

Niagara Regional Police Service Discipline Hearing

In the Matter of Ontario Regulation 268/10

Made Under the Police Services Act, R.S.O. 1990,

And Amendments thereto:

And

In The Matter Of

The Niagara Regional Police Service

And

Constable George Parperides #9165

Charge: Neglect of Duty

Before:

**Superintendent (Retired) M.P.B. Elbers
Ontario Provincial Police Adjudicator**

Appearances:

**Counsel for the Prosecution: Mr. Murry Segal
Niagara Regional Police Service**

**Counsel for the Defense: Mr. Harry Black
Niagara Regional Police Association**

**Public Complainant: Bryan Clark
Represented by Ms. Margaret Hoy**

Background:

On December 27, 2013 Constable Parperides while on patrol in a marked police car was dispatched to and attended an occurrence at 2232 Ramey Road Port Colborne, Ontario. Parperides was assisting other Niagara officers in apprehending a stolen vehicle which had been involved in a Break and Enter at a local business establishment. A roadblock was utilized and the stolen vehicle evaded police by going around the roadblock. The driver lost control of the vehicle and the vehicle was launched off the elevated roadway, through a fence, finally coming to rest against a number of trees. The occupants exited the truck and fled into the bush. Officers began a search of the bush area and Parperides remained in his vehicle checking the perimeter area of the bush. Clark was located hiding in the bush by the canine unit and Parperides was near the location. He heard radio transmissions from the officers and he could hear from the outside of his vehicle the commotion involved over the arrest.

Constable Parperides attended the location where Niagara officers had Clark grounded and handcuffed. Parperides did not take part in any force utilized on Clark to gain control of him. Parperides took custody of Clark and advised him that he was under arrest for possession of stolen property, dangerous operation of the vehicle, theft of a motor vehicle and flight from the police. He also advised Clark that further charges were possible pending an investigation.

He cautioned Clark and returned him to his cruiser for transport to the Welland office for processing. Parperides was aware of a cut to the bridge of Clark's nose and that Clark complained about a broken jaw.

Evidence:

This Hearing commenced in Niagara Falls, Ontario on Monday August 24, 2020 and continued through Thursday August 27, 2020. Witness testimony was heard by the Tribunal on Monday, Tuesday and Wednesday with Counsel presenting their submissions on Thursday.

Three (3) days of evidence was heard by this Tribunal. Three (3) witnesses testified at this Hearing and twenty (20) exhibits were submitted to the Tribunal.

Mr. Clark, the complainant did not attend the Hearing and was represented by Ms. Hoy his Counsel on this matter.

Mr. Segal, the Prosecutor for the Service opened the proceedings on Monday August 24, 2020 advising the Tribunal that the Prosecution would not be calling any witnesses. Ms. Hoy advised that her client would not be attending any of the scheduled Hearing.

Mr. Segal advised the Tribunal that he would be submitting Exhibit #4, a Compendium of Evidence which he would be referring to in his presentation of evidence. Contained in Exhibit #4 at Tab #5 was an Agreed Statement of Fact agreed to by the Prosecution and Constable Parperides. Ms. Hoy advised the Tribunal that the Agreed Statement of Facts was substantially correct however she believed there were some errors and facts omitted. She did agree that it could be submitted to the Tribunal.

I will not repeat the five page statement as it is contained in Exhibit #4 and it relates to the incident, arrest, complaint of broken jaw and the drive to Welland office to process the complainant, Bryan Clark and the subsequent booking process at that location.

Mr. Segal then spoke about Tab #6 the incident report for the Crown Attorney and of the thumb drive which was a video of the incident at Algoma steel on December 27, 2013. the incident report contains the details of the criminal investigation, seized property, stolen items and witnesses to the incident. The thumb drive which contains four videos outlines the two male parties at the Algoma Steel yard and removing a white truck from the premises. One of the individuals on the video at Algoma Steel is believed to be Bryan Clark.

Mr. Segal introduces Tab #7, the crime scene photographs of that night showing some of the stolen copper, the stolen truck, the area where police were called due to a fire and other exhibits seized by officers.

At Tab# 8 were officer statements pertaining to the incident and booking videos showing the booking process and the questions posed to Clark. Three officers involved were Constable Parperides, Staff Sergeant Rogers and Special Constable Cudney.

Tab #8 is the transcript relating to the actions of Staff Sergeant Rogers who has retired from the Service and the comments he made when Clark advises he has a broken jaw.

