

Citation: Neeves v. City of Port Moody    Date: 20111209  
File No: C9820  
Registry: Port Coquitlam

**IN THE PROVINCIAL COURT OF BRITISH COLUMBIA**  
(Civil Division)

BETWEEN:

**SUSAN NEEVES**

CLAIMANT

AND:

**CITY OF PORT MOODY**

DEFENDANT

**ORAL REASONS FOR JUDGMENT  
OF THE  
HONOURABLE JUDGE GARDNER**

Counsel for the Claimant:	D. Chiu
Counsel for the Defendant:	L.E.W. Nilsson
Court Recorder:	J. McIntyre
Transcriber:	S. Wilson
Place of Hearing:	Port Coquitlam, B.C.
Dates of Hearing:	December 8 and 9, 2011
Date of Judgment:	December 9, 2011

[1] **THE COURT:** The facts of this case are that on September 21st, 2008, a pre-Olympic public event known as the "Spirit Train" event occurred in Port Moody.

[2] The claimant, Susan Neeves, attended that event. She is 57 years old, 5 feet, 2 inches, and of average build. In 1986, she learned that she had Hepatitis C as a result of receiving tainted blood while giving birth in 1979. She is presently receiving a disability income, although her disability cannot be seen simply by looking at her. At that time she was "trying to become a journalist". She attended the event with a video camera she had recently purchased.

[3] She arrived around 12:30 p.m. Later that afternoon, a group of protestors arrived who were clearly intent on disrupting what was supposed to be an entertaining family-type of event. They were loud, including chanting, using air horns, and their own amplifiers to drown out the speakers and were yelling out highly-intelligent slogans such as, "Fuck 2010".

[4] Sergeant Ken MacDonald was the supervisor of the police and security personnel. At one point, he learned that a member of the media had been assaulted. He and another uniformed officer went into the crowd to effect the arrest of the male suspect. They were immediately encircled by a large number of angry protestors followed by the media. When the officers tried to arrest the suspect, he did the "wet-noodle thing", that is, he went limp and would neither stand nor walk with the police so

they were forced to carry him in the direction of what I assume to be a nearby police vehicle.

[5] Sergeant MacDonald and the other officer were caught in the midst of dozens of protestors who were demanding to know the reason for the arrest. As they were carrying the prisoner, neither officer could protect themselves by using their arms.

[6] Sergeant MacDonald could see that Constable Morson, a Port Moody officer in plain clothes, was attempting to knife his way through the unruly crowd who seemed to revel in the media attention they had attracted.

[7] Sergeant MacDonald, an officer with 21 years of service, described it as one of the most chaotic, intense events of his career.

[8] Constable Morson of the Port Moody Police, with ten years of experience, was working in a plainclothes capacity assisting another officer who was videotaping the event.

[9] Constable Morson could see that Sergeant MacDonald was in a precarious situation. Understandably, he was intent on navigating his way through the crowd to try and act as a buffer between the arresting officers and the crowd. He acknowledges that he may have come into some contact with Ms. Neeves as he attempted to pass her. Moments later, he was struck in the back. He turned around quickly and told her, "You can't hit police" and arrested her for assaulting a police officer, but

quickly realized she could not have known that he was a police officer at the time she struck him. He then tried to place her in handcuffs, but she resisted. He then observed "an eruption of people focussing all their negative energy towards me". Many were swearing at him including: "Hey fuckhead, you can't do this". He realized he had to remove himself and the claimant from that situation.

[10] On cross-examination, he was asked if he felt threatened by the claimant's actions but I would not expect Constable Morson to compartmentalize his fears. In other words, it is understandable why the group around him caused him to be uneasy.

[11] Constable Rempel, a ten-year member of the New Westminster Police Department, was working that day in full uniform. When he initially went to assist the officer who was arresting the male suspect, he could hear the threats of the protestors who were shouting, "Police brutality. Fucking pigs. Leave him alone; he didn't do anything".

[12] While attempting to act as a shield between the angry mob and Sergeant MacDonald, he saw Constable Morson push past Ms. Neeves. He observed the claimant strike Morson in the back. He grabbed her by the arm and arrested her. As he was trying to handcuff her, she resisted expressing concern about her camera. He told her she needed to give him her arm. Her response was, "Fuck you. This is bullshit. I'm not giving you my video camera. You want to steal it". He asked her if it was okay if

he gave the camera to a woman who I gather was standing nearby. She replied, "Yes, so long as it's not you". He then asked her if he could take her purse and put it inside the trunk of the police car and the claimant replied "that she did not trust me. I was a pig and she would rather give it to a complete stranger" which she did.

[13] Against this we have the claimant's evidence who says that when Constable Morson moved by her, he grabbed her above the elbow and caused pain. She says she was able to break free by using her words "back off, get out of my personal space movement" and she was able to release herself immediately.

[14] She says that the person who she later learned to be Constable Morson spun around and told her that she had assaulted a police officer and as he attempted to handcuff her she said, "You're not an officer; you're not dressed like one".

[15] Counsel for the claimant has taken the position that there were no grounds for the arrest and that the police used excessive force in effecting that arrest. He points to his client's small stature and submits she was simply reacting instinctively to being pushed by a stranger who she believed to be a member of the media. He also argues that she was in a state of shock when she did so. He stresses she never was charged with assaulting a police officer.

[16] The defendant has submitted that Constable Rempel said it

was quickly relayed to the claimant that she was only charged with assault and that the claimant became compliant only after being handcuffed.

