

IN THE MATTER OF

Sub-Section 3(2), Sub-Paragraphs 3(1)(b)
and 3(1)(c) of the Royal Newfoundland
Constabulary Act 1992 (the "Act")

AND

IN THE MATTER OF

the public complaint of Shannon Murrin
(the "Complainant") dated the 15th day
of December 2005 against Constable
Paul Didham

DECISION

1. The Complainant filed a complaint on December 15, 2005 with respect to the conduct of Constable Paul Didham, Regimental No. 606 of the Royal Newfoundland Constabulary (RNC) in arresting and charging him with breaches of sub-paragraph 264.1(1)(a) - 264.1(2) and sub-paragraph 175(1)(a)(i) of the Criminal Code of Canada.
2. The substance of the Complaint was that Cst. Didham did, on December 12, 2005, grab the Complainant by the throat at a time when Mr. Murrin was handcuffed as he was being escorted to the Provincial Court holding cells, thereby committing breaches of sub-paragraphs 3(1)(b) and 3(1)(c) of the Royal Newfoundland Constabulary Complaints Regulations and an offence under sub-section 3(2) of the Regulations.
3. Mr. Robert Buffett was the first witness to be called. He is a Deputy Sheriff who was working at the Provincial Court holding cells on December 12, 2005. He stated that he had received a call from Communications advising that Police would be arriving shortly with a suspect in custody and that the Complainant was the suspect.
4. His initial contact was via the CCTV system camera which was set up to monitor the area outside the door to the holding area. He said that he saw two RNC members, Paul Didham and Douglas Pelley, restraining Mr. Murrin. Mr. Buffett did not see any physical altercation but did see some resistance on the part of the Complainant; that he was visibly bothered but nothing he saw alarmed him.
5. After Mr. Murrin was in Mr. Buffett's custody nothing unusual occurred and the suspect was processed normally.
6. On Cross-examination Mr. Buffett recounted being bitter and spat upon by suspects over the years and told of the training that all Sheriff's Offices' employees had taken in order to avoid this type of thing from occurring. Buffett stated that he would take steps so as to

keep a suspect's face away from his so that spitting would not be a possibility, such as turning the person's face toward a wall or in any event away from his own. This witness said that these measures are required to minimize the risks of infection from various communicable diseases, such as several forms of Hepatitis.

7. During this witness's testimony the video recording of what had transpired outside the door to the holding cells was played. Unfortunately there was no audio component to the tape and due to the system switching to other camera locations there were gaps in the presentation. Basically all I could discern from the recording was the Complainant's head moving close to Cst. Didham's face and then a brief segment of Mr. Murrin being pushed towards the wall/door area.
8. Mr. Buffett testified that from what he could see on the tape, if he was Cst. Didham, he would have taken action in order to prevent the Complainant's face from coming close to his face and would have applied such force necessary to accomplish that end.
9. Mr. Murrin appeared to be visibly agitated when he came through the holding cell area's door, but did not say anything to Buffett about what may have occurred outside.
10. Mr. Chris O'Neil has been a Peace Officer for 15 years and has operated the Holding Cells for 6 years.
11. He testified that audio and video are both normally captured on the monitoring system however no audio is recorded on the camera outside the door. This individual reiterated Robert Buffett's concerns about infectious diseases and opined, upon viewing the tape, that Cst. Didham's actions in moving a suspect's face away from his own were not uncommon. He said that his own first reaction would be to move the suspect away from his face.
12. Mr. Shannon L. Murrin Jr. is the Complainant in the present hearing and testified in Direct Examination that he was in Traffic Court at Atlantic Place where he was convicted of driving without insurance. Constable Pelley was the police officer who issued the ticket to him and gave evidence before the presiding Provincial Court Judge.
13. After the trial Mr. Murrin said that he spoke with Cst. Pelley in the area outside the Court and told Pelley that he had committed perjury during his testimony which ultimately convicted him.
14. Mr. Murrin said that the Constable laughed at him while he walked away with his friend Lewis Tucker and took the Escalator down. While waiting for his girlfriend on top of the Escalator the Complainant testified that Cst. Didham came out from the Court area and was laughing at him and making obscene finger gestures towards him. Mr. Murrin said that he had never seen Cst. Didham before. After a brief verbal exchange Mr. Murrin said that he proceeded down the Escalator. After a few seconds Cst. Didham called out to him and he went back up to see what the Officer wanted. Cst. Didham told Mr. Murrin that he was under arrest for uttering threats. Cst. Pelley was walking behind Didham and

they arrested him. Mr. Murrin testified that the Officers applied handcuffs to Mr. Murrin and twisted them so that they hurt him.