Also contained in Exhibit #4 from Tabs 9-16 are the medical reports from the Niagara detention facility and Niagara Health Systems pertaining to the injuries of Clark sustained on December 27, 2013.

At Tab #17 is the General Order 018.15 of the Niagara Regional Police Service pertaining to Persons in Custody. In particular the Prosecutor, Mr. Segal directed my attention to Section 3.206 which states: **When a person in the custody of the police requires, appears to require or requests medical aid, all members are responsible for ensuring that the appropriate medical attention is obtained prior to transport and /or processing. When the prisoner refuses medical attention, and there is any doubt regarding his/her capacity to make a rational decision, the arresting officer shall take the prisoner to hospital immediately.**

Exhibits #5 and #6 were entered by Mr. Segal as transcripts of the fingerprint and booking process for Mr. Clark as observed on the videos which was entered as Exhibit #7.

Exhibit# 8 was entered by the Prosecutor. It relates to the interview conducted by the OIPRD with Constable Parperides on June 18, 2014. Parperides, in his interview to the OIPRD, related the details of his attendance at the scene and the arrest of Bryan Clark. He advised that while in the police cruiser Clark advised that he was kicked and punched at the scene. He stated he had a broken jaw and Parperides advised him to tell the booking officers of his injuries. Parperides was questioned as to his knowledge of Niagara Regional Police Order 3.206 -"Persons in Custody."

He stated he was to a degree but advised if a person is injured you give them medical treatment. Parperides went on to advise he did not believe the jaw was broken due to the way Clark was talking. Parperides advised his thinking did not change when they arrived at Welland office and he was placed in the care of the booking officers. There was better light and Clark was answering the questions. He advised that Clark still complained of a broken jaw.

Exhibit #9 Parperides notes were entered for the incident.

Mr. Segal submitted Exhibit # 10 A, B and C as his last exhibits for the Prosecution. They are photographs of Mr. Clark taken on the night in question by the booking officer at Niagara Regional Police Service. They depict the cuts, scratches, reddening of the face and bruises of Clark to the frontal area and both left and right side of his face. They appear to be fresh and received on the night in question.

Mr. Black opened his Defense calling Constable Parperides. Parperides testified that he was fifty (50) years old and was raised in Port Colborne. He graduated from McMasrer University in 1994 with a Police Management and Humanities degrees.

He worked for Niagara Parks Police from 1990 through to 2002. When he joined Niagara Regional Police in 2002 he was posted to Welland where he did frontline duties for the Service.

On the night in question he was working a 6PM to 6AM shift in a marked police cruiser in a solo capacity. He advised he heard Constable Kukoly saw smoke at the Wainfleet Pallet wood warehouse. A vehicle was fleeing and he was taking up a pursuit of the vehicle. Kukoly radioed the vehicle had left the roadway and struck a tree.

Parperides took up a position just north of the the MVA location on Concession three (3) to observe for any parties on foot in the area. K9 was requested by Constable Kukoly.

A regional roads employee stopped to tell Parperides that he saw someone cross the train tracks on Concession two (2).

Parperides testified he heard yelling and commands being given while he was in the wooded area. He could also hear the K9 barking. He testified he could hear Constable McLeod over his police radio that the individual they were pursuing was resisting the officers. Parperides testified he exited his police vehicle and ran along the fence line in eighteen (18) inches of snow. It was a bitterly cold night and he was in a swampy area. Parperides testified he proceeded approximately one hundred (100) yards and located a male party on the ground. Constable McLeod was gasping for air and was holding his knee. Constable Kroon the K9 officer was approximately fifteen (15) feet away holding onto the leash of his dog while it was barking.

He testified when he saw the face of the man on the ground he recognized the individual. He told the suspect he knew him and the male party said his name was Bryan Clark. Parperides testified that Clark was missing a boot, was wind burnt, sweaty and had a red face. His socks were completely soaked and he tied up the sleeves of Clarks coat so that he could handcuff him. Parperides carried Clarks boot and back pack while he escorted Clark out of the woods to his police cruiser. He was wearing a black canvas type coat and black hoodie.

Parperides placed him in the rear seat of his police cruiser. Parperides testified he placed Clark under arrest at the scene, read him his charges and rights to Counsel. Parperides testified he saw or met Clark over the years ten to fifteen occasions. He testified that Clark was not disrespectful, never had an issue with him and that Clark was always straight forward with him. Parperides testified that Clark was polite and respectful on their walk to the police cruiser.

Parperides testified that other than the scratch on Clark's nose he did not notice any other injuries. Parperides testified his speech seemed the same as always.

