

SUPREME COURT OF NOVA SCOTIA

Citation: *Blinn v. Annapolis Royal Police Department*, 2018 NSSC 236

Date: 2018-09-27

Docket: Yar. No. 441583

Registry: Yarmouth

Between:

Jean-Michel Blinn

Plaintiff

and

Annapolis Royal Police Department

Defendant

DECISION

Judge: The Honourable Justice Patrick J. Duncan

Heard: January 29 and 30, 2018, in Yarmouth, Nova Scotia

Counsel: Jean-Michel Blinn, plaintiff, self represented

Ian R. Dunbar, counsel for the defendant
Robert Mroz

By the Court:

Introduction

[1] On July 9, 2015, sworn members of the Annapolis Royal Police Department investigated a complaint that the plaintiff, Jean Michel Blinn, had been operating a motor vehicle in a manner that was in contravention of the **Motor Vehicle Act S.N.S 1989, c. 293. (MVA)**

[2] When the officers located Mr. Blinn he was verbally uncooperative, refusing to provide basic information and to recognize the authority of the officers over him and over the subject matter of the alleged offences. After consulting their superior officer, the investigating officers arrested the plaintiff and took him into custody. Mr. Blinn was physically resistive to their efforts.

[3] Mr. Blinn alleges that he is entitled to \$1,000,000 in “financial restitution” “plus 25% agreed interest” to compensate him for the “severe physical and emotional trauma” that resulted from an allegedly unlawful detention and arrest.

[4] For the reasons that follow, the plaintiff’s claim is dismissed.

Position of the Plaintiff

[5] The plaintiff is self-represented and his Notice of Action and Statement of Claim, as amended, reflect his lack of legal training. Nevertheless, the factual and legal underpinning for his claim are discernable. He asserts that the police conduct was in contravention of various provisions of the **Criminal Code (Code)**, the **Universal Declaration of Human Rights**, the **Canadian Charter of Rights and Freedoms (Charter)**, and the **MVA**. The alleged transgressions listed by the plaintiff are:

1. Assault causing injury to his right shoulder;
2. Assault while armed with a weapon;
3. Unlawful detention and arrest;
4. “Malice” by purposefully keeping the police vehicle windows closed on a hot day while he was confined in the police car;
5. “Malicious Negligence” by denying medication and medical treatment;

6. “Cruel and Unusual Punishment” by refusing him access to their police supervisor, and “administering violence within 5 seconds of informing him he was under arrest”;
7. Theft of his motor vehicle;
8. Robbery and Extortion;
9. Sexual assault as a result of his pants being torn off of him during the arrest;
10. Theft of “legal documents”;
11. Theft of “religious documents”;
12. Impeding his freedom of movement;
13. “Mental Trauma”;
14. “Impeding the Right of Recognition of Sovereign status”; and
15. “Impeding the course of justice”.

Position of the Defendant

[6] Counsel for the defendant submits that the two police officers were acting lawfully, and in the execution of their duties while investigating a complaint that the plaintiff was unlawfully operating a motor vehicle. The plaintiff was arrested for refusing to display a valid driver’s licence on demand and refusing to identify himself.

[7] Upon arrest, it was necessary for the officers to use reasonable force to obtain the plaintiff’s compliance with their directions. Medical assistance was provided by the Emergency Health Services and the plaintiff was also transported to the hospital as a precaution.

[8] The plaintiff was charged with various offences contrary to the **Code** and the **MVA**, arising from this incident.

[9] Liability and damages are denied and the defendant puts the plaintiff to the strict proof of facts in dispute. The defendant pleads the provisions of s. 25 of the **Code**, and s. 42(1)(a) of the **Police Act** as legal justification for the officers’ actions.

[10] If the plaintiff suffered any damages, which is denied, then it is pleaded that he was contributorily negligent in that he:

- (a) failed to comply with the lawful directions of the police officers;
- (b) resisted the arrest, necessitating the use of force to effect the arrest; and
- (c) caused his own injuries by his actions during the course of the arrest.

Issues

[11] The issues engaged by the plaintiff's pleadings and testimony are:

1. Whether the plaintiff has established that the defendant is liable to him for damages on the basis any of the following causes of action:
 - (a) assault/battery/unlawful detention
 - (b) false imprisonment
 - (c) detainee/conversion
 - (d) malicious prosecution
 - (e) breach of constitutional rights
 - (f) negligence
2. If the defendant is found to be liable, then what damages, if any, has the plaintiff established as having been caused by the unlawful actions of the police officers?

The Evidence

[12] To provide better context for an assessment of the evidence presented by the plaintiff, I will begin with a review of the evidence of the defendant's witnesses.

Constable Ashley Cleaves [nee Campbell]

[13] Ashley Cleaves indicated that on the afternoon of July 9, 2015, she was a passenger in a vehicle operated by her husband. At that time, she was a Constable with the Annapolis Royal Police Service, but was off duty. While travelling on St. George Street toward the business district in Annapolis Royal, she observed the plaintiff's vehicle exit from School Street and turn in front of her vehicle and continue to travel in the same direction.

[14] It should be noted that Mr. Blinn adamantly denies being on School Street. The only stop he acknowledges making was to pick up an ice cream at a convenience store. He never indicated exactly where that took place. Nothing turns on whether the plaintiff was on School Street. The material facts of what the officer observed and testified to all occurred after the plaintiff's vehicle was on St. George Street and in front of her vehicle. This disagreement could reflect on the reliability and perhaps credibility of the testimony of this witness and of the plaintiff. Overall, however, I found Cst. Cleaves' testimony to be credible and generally reliable.

[15] Constable Cleaves testified that she observed the plaintiff's vehicle travel left of the double solid centre line on St. George Street in the face of oncoming traffic, specifically an oncoming camper trailer. The plaintiff's vehicle swerved back into its proper lane and from that point on it drifted towards the centerline and back.

[16] The truck turned right onto St. Anthony Street.

[17] The officer was able to accurately describe the plaintiff's vehicle. She noted that it had no license plate, and no temporary permit on either of the front or side windows of the truck. It was her conclusion that the vehicle was, therefore, not displaying a licence as required by the **MVA**.

