accused (Mr. Cloud) and the complainant (Mr. O'Brien) engaged in a physical struggle through the narrow hallways of the rooming house;
2. Mr. Cloud had the wooden baton. Mr. O'Brien had a baseball bat. Mr. O'Brien said he had the bat for protection and that Mr. Cloud ambushed him with the wooden baton. Mr. Cloud said that Mr. O'Brien threatened him with the baseball bat and that he armed himself with the wooden baton in self-defence;
3. At one point, Mr. Cloud hit Mr. O'Brien on the top of his head with the wooden baton. The strike opened a significant cut and caused the baton to break into three pieces. The cut produced a significant amount of blood, some of which was visible on Mr. O'Brien's head and face;

[21] In this case, there is evidence that:

1. The accused and the complainant were fighting in a narrow hallway. Both men were armed. The complainant had a baseball bat. The accused had a 3' wooden baton;
2. During this physical engagement:
  - a. The complainant was struck on the top of his head with the accused's baton, opening a significant cut. The baton broke into three (3) pieces; and
  - b. The complainant and accused crashed against the narrow walls of the hallway as they fought; and
  - c. After the accused's baton broke, he and the complainant grappled over the complainant's baseball bat, twisting it in circles to try and gain control.

[22] If this evidence is accepted:

1. The flow of red blood is a rudimentary and distinctive physiological response to an open wound. An ordinary, reasonable person might then draw the common sense inferences that the red staining observed on stains on walls, carpet, clothing, and the wooden baton originated with the bleeding wound sustained on top of a complainant's head (i.e. blood from the complainant's injuries caused the red stains);
2. Scraping a baseball bat against a wall may leave black marks. An ordinary, reasonable person might draw the common sense inference that the complainant's baseball bat scraped against the hallway walls and caused black "scribbling" to appear above the red stains.

[23] I emphasize that these common sense inferences are subject to the following qualifications:

1. First, they are based upon the evidence summarized above;
2. Second, they are dependent on the jury accepting the evidence summarized above; and
3. Third, the inferences are narrow in scope and limited to the origin of the red stains and black marks (i.e. the red stains originated with the complainant's bloody wounds and the black scribbling occurred when the complainant's scraped against the hallway walls). Lay persons could not draw more complicated inferences regarding, for example, the implications associated with any particular blood splatter pattern. Additional, more detailed factual inferences regarding the red stains and black scribbling would require a more focussed and detailed examination into the evidence - and expert (not lay) opinion to explain what factual conclusions might reasonably arise from that evidence.

[24] Overall, I agree that it is open to the finder of fact to draw rudimentary inferences regarding the source of the blood and black marks on the walls. However, it is the jury (not Detective Constable Doucette) that is authorized to engage in that process of inferential reasoning based on the evidence presented at trial. This is because the underlying evidence which supports those inferences was presented to the jury by witnesses other than Detective Constable Doucette who simply collected evidence after the fact for forensic purposes. He was not present at the time of the alleged assault. He never spoke directly to the accused or the complainant about the circumstances surrounding the alleged assault. He neither observed nor photographed the complainant's injuries. Respectfully, Detective Constable

Doucette neither possessed nor presented the evidence necessary to cinch together the separate, distinct facts and develop appropriate inferences regarding the source and nature of the red staining or black marks. In the circumstances, he should not expressly, impliedly, consciously, or inadvertently provide the jury with factual inferences that he was not in a position to make.

[25] For clarity, I do not find that Detective Constable Doucette testified in an inappropriate manner. He did not. However, certain aspects of his evidence (i.e. the source of the red staining) were inadvertently laden with assumptions and inference. For example, his testimony presumed that the complainant was injured during the fight with the accused; the injuries included an open wound which bled and spilled on to nearby objects such as the walls, carpet, clothing, and the accused wooden baton. This presupposition caused him to infer that the red stains in a variety of ways which implied that it was the complainant's blood.

[26] Inferential reasoning is a natural cognitive process through which unique, distinct facts are linked together to develop (or infer) a factual conclusion – even though each unique, distinct fact, in isolation, may not directly express the factual conclusion ultimately reached. This cognitive process is both powered and constrained by logic, the application of rational thought, and an understanding of the basic human experience.

[27] At trial, it is important to understand who, how, and when inferences may be properly drawn. The starting point is admissible evidence revealing distinct facts from which the process of inferential reasoning can begin. In this case, the evidence needed to forge the specific factual links which may then culminate in a conclusion (or inference) came from a number of witnesses, many of whom were not Detective Constable Doucette. Some hours after the alleged assault, Detective Constable Doucette observed the red stains but he did not have (and could not testify as to) all of the distinct links which form the logical chain leading to an inference regarding the nature and origin of the red stains. Respectfully, these gaps in his testimony prevent him from expressing certain inferences which he presumed to offer.

[28] I conclude by acknowledging that these basic conclusions are grounded in common sensical and perhaps even trite evidentiary principles. Nevertheless, they merit repetition because they highlight the nature and limitations of inferential reasoning, a critical aspect of the decision-making process. In the end, trials must be determined on the basis of admissible evidence and not testimony that presupposes a particular conclusion without the appropriate evidentiary foundation.



A witness should not be permitted to present evidence which risks (even inadvertently) improperly swaying the jury or pre-empting the jury's fact-finding authority, including the process of inferential reasoning. Generally speaking, trials should be determined based on the admissible evidence and the proper decision-making process – not the power of suggestion.

Keith, J.