Parperides testified his main concern for Clark was the running through the swamp in a cold wooded area with a high wind chill factor. Clark was exhausted and he wanted to get him out of his wet clothes. He advised that went they got into the cruiser he cranked the heat up.

It was a six minute drive to the Welland station. Parperides testified it was the same distance to the station as it was to the hospital. Enroute to the station they had small talk about associates and of Clarks past girlfriend. Clark also mentioned that his jaw was sore. The insecure door beeped on the cruiser and Parperides stopped to close door. When he stopped Clark asked him whether Parperides was going to hit me like the other guys.

When he got back in car Clark told him jaw was sore – maybe broken. Parperides sarcastically responded with ...*What do you expect..you steal,crash a truck...run through the bush and resist two police officers.. sure your jaw is sore.* Pareperides had no doubt that Clark was struck and slapped. He stated he saw a bit of Clarks face through the plexiglass partition of the cruiser.

Parperides stated he had seen lots of broken jaws however he did not see anyone talking the way Clark was speaking. He was totally normal. Clark never asked Parperides to take him to the hospital or to call an ambulance.

Parperides advised he was aware of the liabilities to the Service and sometimes you wait for 2 to 2.5 hours for an ambulance.

Parperides was questioned by Mr. Black if he gave any advice to Clark and Parperides answered that he advised Clark when they get to the station to tell the booking officer about your injuries and to tell her that your jaw may be broken. He advised Black he was not attempting to pass this on to senior officers and Parperides testified that Clark had no visible injuries.

Parperides goal was to get Clark to the station to get him out of his wet clothes.

Parperides advises the Tribunal he makes these decisions all the time. You cannot force people to go to the hospital. He testified that nothing Clark was doing or showing led him to believe the jaw was broken. The only indication that Parperides received about the jaw was that Clark told him it was broken or might be broken. He testified that if he brought Clark to the hospital he would have been sitting in wet clothes.

At the station they gave Clark gauze to administer to a burn on his foot.

Parperides testified it was several days later that he learned that Clark had a broken jaw and he stated he would not wish that on anyone.

Parperides concluded his evidence with the statement that he has been seven years that he was alleged of this misconduct of not providing medical assistance to Bryan Clark. Parperides testified it was not a serious injury, Clark was not in distress and he did not request medical assistance. He testified he acted in the best interest of Bryan Clark.

Mr. Segal in his cross examination of Constable Parperides began his questioning if Constable Parperides believed a broken jaw would interfere with a person's health and comfort. Constable Parperides answered with yes... depending on the degree of break and advised the Prosecutor he was not a Doctor. Mr. Segal continued with the idea that not all fractures are serious and Parperides agreed to this statement. Parperides testified he had friends with breaks and they healed on their own. He also testified they had medical attention.

Mr. Segal raised the issue that a police officer has a special responsibility with people under their charge and referred the witness to Exhibit 4 Tab 17 the Niagara General Order 018.15 in particular 2.16 which defines Serious injury. Parperides testified if the injury was interfering with Clark's health he would know that. When questioned by the Prosecutor in relation to sec 3.1 a member having a person in custody Constable Parperides testified his concern was to get Clark out of his wet clothes. He was concerned about hypothermia.

In relation to Sec. 3.206 of the Order the Prosecutor questioned Parperides as to why he did not attend to the concern of Clarks in relation to his jaw. Parperides testified that Clark did not appear to require any medical aid nor did he request any aid.

Mr. Segal questioned Parperides whether he should error on the side of caution. Parperides wanted to see Clark under better light and he reiterated he did not believe the jaw was broken.

Parperides conceded if a family member thought they had a broken jaw he would take them to a hospital.

Mr. Segal posed a constellation of factors to Constable Parperides. He states that Parperides takes custody of Clark after knowing a theft had taken place, burning copper, car chase culminating with car leaving the road and ending up in the trees, belief that Clark was in the vehicle, a foot chase in the woods, ground is icy in part, fresh snow, a known struggle with the officers which was not peaceful, Constable McLeod doubled over and short of breath, Clark on the ground in handcuffs, heard the yells and commands of the K9 ,slipping on the ice yourself and when Clark enters your car and indicates he believes his jaw is broken does that not make sense in light of what had transpired. Parperides testified that he knew that Bryan Clark was going to be asked if he wanted to go to the hospital.

Parperides testified that if he went to triage they would be sitting a long time and he wanted to get Clark out of his wet clothes. Parperides testified that the police do not take parties to the hospital. They call EMS. He testified he did not believe that Clark was making up a story. Parperides testified he had made a late entry in his notebook in regards to the broken jaw comment of Clark. Notes made on January 01, 2014.