[18] She testified that the appearance of the plaintiff is consistent with the appearance of the driver of the truck on that day but that she could not specifically identify him as the driver. In other respects, including the description of the truck, the route it followed, as well as the short time over which this incident occurred, it is clear that the plaintiff was operating the truck at the time she made her observations. This is confirmed by the plaintiff's evidence.

[19] The officer believed that the operation of the vehicle was consistent with one of three possibilities:

1. an impaired driver;
2. a person suffering a medical emergency; or
3. the operator of the vehicle was lost.

[20] Irrespective of why the vehicle was being driven in this manner, it represented a risk to the safety of the public and so the officer phoned in a report to the police officers on duty. From her perspective, it would be for them to determine the cause of the erratic driving and what steps to take arising from their investigation.

[21] At 4:35 p.m., Cst. Cleaves received a phone call from the investigating officer, Cst. Joel Foster, seeking her assistance. Cst. Foster advised that he was stopped on Highway 1, across from Charlie's Place Restaurant. She recalled that she could hear the voice of the plaintiff in the background, which she described as "very upset" and agitated.

[22] The constable was scheduled to commence her shift at 5:00 p.m., but reported early to respond. Cst. Cleaves arrived at Cst. Foster's location at 4:54 p.m. She observed Cst. Foster and a cadet seated in the front of the police car and Mr. Blinn in the back seat. The window was open and Mr. Blinn was "screaming". He was verbally aggressive and very irate. He was handcuffed. Cst. Cleaves spoke to him in an attempt to de-escalate the situation. The plaintiff complained that he had been attacked by the other officers and that his shoulder was injured. He claimed that he had been arrested for no reason. She recalled that he was wearing a red shirt and jeans that were ripped. Plaid pajamas could be seen underneath the jeans.

[23] An ambulance arrived while she was at that scene. When asked in cross-examination about the refusal of the ambulance personnel to transport the plaintiff to the hospital she testified that it was not unusual for EHS employees to refuse to transport prisoners who are in an irate or agitated state. When she observed the plaintiff on the highway he was in such a state, and so it was not surprising to her that they would not want to transport him to the hospital.

[24] Mr. Blinn's vehicle was impounded later that afternoon. That evening, the plaintiff called Cst. Cleaves indicating that he was suing the officers and wanted to know the address to serve legal documents on Csts. Foster and Schofield. He accused Cst. Foster of stealing \$20 from him.

[25] The plaintiff also wanted to know how to get his truck released. The officer explained the conditions for the release of the vehicle. He wanted to put it on a flatbed and drive it away without the vehicle actually being operated on a highway. He was told that he would have to have proof of ownership in order to do this. Mr. Blinn, apparently, never fulfilled the conditions for obtaining the release of the vehicle and accuses the police of "theft" of the vehicle for this reason.

[26] St. George Street has two-way traffic until it intersects with St. Anthony Street, at which point it is a one-way street. Cst. Cleaves observed Mr. Blinn operating his truck in the face of oncoming traffic on the two-way portion. Cst. Foster understood that Mr. Blinn was travelling in the wrong direction on the one-way portion of the street. This created some confusion when Cst. Foster first

encountered the plaintiff as will be discussed. Cst. Cleaves acknowledged that on the evening of these events, or the following day, she spoke with Cst. Foster about his confusion as to the location and nature of the driving offence she had reported.

Cst. Joel Foster

[27] On July 9, 2015, Joel Foster was a constable employed by the Annapolis Royal Police Department. He was on duty and partnered with Cst. Alex Schofield, who was a cadet at that time.

[28] He testified that he received a complaint from off duty police officer Nicole Cleaves that she observed a truck travelling on St. George Street, in a manner that caused her to believe the operator might be impaired. The driver was a man and was alone in the vehicle. She described the truck as a Ford Ranger, black with the frame or chassis painted red. It did not have a licence plate. He also understood that the vehicle had been “all over the road” and travelling in the wrong direction on the one-way portion of St. George Street.

[29] The vehicle was located in a parking lot on St. Anthony Street. It was unoccupied and without a licence plate, and so could not be checked for a registered owner. Shortly, the plaintiff arrived on foot and began to enter the truck. The officer approached him and advised that he was investigating a “driving complaint”.

[30] Mr. Blinn turned on a smart phone camera which captured the beginning of the conversation. That recording is in evidence and will be referred to a later point in this decision.

[31] Cst. Foster requested that Mr. Blinn provide his driver’s licence, insurance and vehicle registration. Mr. Blinn refused. He handed a laminated document to the officer. Marked as Tab 4 in Exhibit 3, it states:

NOT FOR HIRE NOTICE

- DO NOT ASSUME JURISDICTION -

THIS IS A PRIVATE VEHICLE AND IS NOT FOR HIRE. AS A COMMON-LAW PERSON OF INHERENT JURISDICTION IT IS UNDERSTOOD THAT I DO NOT ENJOY THE BENEFITS OF THE MOTOR VEHICLE ACT (OR INCOME TAX ACT, ETC) DUE TO THE LACK OF JURISDICTION, AT THIS TIME IT IS CLEAR THAT I DO NOT CONSENT TO ANY UNLAWFUL TRANSACTION OF NON-CONSENSUAL BUSINESS PRACTICES AND A FEE SCHEDULE IS APPLICABLE TO ANY PRIVATE CORPORATION THAT WISHES TO CONDUCT COMMERCE WITH MY OWNED CQV TRUST, TO

WHICH I AM DIRECTOR. BY WAIVING YOUR RIGHT TO END ANY CONFLICT OR CONFRONTATION YOU HEREBY CONSENT TO INCURRING CHARGES LISTED IN "FEE SCHEDULE" ON BEHALF OF YOUR COMPANY. YOU HEREBY CONSENT TO FINANCIAL RESTITUTION PAID TO THE HOLDER OF THIS CARD WITHIN A TIMELY MANNER IF ANY COMMERCE IS CONDUCTED. I ONCE AGAIN STATE THAT I DO NOT CONSENT TO GOVERNMENTAL ACTIVITY AND BY ASSUMING JURISDICTION YOU HEREBY AGREE TO APPLICABLE FEE SCHEDULE PAYABLE TO OWNER OF CQV TRUST.

[32] At one point, Mr. Blinn identified himself as "John".

