



No. C822105

Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Vancouver, B.C.

11 May, 1984

BETWEEN:)	
)	
DENNIS TIMMERMEISTER)	REASONS FOR
)	JUDGMENT OF
PLAINTIFF)	CALLAGHAN, S.C.J.
)	
AND:)	
)	
CONSTABLE R. PETERSON and)	
THE CITY OF VANCOUVER)	
)	
DEFENDANTS)	

F.G. POTTS, Esq.	appearing for the Plaintiff
J.E. HALL, Q.C., Esq.	appearing for the Defendants

THE COURT: (Oral) The plaintiff, a 23 year old sales representative, claims damages from the defendants for assault. The defendant Peterson is a constable in the Vancouver City Police Department and the city is joined as a defendant pursuant to Section 54 of the Police Act, R.S.B.C. 1979, Chapter 311. The defendants allege that Constable Peterson acted in defence of a fellow officer.

During the evening of October the 24th, 1981, the plaintiff and five young male companions of a similar age by pre-arrangement attended a downtown Vancouver pub for an evening of merriment. They arrived about 9:30 and left about three hours later. After exiting, the group proceeded east and in an act of wanton vandalism turned over a Honda

motor vehicle that was parked near the intersection of Powell and Main Street. Thereafter, they quickly left the scene. The mischief which took place within a block of the Vancouver police station was observed by a motorcycle police officer. The young men were apprehended as they entered their vehicle. A minimum of four police officers were in attendance at the scene at all times, including the defendant, Constable Peterson.

Following their arrest, the plaintiff and three others were lined up in a vacant lot facing a wall in a controlled position, that is, their legs apart and arms out-stretched with their hands against the wall for easier searching. The young men including the plaintiff were under the influence of alcohol. All were slightly to moderately intoxicated save Wayne Aussem who was then drunk. They were loud and boisterous. While the four were in a controlled position, Constable Peterson commenced a search. Constables Lester and Cruise were within a few feet of him. The plaintiff Timmermeister was standing beside Bettles and was being searched by Constable Lester. The plaintiff while in the position described turned around on at least three occasions while being searched and once lifted his right hand from the wall. He was loud, insulting, defiant and undoubtedly aggravating but did not attempt to escape nor did he assault or attempt to assault Constable Lester or Peterson. While the plaintiff was in the search position, Constable Peterson lost his temper, presumably because of

something the plaintiff said or did, and struck him in the face with his fist knocking the young man to the ground. After regaining consciousness, the plaintiff was helped to his feet by Constables Lester and Cruise and again placed in a controlled search position. Peterson is six foot four and at the time of the incident weighed approximately 220 pounds. The plaintiff is much shorter, five foot eleven and of slight build.

Constable Cruise who was within a few feet of Constable Peterson testified the plaintiff was loud and abusive but he did not see him threaten either Constable Lester or Constable Peterson. Furthermore, Cruise did not notice the plaintiff interfere or attempt to interfere with Constable Peterson while the search was being conducted, nor did he see him strike or attempt to strike Constables Lester or Peterson. While he did not see the blow struck by Peterson, he distinctly heard it. The blow was delivered with considerable velocity.

Constable Peterson testified that the plaintiff came off the wall with his right elbow raised and arm bent as if to strike Constable Lester with his elbow. While in that position, Peterson grabbed the plaintiff's right arm with his left hand and struck him in the face with his right fist. He said he was apprehensive the plaintiff's elbow would strike Lester and that he acted instinctively to protect a fellow officer. I find that not to be the case.

Timmermeister's back was to the officers. He

was in a search position, his feet some three feet from the wall leaning forward with his hands against the wall. His weight was off centre and he would clearly be at a disadvantage in attempting to start an altercation. He was much smaller and lighter than the attending officers and an unlikely source of danger. Yet Peterson testified that the plaintiff came off the wall fighting, with his right elbow directed at Constable Lester after Peterson had pushed him to the wall for the third time. But Constable Peterson's notes made shortly after the incident do not support that statement. The notes reads in part, "on arrival, had all parties to put hands on wall. Once over there searching one person, when above person kept turning around and refused to cooperate. Twice had to keep him, put hands on wall. Turned and I pushed him back. Turned with hand raised. Hit on side of cheek". No reference is made to coming off the wall fighting nor to an elbow being directed at a fellow officer. Surely if that had occurred, it would have been mentioned. Furthermore, even if it occurred as he stated, Peterson by grabbing the plaintiff's right arm with his left hand had immobilized the plaintiff. There was no need to strike him with his right hand with such force that the plaintiff fell unconscious to the ground in a semi-fetal position.