Parperides summed up his cross examination by testifying if he had to do it again he would have taken it more seriously in relation to the broken jaw comment of Bryan Clark and should have asked him if he wanted EMS.

Ms. Hoy questioned Constable Parperides in relation to Clark stating to Parperides that he was cold or wet and Parperides responded with a No.

The next witness for the defense was Doctor Robert Wood. Mr. Black entered Dr. Woods CV as Exhibit 12 and his medical report as Exhibit 14. Dr. Wood was recognized by this Tribunal to be an expert in jaw fractures. Dr. Wood described the jaw fracture as not serious and not a medical emergency when questioned by Mr. Black. The resulting subdural hematoma which Bryan Clark was diagnosed and treated for and commented on by Dr. Wood I will not consider as it does not relate to the charge of misconduct that Constable Parperides is facing.

When questioned by Mr. Segal, Dr. Wood agreed that a hairline fracture could become serious at a later time. Wood agreed with the prosecutor that police officers are not Doctors and Dr. Wood is not aware of the obligations of a police officer. He testified it was out of his expertise.

Mr. Black`s next witness was Dr. Christopher Mark Milroy. He was also requested by the Defense to review the medical documentation of Bryan Clark. Exhibits 14 his CV and the answers to four questions that Mr. Black requested answers were submitted as Exhibit 15. Dr. Milroy was recognized by this Tribunal to be an expert in head injuries. Dr. Milroy testified to the Tribunal that a fractured jaw is not a head injury. He testified through questions from Mr. Black about subdural hematoma which again is not relevant to the charge Constable Parperides is facing. It is factual that Bryan Clark suffered a subdural hematoma forty eight hours after his arrest however the exact cause of this is unknown.

Ms. Hoy cross-examined Dr. Milroy. She raised the issue with Dr. Milroy that the Niagara Detention Center would not admit Clark due to his obvious facial injuries as depicted in Exhibits 10A, B and C. She stated to Milroy that the Detention Center required a medical assessment. Milroy stated that people that are not Doctors make assessments however police protocols should be followed.

Findings:

Mr. Black began his summations indicating that Bryan Clark did not have a complaint. The other officers involved in the incident Constables Kroon and McLeod were cleared by the OIPRD. He argues pursuant to the investigative report of the OIPRD in relation to Niagara Regional Police Order 2.16, 3.06 and 3.1(c) that Parperides fulfilled his obligation by telling Clark to advise the booking officer of his injuries when they were approximately three minutes from the station. Black states that Staff Sergeant Rogers is now in charge.

He states that Clark and Parperides were half way to station when Parperides was made aware of the complaint of a sore or broken jaw. Parperides was driving at a high rate of speed. A Judgement call had to be made about the jaw and supplying medical attention. Black referred to the medical Doctors who testified and stated experience tells them it's rare to be able to open your mouth. Fractured parts do not move together. With an undisplaced fracture a person may not know they have a fracture.

Black stated another way the order is triggered is by a request and in this case Clark never requested to go to the hospital.

Black indicated in the prosecutions cross of his client that the Prosecution stated the Order does not give the officer a choice. Black stated that the booking officer and staff sergeant Rogers asked Clark if he would like to go to the hospital and Clark replied '*Don't know yet*'.

Black indicated the charge does not make sense. Black argues no duty under the General Order. Black argues that an officer must know their duties. Black argues it requires or request. OIPRD he argues did not look at Section 3.206.

Black argues that Parperides made a good faith decision and to observe Clark under more favorable light. Orders must be clear he argues.

Black also argued that there was no evidence received by this Tribunal as to why the nurse at the Detention Center refused Clark's admittance and advised he must attend a hospital for a medical examination.

Mr. Black submitted a Book of Authorities which was marked as Exhibit 19. It contains ten cases for the Tribunal to consider.