[17] The defendant says Constable Morson stopped what he was doing to assist another officer and was smacked in the back which caused him to change focus of assisting another officer to deal with her.

[18] The defendant has also argued and has referred to a number of prior court cases saying the arrest was justifiable. Some of these cases of course have been very helpful.

[19] Our Court of Appeal in the decision of ***Richardson v. the City of Vancouver***, 2006 BCCA 36 where the City and a police officer were being sued for wrongful arrest and defamation, framed the question as to whether the arresting officer had reasonable and probable grounds to believe that the complainant Richardson committed the offence. That question could not be answered according to the knowledge that other police officers may have had concerning Richardson's motives and behaviour, nor by reference to the legal status of the police operation. They did however say that the arrest was justified in law and in doing so they said in para. 18:

[18] The lawfulness of arrest must depend on the subjective belief of the arresting officer and an objective assessment of that belief based on what the officer knew at the material time.

[20] The court went on to say:

[20] The plaintiff runs together his criminal liability with the officer's civil liability ... for the tort of wrongful arrest. They each have a different set of legal rules and procedures; they must be treated separately to avoid the kind of confused thinking manifest in the plaintiff's argument. Many lawful arrests may ultimately result in an acquittal. If an acquittal were to create exposure to tort liability, the power of arrest would be radically curtailed. There is no logical relationship between the criminal and civil determinations; they are each aimed at different questions: "Did the accused obstruct?" is not the same as "Did the officer have reasonable and probable grounds to believe he did?"

[21] Counsel for the City of Port Moody and for the defendant officer has also referred the Court to a B.C. Supreme Court case of *Anderson v. Port Moody (City) Police Department*, 2000 BCSC 1194. I find that case to be very helpful, particularly in paras. 49 and 50 which addresses the issue presently before the Court. In that case, the Court concluded that:

[49] Once the plaintiff has proven that force was applied against him, the onus shifts to the defendants to prove that the assault was justified. The burden is also upon the defendants to prove that the assault was neither intentional nor negligent: *Berntt v. Vancouver (City)* (1997), 28 B.C.L.R. (3d) 203 at 212 (S.C.). Whether Constable Smith used reasonable force to arrest the plaintiff is a question that must be answered in the defence of both the assault and the negligence claim. In the latter, the question arises within the analysis of whether there was a breach of the standard of care.

[50] The defendants have relied upon section 25(1) of the *Criminal Code* to justify the use of force in the assault. This section provides relief from liability for assault but not for negligence: *Noel (Committee of) v. Royal Canadian Mounted Police* (1995), 9 B.C.L.R. (3d) 21 at 34 (S.C.). Section 25(1) absolves of blame anyone who does something

which he is authorized by law to do and empowers that person to use as much force as is necessary for the purpose of doing it: *Eccles v. Bourque* (1973), 14 C.C.C. (2d) 279 at 280-281 (B.C.C.A.). There is a limitation upon the amount of force that can be used. The officer cannot use force that is intended or likely to cause death or grievous bodily harm: *Criminal Code*, section 25(3); *R. v. Bottrell*, supra at 217-218. This is not in issue here.

[And similarly this is not the issue before the Court today].

[22] The court went on to quote the case of *Doern v. Phillips Estate* (1994), 2 B.C.L.R. (3d) 349 at 372 (S.C.) and said that the standard of care to which a police officer will be held is that of a reasonable police officer, acting reasonably within the statutory powers imposed upon him, in the circumstances of this case.

[23] I have a number of problems with the evidence given by the claimant.

[24] First of all, she was asked in examination in chief who she thought had pushed by her. She said, "I thought he was on the media team, trying to keep me from getting a good camera shot", an answer I find to be borderline ridiculous.

[25] She testified she did not believe Constable Morson was a police officer, even when he was trying to place handcuffs on her and even though Constable Rempel in full uniform immediately assisted in trying to handcuff her. Within that context her explanation that even though after being shown a photograph that Constable Rempel was right beside while she was being dealt with



by Constable Morson her answer was that she was in shock. That answer I take it was based on self-diagnosis. In her words, "I wasn't resisting. I was negotiating".

[26] In my view, on this occasion the claimant tried to use her age, her gender, and her slight stature to her advantage. That is, she struck a male assuming that he would not retaliate. The officer in this case did not retaliate. He simply turned around and informed her that she had just struck a police officer. It must have become quickly apparent to her that Morson in fact was a police officer even though he was dressed in plain clothes.

[27] As counsel for the defence has argued, it could not have been attributable because why would Constable Morson who had the intention of assisting another officer briefly lose focus of that and turn around and arrest the claimant?

[28] I agree with what defence counsel has argued that if the police in this situation did not react promptly, this would simply incite the crowd which was already in a hostile and aggressive mood.

[29] Accordingly, on the two issues before the court, I find, first of all, that there were grounds for her arrest. It matters not, in my view, that they did not subsequently forward charges to the Crown. She spent three hours in custody, but more importantly, she was removed from the situation and, moreover, the message was given to the crowd you cannot strike

people with impunity. There is, in my view, very little public interest in pursuing this matter any further, but I still find it to be a lawful arrest.

[30] Secondly, clearly in these circumstances, even though the claimant suffered some injury, her somewhat fragile condition could not have been known by the police at the time of the arrest. She certainly was not presenting herself as such a person. She was argumentative, uncooperative, both verbally and in a physical manner with the police upon arrest. The force that they used to handcuff her and transport her to the police station was entirely reasonable in the circumstances.

[31] I dismiss the claim.

(ORAL REASONS FOR JUDGMENT CONCLUDED)