[33] Cst. Foster described the plaintiff as "argumentative" and uncooperative. Despite repeated requests to provide his documents, Mr. Blinn would not. Confronted with the plaintiff's refusal to cooperate, the officer used a cell phone to call the Chief of Police, to seek direction, and to request backup officers if needed.

[34] After receiving the directions of his superior officer, he approached the driver's side of the truck and directed the plaintiff to give the officer the cell phone that was being used to record events. Mr. Blinn turned it off and put it in his pocket. The plaintiff exited the vehicle on his own.

[35] The officer advised the plaintiff that he was being arrested for refusal to identify himself, and told to put his hands behind his back. The plaintiff refused and a struggle ensued. This struggle lasted approximately ten minutes. During this time, Mr. Blinn would sometimes put his hands in his pockets and at other times would clasp them in front of himself. He was repeatedly told to stop resisting. At no time was he punched or kicked, nor did he go to the ground.

[36] Cst. Foster has been trained and certified in the use of pepper spray. The struggle had gone on long enough that he was tiring. He advised Mr. Blinn that he was to put his hands behind his back or be sprayed. The officer produced the spray can and issued a warning of his intent to use it. As there was no compliance he did so. Issuance of a warning before deploying the spray was consistent with that training.

[37] The spray had little effect on Mr. Blinn who continued to resist. He had his hands in his pocket when the officers pulled his arms back to handcuff him. This resulted in the plaintiff's pants being torn.

[38] Once handcuffed the plaintiff was placed in the police car where he began to scream that he could not breathe. A call was made immediately for paramedics to

attend which they did. Mr. Blinn was removed from the police car and sat on the ground until the paramedics arrived. They rinsed Mr. Blinn's eyes, assessed him and cleared him for health concerns. After the paramedics were finished, the officer provided the plaintiff with his rights under the **Charter**. He was advised that they were going to the RCMP Digby Detachment. Mr. Blinn refused to respond when offered the opportunity to contact legal counsel. (This was offered again approximately a half hour later with the same result).

[39] The police left with Mr. Blinn for Digby where there were detention facilities. The plaintiff was in the back of the vehicle during transport. It was a hot day and the air conditioning was on in the car. Cst. Foster believes that the window in the back was down "a crack".

[40] Mr. Blinn was quoted as saying that "Judgement Day" was coming for the officers. He told Cst. Foster that he was "the devil" and that the plaintiff was going to sue him "for so many zeros" that the officer "would not know what to do."

[41] Shortly after turning on to Highway 1 in Annapolis Royal, the plaintiff began to hyperventilate, "screaming" that he needed his "puffer". Cst. Foster recalled seeing a puffer in Mr. Blinn's jeans earlier and so he called EHS again. The officers pulled the vehicle to the side of the road and waited for the paramedics to attend. The paramedics arrived very soon after, and administered the puffer through the window of the police car.

[42] Mr. Blinn complained that his shoulders hurt and that the police "broke" his arms. The paramedics advised the police to transport the plaintiff to hospital for further assessment. When asked why the paramedics did not conduct a further assessment or transport the plaintiff, the officer said that in his experience EHS will not transport people who are "out of control". The plaintiff had been "screaming" and "spitting", and "carrying on".

[43] Because of the plaintiff's behavior Cst. Foster contacted the RCMP in Digby to request assistance when they arrived at the hospital with Mr. Blinn. Upon arrival at the hospital, one of the RCMP members recognized the plaintiff but could not remember his name. That officer returned to his office where he located the plaintiff's information and returned to the hospital where he passed it along to Cst. Foster.

[44] Satisfied with this evidence of identification, Cst. Foster decided to release the plaintiff from custody after providing him with notification to attend court to

face a series of charges under the **Code** and the **MVA**. Before doing so, he again contacted his Chief, who agreed with this course of action.

[45] When served with the notice to attend court, Mr. Blinn wrinkled up the paper and threw it on the floor. An RCMP officer picked it up and left it on a table. The officer indicated that the **MVA** charges included:

- failing to display a driver's licence;
- operating a vehicle to the left of the center line;
- no motor vehicle inspection;
- no licence plate; and
- no insurance.

[46] He was also charged with the offence of obstruction under s. 129(a) of the **Code** for obstructing a peace officer by failing to provide his name. The officer was not present when the matters returned to court.

[47] In cross-examination, Cst. Foster acknowledged that the plaintiff had handed him a document at the scene, the contents of which suggested to him that Mr. Blinn adhered to "Freemen of the Land" beliefs, which included the view that he is not required to abide by government enacted laws unless he consented to those laws.

[48] He agreed that Mr. Blinn said he would identify himself if he was charged with an offence, but the officer's requirement was to obtain the plaintiff's identity and then decide how to proceed.

[49] Much of the detail provided in direct examination was repeated, sometimes with additional explanation. For example, the officer explained that he wanted to take Mr. Blinn's phone so that it could not be used to hit the officers during the arrest. This was important because of Mr. Blinn's confrontational attitude. Police would not permit a person who is about to be handcuffed to hold an object in their hands because of the risk that it could be used against them.

[50] He did not agree that Mr. Blinn was "naked" after his pants ripped, although they were ripped open and fell to the plaintiff's ankles at one point during a search incident to arrest.

[51] Mr. Blinn wanted to know why the officers would not administer the puffer when they stopped *en route* to Digby. Cst. Foster replied that he is not trained nor is

it appropriate for him to administer medications to persons in custody. He had no identification for the plaintiff and, in his opinion, it was something that paramedics are more appropriate to administer. The police were willing to have EHS transport him to the hospital but the paramedics were not prepared to take the plaintiff due to his behavior.

[52] As to the ultimate disposition of the charges, the officer stated that those decisions were made by the prosecutors, not him. He was not present nor did he follow the court proceedings that came out of this altercation.

[53] Cst. Foster provided his evidence in a straight forward manner. He provided a coherent narrative that was internally consistent and consistent with other evidence that I accept, including that of Cst. Cleaves and of the civilian witness, Lorraine Comeau.

Lorraine Comeau

[54] Ms. Comeau lives in her home, located across St. Anthony Street from the point of the plaintiff's arrest. On July 9, 2015, her attention was drawn to the sound of a man yelling outside. She went out and stood on her deck where she initially had a clear view of the interaction between the plaintiff and the arresting officers.