15. The Officers escorted Mr. Murrin to the holding cells while the Complainant was constantly asking that the handcuffs be removed. Mr. Murrin reiterated several times that Constable Pelley was lifting up on the handcuffs and thereby hurting him.
16. The trip to the lock-up at Provincial Court only took a couple of minutes by Mr. Murrin's estimate and he denied attempting to spit in the Constable's face and testified that Cst. Didham lost his temper and grabbed him by the throat.
17. From the point of being turned over to the holding cell staff there was no further altercation.
18. Three days later Mr. Murrin filed a Complaint with the Royal Newfoundland Constabulary and testified that there was a small bruise on his throat. As a further note he stated that he has Hepatitis "C". This concluded his direct testimony.
19. In Cross-Examination by Simmons, QC, Mr. Murrin admitted having called Cst. Didham names and, referring to the statement he gave to Sgt. Roberts, confirmed that there was no mention of Cst. Didham giving him the "finger" or telling him to "go pay his ticket" in a mocking fashion. This was confirmed by Sgt. Roberts in his *viva voce* testimony as was the fact that there was no mention of anyone "lifting the handcuffs". The Complainant did tell Sgt. Roberts that he liked to get up close to someone when he was arguing. There was no mention in his written statement to the RNC Sergeant that the handcuffs were too tight; all of which was confirmed by Mr. Murrin, along with the fact that in January, 2007, he gave false information regarding an old missing persons investigation in order to get transferred back to Newfoundland.
20. Cst. Douglas Pelley was on duty December 12, 2005 and in Traffic Court when Mr. Murrin went to trial for driving a vehicle without insurance. The Constable had stopped a vehicle in Paradise and given him a ticket for the offence noted.
21. Whilst in the Court annex Mr. Murrin came out of the Court and seemed quite upset to the Officer, he was cursing and making none too veiled threats towards Cst. Pelley and after a minute or so the Complainant left.
22. Cst. Didham then came out of Court and told Pelley that he intended to arrest Murrin for uttering threats. Cst. Didham told Cst. Pelley that Mr. Murrin had said to him that "the next time I see that Cop it's bang, bang, bang".
23. The two Officers descended one level on the escalator where Cst. Didham arrested and handcuffed Mr. Murrin, with Pelley's assistance, and each took one of the Complainant's arms and proceeded to the Holding Cells area.

24. Cst. Pelley testified that Mr. Murrin was tugging at Cst. Didham, shouting, cursing, etc. When they arrived at the Holding Cell entrance Mr. Murrin pulled away from Pelley's grasp and was in Cst. Didham's face. At that point the officers pushed Mr. Murrin through the door and into the custody of another peace officer.
25. Cst. Pelley stated that he, as well as all other Police Officers, are very cognizant of the risk of contagion associated with the exchange of body fluids. He further stated that he did not lift the handcuffs as was alleged by the Complainant. It is noted that Cst. Pelley had no earlier involvement with Mr. Murrin prior to this incident and the issuance of the traffic ticket.
26. Cst. Paul Didham had never met Mr. Murrin prior to the day at Traffic Court. He saw Mr. Murrin and Cst. Pelley having words outside of the Court area and told the Complainant to leave. He was looking over the railing when he heard him say "next time I see that fucking copy Pelley it will be bang, bang, bang"... while making his hand as if shooting a gun.
27. Someone in the area had said that Mr. Murrin had Hepatitis, however no name was mentioned. Didham, on the basis of what he had heard felt that the threat was a serious one and proceeded to arrest him.
28. We had the benefit of viewing the video only surveillance tape of the Officers and Mr. Murrin arriving at the Holding Cell area twice. Unfortunately due to the lack of audio and broken continuity it was of little assistance and I give it no weight in reaching my decision other than to find that it does show that Mr. Murrin did move his face very close to Cst. Didham's.
29. Cst. Didham indicated that it took 2 - 3 minutes to get to the cells from the time of the arrest and that it proceeded relatively smoothly until Mr. Murrin make a lunge for his face.

DISPOSITION

30. As it almost always occurs, there are inconsistencies in the evidence adduced through witnesses produced by Counsel for both sides in this Reference to Adjudicator. Having stating the above and well realizing that human memory can be imprecise, at best, I must make my determination on the balance of probabilities and only on the admissible evidence before me.
31. In Hickey v. Ploughman a 1998 decision of the late **Reginald Brown QC**, the learned Adjudicator quite properly applied the civil test that evidence must be **clear and convincing** for a case to be proven in that (at p. 12): (emphasis added)

"As stated in the case of **Re Tremblay et. al. and Fleming**, (29 D.L.R. 557, 1986, Ont, C.A.) a 1986 Ontario Court of Appeal decision, the most serious consequence that can

befall a police officer in such a proceeding is the loss of his or her position and while a serious consequence, it is a civil consequence and not punishment of a Criminal nature."

Further:

"In Criminal cases a charge must be proven beyond reasonable doubt but within that standard there are degrees of proof. In proportion as the crime is enormous so ought the proof to be clear. Also in civil cases the case must be proved by a preponderance of probability, but there may be degrees of probability within that standard. Acting therefore with caution, the evidence must be such to lead me to the fair and reasonable conclusion that Cst. Hickey has acted improperly as alleged" (emphasis added).

32. To a large extent most of the clearest evidence adduced at this Hearing came from witnesses who had very little involvement in the incident complained of, as they were not outside the holding cell door for the split second when something apparently occurred.
33. Mr. Robert Buffett testified that when the Complainant was inside the door and thus in this custody, he did not mention anything to him about what is now the subject of this Complaint, nor did Mr. Murrin say anything about handcuffs to Sgt. Dean Roberts when he gave his statement to the Sergeant. This incongruity is very troubling in that I cannot rationalize it given that the lifting of Mr. Murrin's handcuffs appeared to be the Complainant's main impetus for getting in Cst. Didham's face on the day in question.
34. All of the evidence I have heard from witnesses, save that of Mr. Murrin, can only lead me to the conclusion that Constable Didham did nothing wrong on the day in question that could attract a finding that any breach of the Royal Newfoundland Constabulary Act, or its subordinate legislation had taken place.
To a large and overwhelming extent the evidence against the Police Constable adduced at this Hearing was not clear and convincing and did not meet the test set forth by Brown, QC (which I accept) to be used in weighing evidence in such matters.
35. Having come to the conclusion above I have no alternative but to Dismiss this appeal.

David L. G. Andrews, QC
Adjudicator

August 13, 2007