Constable Lester's evidence was not dissimilar to that of the defendant Peterson. He maintained Timmermeister attempted to assault him while making a body

search and it was only then that Peterson acted. But again Lester's scanty notes made the same day do not refer to an alleged assault. They read in part, "five males stopped by wagon driver and Corporal Dale Blanchard. P.C. 315 and me back up searched a male person - continued to turn around and subdued by 315".

The plaintiff and a number of the other young men in attendance testified that while they were in the search position, the officers kicked and then struck the insides of their legs with a dark metal object, presumably a flashlight in order to get them to widen their stance. I am satisfied that occurred, and it was that action in part that caused the plaintiff to turn his head and lift his hand off the wall.

Counsel for the defendants submit that the action of Constable Peterson was necessary to defuse a dangerous situation. I disagree. At the search area, there were six experienced police officers, a minimum of four at any one time. Some of the young men were slightly, while others were moderately, intoxicated. They were verbally abusive but complied with the demands of the officers to walk to the wall, face it and allowed themselves to be searched. It was not a situation where force was required or justified. The constable unfortunately lost his temper because of the comments expressed by Timmermeister and his continual turning around while being searched.

Clearly, on the whole of the evidence, the

plaintiff has established that he was assaulted by Constable Peterson and that he suffered injuries therefrom.

The striking of the plaintiff was not justified. He did not attempt to assault either officer. But even if justified, the force used was excessive, that is, more force than reasonably necessary was used.

The plaintiff and the five other young men were charged with mischief. All entered pleas of guilty. They were ordered to make restitution and granted conditional discharges. Restitution was in fact made. Four of the six young men testified. Each agreed his conduct on that evening was unreasonable, unseemly and disgraceful.

While I do not condone the actions of the plaintiff, it goes without saying that police officers are not to take the law into their own hands. The wearing of a uniform does not give a police officer the right to use excessive force in searching, apprehending or escorting a citizen.

As a result of the unwarranted attack, the plaintiff suffered injuries to his teeth including fractures to his mandibular right central and mandibular right lateral while his maxillary right cuspid was sheared off. He also sustained bruising to his nose, lips and right eye.

The majority of the dental work because of lack of funds has not been carried out. Dr. Nikolai, the plaintiff's dentist, indicated in his report that because of the severe blow to the teeth, they may become necrotic in

the future. The total estimated cost for repairs including cost to date will amount to the sum of \$2,007.70.

For a week following the incident, the plaintiff's mouth was painful and he had difficulty eating. Save for his teeth, he has no lasting effects from the incident.

The plaintiff who was gainfully employed at the time was unable to return to work for a period of seven days. He lost by way of income the sum of \$520.80.

I assess the plaintiff's general damages for pain, suffering and loss of amenities, exclusive of lost wages at \$2,500.

The plaintiff also seeks punitive or exemplary damages. Timmermeister was involved in an act of mischief. After being apprehended, he was loud and boisterous and berated and insulted the arresting officers. His conduct was unseemly to say the least. The defendant Peterson unfortunately lost his temper because of the administered verbal abuse and the plaintiff's actions in turning around while the search was being conducted. If the plaintiff had kept quiet, the incident might not have taken place. Consequently, I have concluded the injuries and the manner in which they were caused are not such as to warrant exemplary damages.

In the result, the plaintiff is entitled to recover from the defendants the sum of \$5,028.50 and taxable costs. There will be pre-judgment interest on the sum of

\$3,162.20 from the 25th day of October, 1981 at the rates allowed by the Registrar from time to time. Judgment accordingly.

MR. POTTS: My lord, might I get the figure, the pre-judgment interest on which amount?

THE COURT: On the sum of \$3,162.20.

MR. POTTS: Thank you, my lord.

MR. HALL: My lord, there was entered as an exhibit the flashlight. I simply ask for an order returning it.

THE COURT: Yes, that order will go.