[55] She observed the police holding Mr. Blinn by the arms, trying to put his hands behind his back to handcuff him. Mr. Blinn was resisting this, struggling and yelling, at a volume she placed at 8.5 out of 10. She heard the officers repeatedly tell the plaintiff to "calm down".

[56] Mr. Blinn clasped his hands in front of him. She formed the opinion that he was "quite strong". Eventually, the police informed the plaintiff that if he did not calm down they would have to "spray him". Mr. Blinn did not become compliant and he was "sprayed". She observed that this had no apparent effect on the plaintiff, as he continued to be physically resistive. In time, the officers were successful in getting handcuffs placed on the plaintiff.

[57] She was clear that the police did not punch or kick the plaintiff during the time she watched the altercation.

[58] Ms. Comeau estimated that approximately five or six minutes passed between the time that Mr. Blinn was placed in the police vehicle until an ambulance arrived. The ambulance parked between her and the police car, blocking her view of what occurred after that.

[59] Ms. Comeau testified that she was “amazed” at the officers’ calmness. She said that they maintained a consistent tone of voice throughout her observations and that they did not raise their voice to the plaintiff.

[60] In cross examination Ms. Comeau testified that she thought that the plaintiff was either “on drugs or mentally unbalanced”.

[61] Mr. Blinn was fully clothed during her observations and she did not recall seeing his clothing being torn. She did not hear the plaintiff ask to go to the hospital, noting that the sound of passing traffic “cut” some of what she could hear.

[62] Ms. Comeau was a very credible witness and her testimony is consistent with that of other evidence that I accept of the arresting officers.

Evidence of the Plaintiff

[63] The plaintiff testified that on July 9, 2015, he drove from Yarmouth for the purpose of serving certain legal documents at the offices of Nova Scotia Legal Aid, located on St. Anthony Street in Annapolis Royal.

[64] He was operating a Ford Ranger truck, black in colour, with red highlighting on the undercarriage. He testified that he travelled on Highway 101, taking the exit ramp to Annapolis Royal which brought him into the town on a road that ultimately becomes St. George Street. At the time, he was unaware that he was travelling on St. George Street.

[65] He turned right onto St. Anthony Street *en route* to the Legal Aid office when he realized that he needed extra copies of the legal documents. He turned around and then parked behind the Guardian Pharmacy, where he went to get the copies made. The pharmacy is located on the corner of St. George and St. Anthony Streets.

[66] When the plaintiff returned to his vehicle he was stopped and questioned by Cst. Joel Foster and then-Cadet Troy Schofield of the Annapolis Royal Police. Very shortly after they approached him, perhaps two or three minutes, the plaintiff began to videotape the conversation. He felt that they were being “aggressive” with him and that they thought they “had the right to make him reply” to their questions. He did not agree that they had such a right.

[67] From that point forward the plaintiff’s testimony as to the sequence of events is essentially the same as that of the defendant’s witnesses. However, there is a very significant difference in the details of what occurred within that sequence.

[68] The video is an exhibit in the trial and provides an accurate presentation of the exchange that took place as between the plaintiff and the police officers for several minutes prior to it being turned off. The following facts are evidenced in the video.

[69] The officers were in uniform and identified themselves by name and position when asked to do so by the plaintiff. Constable Foster asked, almost immediately after identifying himself, for the plaintiff to provide his driver's license, insurance and registration. The plaintiff told the officers that he did not have his license with him and that he had no other identification.

[70] In responding to requests for his documents, Mr. Blinn characterized the vehicle as his "private truck... not a Canadian truck".

[71] When he was told that he was required to provide his name he replied: "I'm John".

[72] Constable Foster explained to the plaintiff that the police were investigating a complaint that he "came up the wrong way on St. George Street". In describing the complaint, he told the plaintiff that the vehicle was described as a black Ford Ranger with no plate and a red axle which fit the description of the plaintiff's vehicle. Later in the conversation, Constable Foster described to the plaintiff that the complaint alleged that the plaintiff was "operating a vehicle going in the wrong direction of traffic, going against the flow of traffic" which was a motor vehicle offence.

[73] The plaintiff repeatedly told the officers that he was not on St. George Street. I accept that this was not an intentional misstatement, but rather he did not realize that the portion of the road that he travelled on when coming into Annapolis Royal was part of St. George Street. The plaintiff's misunderstanding as to the street name led him to believe that there was no validity to the complaint against him. I conclude that this was the first of a number of problems that led to the confrontation which gives rise to this action. Had Mr. Blinn understood that he had been driving on St. George Street, then he would have realized that the complaint did relate to him. Having said that, I am confident that he would still have refused to cooperate with the police.

[74] Over the course of the video, lasting approximately six minutes and twenty seconds, the plaintiff was asked on twelve different occasions to provide his last name. He refused to do so, indicating on a few occasions that "I don't operate under that capacity". He was asked what name he was given at birth and again replied: "I

don't operate under that capacity"; and on one other occasion said that "I would choose not to give that information out".

[75] Mr. Blinn asked if he was being "detained" and if so for what crime. Cst. Foster told the plaintiff that he was being detained in order for the police to conduct their investigation into the driving complaint. The plaintiff then offered that if he was charged with a crime he would provide his identification and any other documentation requested.

[76] Constable Foster made a cellular phone call to a superior officer looking for direction in how to handle this matter. Constable Foster's end of that conversation is recorded in the video. During this call, Mr. Blinn asked Cadet Schofield for the time, which was noted as 4:05 p.m.

[77] After concluding the conversation, Constable Foster returned to the plaintiff and told him that he had to put his phone down and that he was under arrest for refusing to provide identification. Cst. Foster reached to take away Mr. Blinn's phone. Mr. Blinn then stated: "Don't be aggressive to me at all! There's violence! That's violence right there! Violence!"

[78] The video ends at that point.

[79] Mr. Blinn's last comment before the tape was turned off is indicative of the plaintiff's perspective on the entirety of what occurred that day. An objective view of what transpired does not support the conclusion that the police were violent or aggressive before placing him under arrest. In fact, the video shows the police officers to have been extremely polite to him throughout. He maintains that the police treated him with great violence and aggression throughout the rest of his interaction with them. There is no objective evidence of this and the evidence which I do accept contradicts this.

[80] Mr. Blinn provided his version as to what occurred after the video ends. The plaintiff refused to put his hands behind his back and be handcuffed. There was an altercation involving the officers physically attempting to handcuff him. At one point, Mr. Blinn put his hands in his pockets and held them there to avoid being handcuffed. It was in the course of the police taking his hands away from his pockets that the plaintiff's pants ripped which, as Constable Cleaves described, resulted in ripping Mr. Blinn's pants and showing some pajama bottoms underneath. Mr. Blinn testified that this left him naked, which I find is not true. He described his situation as being "life-and-death", which I find to be a gross exaggeration.

[81] Eventually, the police “pepper sprayed” him in an attempt to gain his compliance with their directions. Mr. Blinn complained that he was suffering an asthma attack and so Emergency Health Services (EHS) was called to the scene. They flushed the pepper spray from his face. After EHS finished their examination of the plaintiff, he was transported in the rear of the police car to be taken to the RCMP detachment in Digby. During the trip, and while on the highway, the plaintiff began to again complain of an asthma attack. He testified that throughout this time the back of the police vehicle was hot, the windows were not open or not open enough to give him needed air. He denied being violent or aggressive.

[82] Mr. Blinn believes that the police should have administered his puffer at that time. The fact that they did not do so forms part of his basis for claiming that they mistreated him. I accept the reasons testified to by Cst. Foster as to why it was left to EHS personnel to decide whether to administer medication.

[83] In cross-examination, he refused to acknowledge receipt of any of the documentation that the police tried to serve him with. He agreed, however, that he knew he had to go to court on a specific date and that he did not appear as required. He testified that he did not go to court because, in his opinion, the charges against him were unjustified.

[84] Ultimately, he was picked up on a warrant for his arrest and did appear in court to respond to the charges.

[85] Documentary evidence tendered at trial demonstrated that Mr. Blinn appeared in Provincial Court on November 24, 2016, and entered a plea of guilty to an offence contrary to s. 129(a) of the **Code**. He was fined \$100 plus court costs. The offence to which the plaintiff entered the guilty pleas stated that Mr. Blinn did, on July 9, 2015, in Annapolis Royal;

...resist Cst. Joel Foster and Aux. Cst. Troy Schofield, peace officers, to wit police constables for the Town of Annapolis Royal, Nova Scotia, engaged in the execution of their duty of arresting Jean-Michel Blinn, by actively resisting and being uncooperative to officer demands.

[86] The Information contained five more charges, one contrary to the **Code** and four contrary to the **MVA**. The parties did not provide an official record as to the disposition of those charges.

[87] When asked about the court history of this matter Mr. Blinn was evasive, initially denying that he had entered a guilty plea. He testified that: “I don’t

recognize a charge” and described his plea of guilty to the criminal charge as a “false plea”, brought about by duress and other overarching circumstances.

[88] While one might accept that he had a number of reasons for entering his guilty plea, his credibility suffers when he would not even acknowledge that he did enter a guilty plea, the proof of which was demonstrated by the Certificate of Conviction entered into evidence. It is an example of the many times that Mr. Blinn tried to minimize any evidence which would tend to cast him in a negative light or that might tend to undermine the strength of his case.

[89] Overall, Mr. Blinn’s testimony was a blend of truth, falsehoods, evasion and apparent misunderstandings or a distorted perception of events. The plaintiff’s testimony about what took place is highly selective. I conclude that he intended to cast the officers in a negative light and to present himself as a victim of unwarranted police use of force. His credibility is in serious question.

[90] The plaintiff says that he was not feeling well at various times during the altercation and offers this as a reason for his inability to remember essential details. That may be so, in which case it calls into question the reliability of his evidence, as well as his credibility. Some examples of the problems with his testimony follow.

[91] Mr. Blinn testified that he would have agreed to cooperate if he had been told he was under arrest. The video demonstrates that he was told he was under arrest, but he did not cooperate. He said that he wanted to know what the reason for his arrest was. The video indicates he was told that the reason for his arrest.

[92] He describes the officers as beating him and committing a vicious assault that involved ripping the clothes off of him, kicking him, and punching him. That is not true.

[93] He says that he was violated by being searched by Constable Foster. He said that he would rather have been strip-searched than feel Foster’s hands on his body. That was an exaggeration.

[94] He says that he didn’t have pants on – that was momentarily true, but not in the way that he presented the allegation. At one point he alleged that he had an asthma attack that went unheeded. This is not true.

[95] In cross-examination, he denied being asked to submit to handcuffing, which was not true.

[96] He was confronted with Discovery testimony in which he acknowledged that he “may” have kept his hands in his pockets to keep the police from being able to handcuff him. In the trial, he said that he could not say that he did not hold his pants in the way the police described. He allowed that, perhaps, for “a brief moment” he “may” have held onto his pants and, while “it was a possibility”, his actions were part of his self defence. I accept that Mr. Blinn did put his hands in his pockets to resist the officers attempts to handcuff him, and that as a result of his resistance his pants were torn.

[97] The plaintiff alleged the police bumped his head against a wall. There is no evidence that there were walls in close enough proximity to the point of arrest for this to have occurred. There is no evidence of the injury beyond Mr. Blinn’s account. I conclude that this allegation is false.

[98] There are internal inconsistencies in Mr. Blinn’s position. At one point in his evidence the plaintiff acknowledged that when he complained of an asthma attack, the police pulled over and called EHS, who attended and treated him, after which he was taken to the hospital. This is inconsistent with his allegations that the police committed “Malicious negligence by denying medication and medical treatment”.

[99] Mr. Blinn acknowledged that the vehicle was not registered in his name, did not bear a license plate, did not bear a motor vehicle inspection sticker, and was not insured, and also that he did not provide his identity when asked. It is disingenuous of him to say that he did not understand that he was under arrest or the reasons for his arrest.

[100] The plaintiff was encouraged during his testimony to describe his damages and to quantify them.

[101] Mr. Blinn alleged that he suffered serious soft tissue injury to his shoulder during the altercation. He indicated that medical staff at the Digby Hospital examined him and released him with a prescription for pain medication. He testified that he did not take the medication and healed on his own.

[102] No evidence was presented to support a claim for physical injury. There are no photographs, police records nor hospital records that indicate the Mr. Blinn suffered any injuries that would be consistent with the serious assaults that he alleges the police committed upon his person.

[103] During his direct testimony, I asked Mr. Blinn to describe what other compensable damages he claims for. In my view, he offered little to no evidence of

what the consequences were beyond his subjective and exaggerated assessment of the injuries. It is evident that he was able to carry on his day to day activities without any significant impairments.

[104] The second type of damage that he alleges is the humiliation of being a victim of a sexual assault, being the officer's touching of his person during the search, and presumably the ripping of his pants exposing some of his underclothing. He describes the injury as being the result of "an act of war". He says he now has a fear of the police. He found the entire experience degrading. The evidence he provided was, again, exaggerated and not trustworthy. His claim of mental distress is not substantiated by independent opinion evidence. To the extent that he had these reactions they were either unjustified by the actual events as I have found they took place, or were consequences of his own failures to cooperate with the police in the execution of their duty.

[105] When I asked the plaintiff what financial consequences he suffered, he blamed the police for his inability to recover the truck which had been impounded following his arrest.

[106] I find as a fact that the truck was offered to be returned to him and would have been if he could prove that he owned it, that it was insured, inspected and the towing charges and cost of impound were paid. He saw all of these as being unfair fees that the Crown had no right to impose upon him. He equated the entire episode to Crown agents trying to obtain money from him which he did not feel he owed and should not have to pay.

[107] Kelly Goodick provided proof of ownership of the truck and it was released to that person. Mr. Blinn says that since he had purchased the truck, but was unable to have it returned to him, he lost income as a trucker and says he should be compensated for that loss. The inference I draw from the evidence is that the registration of the truck was never in Mr. Blinn's name and it was not lawful for him to operate it until he complied with all the requirements under the Motor Vehicle Act, which he could not or would not do.

[108] He did acknowledge getting all his documents back that were in the vehicle.

[109] Mr. Blinn failed to demonstrate that he had compensable losses or what the value of those losses would have been.

Analysis

Was the arrest lawful?

[110] The members of the Annapolis Royal Police have certain legal “authority, privileges, rights and immunities” which are specified in s. 42 of the **Police Act**, SNS 2004 c. 31:

42(1) A member of ..., a municipal police department...providing policing services in the Province ... is a peace officer and has

- (a) all the powers, authority, privileges, rights and immunities of a peace officer and constable under the common law, the *Criminal Code* (Canada) and any other federal or Provincial enactment; and
- (b) the power and authority to enforce and to act under every enactment of the Province and any reference in any enactment or in any law, by-law, ordinance or regulation of a municipality to a police officer, peace officer, constable, inspector or any term of similar meaning or import shall be construed to include a reference to a member of ...a municipal police department, ... providing policing services in the Province...

42(2) Subject to this Act and the regulations, or any other enactment or an order of the Minister, the authority, responsibility and duty of a member of a municipal police department includes

- (a) maintaining law and order;
- (b) the prevention of crime;
- (c) enforcing the penal provisions of the laws of the Province and any penal laws in force in the Province;
- (d) assisting victims of crime;
- (e) apprehending criminals and offenders who may lawfully be taken into custody;
- (f) laying charges and participating in prosecutions;
- (g) executing warrants that are to be executed by peace officers;
- (h) subject to an agreement respecting the policing of the municipality, enforcing municipal by-laws within the municipality; and
- (i) obeying the lawful orders of the chief officer,

and the person shall discharge these responsibilities throughout the Province.

[111] I find that the officers had the authority and the obligation to investigate Nicole Cleaves' complaint and to enforce provisions of the **MVA** and **Code** where actions of the plaintiff constituted violations of those statutes. I also find that the officers had the authority and obligation to apprehend any offender who may be lawfully taken into custody. I find, as well, that in arresting Mr. Blinn, the officers were following the orders of their chief officer.

[112] The questions that arise are whether the detention and arrest were lawful and if so whether the force used, and other actions taken, were justified in law.

[113] Cst. Foster had reliable information that the plaintiff was operating a motor vehicle in a manner that contravened s. 115 of the **MVA** by driving to the left of centre. Cst. Cleaves' complaint would also have justified consideration of s. 110 and s. 111 of the **MVA** which delineate duties to drive in the right-hand lane except in certain circumstances. Mr. Blinn's vehicle was not displaying a licence plate, which is a violation of s. 20 of the **MVA** for which an offence is specified under s. 37 of the **MVA**. The driving evidence would also be consistent with an impaired driver, an offence contrary to s. 253 of the **Code**.

[114] Once Mr. Blinn arrived at the vehicle, he was asked to provide his driver's licence, vehicle registration, and proof of insurance. He refused to identify himself and failed to produce those documents. The plaintiff's refusal or failure to provide these documents provided grounds to support charges under s. 230(1) **MVA** (no liability insurance), and s. 78(2) **MVA** (Failure to display a driver's licence on demand). Finally, there was no motor vehicle inspection sticker on the vehicle which is an offence contrary to s. 26(2) of the **MVA**.

[115] Section 261 of the **MVA** provides that:

261(1) Arrest without warrant

A peace officer may arrest without warrant a person whom he finds committing an offence or has reason to believe has recently committed an offence against this Act.

(2) Taking before justice

A peace officer making such arrest without warrant shall with reasonable diligence take the person arrested before a judge of the provincial court or justice of the peace to be dealt with according to law.

(emphasis added)

[116] Cst. Foster had “reason to believe” that Mr. Blinn had “recently committed” an offence against the **MVA**. Therefore, he had the right to arrest Mr. Blinn without warrant. There are further considerations that apply to the facts of this matter.

[117] Section 7(1) of the **Summary Proceedings Act**, R.S.N.S. 1989., c. 450, as amended states:

Except where and to the extent that it is otherwise specially enacted, the provision of the Criminal Code (Canada) except section 734.2, as amended or re-enacted from time to time, applicable to offences punishable on summary conviction, whether those provisions are procedural or substantive and provisions which impose additional penalties and liabilities apply, *mutatis mutandis* to every proceeding under this Act.

[118] Section 495 of the **Code** sets out an officer’s authority to arrest without warrant:

495 (1) A peace officer may arrest without warrant

- (a) a person who has committed an indictable offence or who, on reasonable grounds, he believes has committed or is about to commit an indictable offence;
- (b) a person whom he finds committing a criminal offence; or
- (c) ...

(2) A peace officer shall not arrest a person without warrant for

- (a) an indictable offence mentioned in section 553,
- (b) an offence for which the person may be prosecuted by indictment or for which he is punishable on summary conviction, or
- (c) an offence punishable on summary conviction, in any case where
- (d) he believes on reasonable grounds that the public interest, having regard to all the circumstances including the need to
 - (i) establish the identity of the person,
 - (ii) secure or preserve evidence of or relating to the offence, or
 - (iii) prevent the continuation or repetition of the offence or the commission of another offence,

may be satisfied without so arresting the person, and

(e) he has no reasonable grounds to believe that, if he does not so arrest the person, the person will fail to attend court in order to be dealt with according to law.

(3) Notwithstanding subsection (2), a peace officer acting under subsection (1) is deemed to be acting lawfully and in the execution of his duty for the purposes of

(a) any proceedings under this or any other Act of Parliament; and

(b) any other proceedings, unless in any such proceedings it is alleged and established by the person making the allegation that the peace officer did not comply with the requirements of subsection (2).

(emphasis added)

[119] As noted previously the plaintiff entered a guilty plea to an offence contrary to s. 129(1) of the **Code** admitting that he resisted Cst. Foster's lawful demands for cooperation in the investigation. This is a hybrid criminal offence punishable on indictment, although the Crown at the time of arraignment may elect to proceed summarily (as apparently occurred here).

[120] I find that the officer had an obligation to establish the identity of the plaintiff and that Mr. Blinn's absolute refusal to cooperate left Cst. Foster no option but to arrest in order to obtain that information. Mr. Blinn's categorical refusal to accept the authority of the government or the officer provided reasonable grounds to believe that Mr. Blinn would fail to attend court. Without his identifying information, Cst. Foster could not issue an Appearance Notice or other release document requiring Mr. Blinn to attend court to answer to the charges. Therefore, the public interest could not be satisfied without arresting the plaintiff. (In fact, Mr. Blinn did fail to appear as directed because he did not feel that he had an obligation to do so.)

[121] Having regard to the facts and applicable law, I am satisfied that the arrest of Mr. Blinn was lawful and authorized under both the **MVA** and the **Code**.

Was the force used to effect the arrest of the plaintiff justified?

[122] Section 25 of the **Criminal Code**, S.C. 1985 c. C-46, provides immunities that are incorporated in s. 42(1)(a) of the **Police Act**. It states:

25 (1) Every one who is required or authorized by law to do anything in the administration or enforcement of the law

...

(b) as a peace officer or public officer,

is, if he acts on reasonable grounds, justified in doing what he is required or authorized to do and in using as much force as is necessary for that purpose.

[123] Mr. Blinn has alleged that he suffered bodily harm during his arrest and detention. I find that the officers did not inflict grievous bodily harm nor did they have the intention to do so. I am satisfied, therefore, that the protections contained in subsections 25(3) and (4) of the **Code**, which are available where the arresting officers used force that was “intended or is likely to cause death or grievous bodily harm”, are not engaged on the facts in this case.

[124] I am satisfied that the force used, and as described by Csts. Foster and Ms. Comeau, was no more force than was necessary and reasonable to gain Mr. Blinn’s compliance. Throughout the interaction, Mr. Blinn escalated in verbal and physical resistance. The officers, to their credit, did not immediately escalate their response to his conduct, maintaining their composure and continuing to use a combination of voice commands with minimal physical force. *i.e.*, grabbing his arms and trying to get them behind the plaintiff’s back so that he could be handcuffed.

[125] Cst. Foster elevated to the use of intermediate force when he decided to pepper spray the plaintiff. Before administering the spray, Cst. Foster provided the plaintiff with a warning of what he intended. The plaintiff chose not to heed the warning.

[126] I am satisfied with his explanation as to the need for this response. Police officers have to be concerned for their own security and that of the public. It had been ten minutes with no indication that the police were getting control of Mr. Blinn. He demonstrated himself to be a physically strong individual. The police did not resort to elevated physical force, such as taking him to the ground, striking him or kicking him. They did not use batons, a taser or guns. Of the choices available to them, and having regard to all of the circumstances, I accept that their response was measured and proportionate.

[127] Mr. Blinn complained about his treatment once in custody. I find that the police were appropriately responsive to his concerns. They called for paramedics to attend on two occasions, relatively close in time to each other. They also took the plaintiff to the hospital as a precaution.

[128] Finally, they released him from custody as soon as they were satisfied of his identity, which they only obtained through an officer who recognized the plaintiff. Mr. Blinn never did identify himself to the Annapolis Royal police.

[129] The evidence that Mr. Blinn's health was in jeopardy is inadequate. I am not satisfied that the conduct of the officers induced him to have an asthma attack. His hyper ventilating and concurrent comments that he was intending to sue for significant damages causes me to doubt that his conduct in the police car was anything more than feigned physical injury. His description of his injuries is not credible.

[130] Similarly, there is no objective evidence that his shoulder was injured by the police, and the plaintiff's testimony as to that allegation was unconvincing. Even if it was sore because of the officers pulling his arms behind the plaintiff's back, it was a reasonable use of force and was in response to Mr. Blinn's physical resistance to a lawful arrest.

[131] I conclude that his assertion of injury to his shoulder was another aspect of his overall objective of trying to set the stage for recovery in this action.

Was the seizure of the plaintiff's documents and of his vehicle lawful?

[132] The plaintiff conceded that his documents were returned to him.

[133] The officer's authority to seize the truck is found in s. 273 of the **MVA**:

273(1) Seizure of vehicle involved in offence

... any peace officer may seize a motor vehicle with which an offence has been committed under this Act or under any section of the *Criminal Code* (Canada) having particular relation to motor vehicles and may detain the same until the final disposition of any prosecution instituted for such offence but such motor vehicle may be released on such security for its production being furnished as the Registrar may require.

[134] I conclude that the prerequisite conditions necessary for a peace officer to lawfully seize and detain the vehicle were satisfied in this case. The vehicle was being operated on a public highway in contravention of several provisions of the **MVA**.

[135] The plaintiff was unable to demonstrate ownership of the truck or that he could operate the vehicle in compliance with the provisions of the **MVA**. It was successfully claimed by the last registered owner. The officers were acting lawfully in refusing to deliver the truck to the plaintiff.

Summary: Liability

[136] The plaintiff believes that he lives in a parallel world of rights and obligations that sometimes intersect with those that govern other Nova Scotians. For example, he is content to use highways that are built and maintained by taxpayers but he believes that he does not have to pay the fees or taxes associated with the cost of government.

[137] He does not believe that he is obligated to comply with laws that he does not agree with. When confronted with authority he defies that authority unless he “consents” to be bound by that authority.

[138] The confrontation that Mr. Blinn had with the police on July 9, 2015, was an inevitable event. It could have taken place at any time or place where he chose to defy lawful authority.

[139] It is not clear whether Mr. Blinn intended to provoke the confrontation he had with the police on that day, or whether he is so righteous in his convictions that he truly could not understand that he is subject to the law and the authority that those laws provide the police to enforce them. Perhaps it was a bit of both.

[140] Irrespective of his motivations, his actions throughout this interaction with the police were ill advised, poorly informed and largely irrational. The video which he believes supports his perspective of a police abuse of authority proves the opposite. That is, it showed the police to have been patient, polite but firm in the pursuit of their duty, as they understood it. The moment at which Mr. Blinn is seen to raise his voice and say “Don’t be aggressive to me at all! There’s violence! That’s violence right there! Violence!”, demonstrated him to be provocative. If he genuinely believed that what was happening at that moment constituted “violence”, he was wrong.

[141] Mr. Blinn’s testimony was self-serving and unconvincing. Where it differed in material points with that of the defendant’s witnesses, I accept the evidence of the defendant’s witnesses. The police officers’ testimony was straightforward, told a logical narrative and was supported by the video evidence and by the testimony of Lorraine Comeau, who I also found to be a credible and reliable witness.

[142] I find that the Csts. Foster and Schofield were responding to a valid complaint of erratic driving in violation of the **MVA** and consistent with the possibility of impaired operation of a motor vehicle. The information provided to them was specific enough to correctly identify the suspect’s truck.

[143] The officers immediately identified themselves to Mr. Blinn and stated the reason that they wanted to speak with him. The failure to identify himself, the failure to present insurance, a driver's licence or to display licence plates all contributed to the officers' belief that it was necessary to detain him.

[144] He was advised of the reasons for his arrest and once control was gained over him he was provided the informational component of his right to counsel, which he refused to respond to.

[145] The burden rests on the plaintiff to prove that the defendant is liable to him. He has not met that burden. To address the bases upon which he sought to establish liability I conclude:

Assault and battery/ unlawful detention

[146] The officers warned the plaintiff of an intention to touch his person without his consent and then did touch the plaintiff without his consent. Cst. Foster also sprayed the plaintiff with an irritant that required EHS to attend and flush Mr. Blinn's eyes.

[147] I find that the officers' actions were authorized by law and that the force used was no more than was necessary and reasonable in the circumstances. There is no liability that can attach to the defendant in these circumstances. Further the plaintiff has failed to prove that the actions of the officers caused him any injury or that he had compensable damages because of the officers' actions.

False Imprisonment

[148] The plaintiff has shown that the police effected an intentional and complete restriction of his liberty. False imprisonment is actionable without a proof of damage.

[149] I am satisfied on the facts, as I have found them, that the defendant has met the burden on it to show that the "imprisonment" was authorized by law. This cause of action is dismissed.

Detinue, Conversion

[150] The officers seized the vehicle that the plaintiff was operating on the day of the arrest. It was not returned to the plaintiff for reasons discussed above. It was

released instead to the person who could produce proof that the vehicle was registered to them.

[151] The defendant has met the burden of demonstrating that the seizure and temporary retention of the vehicle by police was authorized under the MVA and the defendant's agents acted properly and in a timely manner in deciding to release the vehicle to the person who satisfied the conditions for release.

[152] This cause of action is dismissed.

Malicious Prosecution

[153] The defendant's officers arrested Mr. Blinn, and laid an Information in the Provincial Court alleging the plaintiff committed various offences. The decision to continue the prosecution was the responsibility of the Public Prosecution Service of the Province of Nova Scotia. The prosecution of the plaintiff ended in his conviction for a criminal offence.

[154] This claim has no merit.

Breach of constitutional rights

[155] The evidence satisfies me that the detention and arrest were lawful, not arbitrary, that the arresting officer ensured that the plaintiff was informed of the reason for his detention and arrest, and of his right to consult legal counsel. The plaintiff chose not to exercise his right to counsel. The search of his person was incident to arrest and was not intrusive.

[156] The plaintiff was released from custody at the earliest reasonable time by the least restrictive means provided for in the circumstances.

[157] There is no basis upon which a breach of Mr. Blinn's constitutional rights could be founded.

Negligence

[158] The defendant acknowledges the existence of a duty of care owed by it to a person in custody. Appropriate steps were taken to ensure that medical attention was provided to the plaintiff in a timely manner. The plaintiff has failed to prove that the officers breached the standard of care owed to him or that any compensable damage

was caused by their conduct toward him, or the manner in which they sought to ensure his safety and wellbeing while in their custody.

[159] This cause of action is dismissed.

Summary: Damages

[160] If I am wrong in my conclusions and the defendant is liable to the plaintiff, then what damages, if any, has the plaintiff established as having been caused by unlawful actions of the police officers?

[161] The evidence is wholly unconvincing that the plaintiff suffered any compensable damages. To the extent that he may have experienced some temporary soreness or upset as a result of his detention and arrest, I find that it was minimal and was substantially contributed to by the plaintiff's own behavior. I would not make an award in damages.

Conclusion

[162] The claim is dismissed.

[163] If the parties cannot agree as to costs, I will receive their written submissions setting out their positions.

Duncan, J.