1. *Penner v. Niagara (Regional Police Services Board), 2013 S.C.J. No.19*
2. *Pollock v. Hill and Cowley, (Board of Inquiry, 1992)*

3. *Police Constable P.G. and the Attorney General of Ontario and Police Complaints Commissioner, April 18, 1996 (Div.Ct)*
4. *Kraljevic and Svidran, Plomp, Wilson and Ottawa Police Service, 2017 ONCPC 21 (Canlii)*
5. *Re Gloucester Police Force et al and Tremblay, (1983) 42 O.R. (2nd)395 (Div. Ct)*
6. *Rabah v Austin et al., (Board of Inquiry), 1998)*
7. *Miles v Krug, (1993) 1 P.L.R. 502*
8. *Hewitt and Devine , (1999) 3 O.P.R. 1372*
9. *Peel Regional Police and Detective Robert Crane, May 25, 2020*
10. *Ontario Provincial Police v. Ontario Independent Police Review Director, 2016 O.J. No. 5397 (Div.Ct)*

All of the cases that Mr. Black submitted for consideration contain common themes. These are that discretion and judgement are not to be examined scrupulously with the benefit of hindsight, officers make honest mistakes, must fund some element of willfulness in their neglect, officers were acting in good faith, misjudgment of a situation does not lead to neglect and a decision was not an unreasonable one. These highlight the cases presented to me from the Defense.

Mr. Segal argues that Constable Parperides committed the alleged misconduct. He argues the conduct crossed the line from performance to Misconduct. He argues as in the General Order of Niagara Regional Police the officer did not provide medical attention to Bryan Clark. He argues there is no dispute when you read the order as contained in Exhibit 4 at Tab 17. When a person is entrusted in the care of an officer while they are in custody certain procedures must follow. There were injuries incurred after the car chase and the subsequent capture in the woods of Clark. The force utilized was justified. Some of those injuries were incurred as a result of police-citizen interaction the Prosecutor argues. Segal argues that 3.206 relates to persons in police custody. He states it is a three tier issue;

1. requires medical aid
2. requests medical aid
3. appears to require medical aid

All offices are accountable with persons in custody and in your care.

Segal argues a serious injury as it is particularized in the charge and found at section 2.16 of the Order. Segal argues we would not be here today if this was a trivial issue. Segal argues that there were many facts presented to Parperides. Clark had serious injuries that required immediate attention. Police officers are not Doctors and police officers are expected to get them to a doctor or medical facility as part of their job requirements. He argues that what must be considered is what Parperides knew had transpired and the circumstances known to him. The General Order applies to all members.

Segal argues that Parperides had a constellation of facts before himself. Parperides knew the Order and he was not a young Constable. Parperides admitted to knowing the order, knew what he was supposed to do but did not do it. Segal stated that Parperides is an experienced officer with a good heart and many fine qualities. Segal argued that hospitals have good light as well. Segal argues that the hospital could have given Clark warm clothes as well and also provide a medical assessment at the same time.

Segal argues the documentation of the jail record and medical care is not relevant to this charge for Parperides.

The charge relates to what was apparent at the time of being placed into custody.

Segal argues that Parperides knew the following:

- Clark had high speed chase with stolen vehicle
- there was a collision
- lost control of vehicle in ditch and struck trees
- this may have contributed to the head injury (cut nose, cheek , nondisplaced fracture)
- terrain tracked over to flee vehicle, slippery, hard, snowy and ice)
- swampy terrain, treacherous and bitterly cold
- violence used to affect the arrest
- Parperides heard commands and noises from his radio and in the air during the resist phase of the arrest.
- knew on arrival that force was utilized
- Clark on back with handcuffs
- struggle known with no doubt force utilized
- Escorts Clark back to cruiser
- Clark complains about a sore jaw, maybe broken
- Clark stated he was kicked and punched

Segal argues how clear do you have to be with all the circumstances outlined with the added kicked and punched and stating your jaw is sore. It was the Constables understanding that violence had occurred and it was stupid to resist.

Segal argues it was deliberate and not what the General Order expects from the Niagara Regional police officers.

Segal argues that Parperides did not think what Clark was saying was correct. Did not affect Clark's speech. Police officers are to provide medical assistance not advice.

Parperides admitted he felt bad for Clark after he found out that Clark's jaw was broken and he suffered a subdural hematoma.

Segal argues there was a clear articulation of Clark at the squad car and he maintained the same position at the station. He was consistent in voicing his complaint.

In regards to the medical experts Segal has great respect for them. They both agreed after lengthy prodding medical assistance should have been rendered.

Exhibit 20 was submitted as a case to support the Prosecution.

1. Watters v. Ontario Provincial Police and Smith

This case deals in part with the request of medical assistance. This was a request for assistance which was not completed by the officers from the arrested party and the officers did not place the request in their notebooks.

Ms. Hoy made submissions to the Tribunal. She argued that it was a mandatory order with no discretion. She argues it was clear that Clark indicated he had a sore or broken jaw which fits the definition of serious injury and the Order does not give latitude to interpret or utilize your knowledge of broken jaws. She referred the Tribunal to the photos (Exhibit 10) which were taken by the police at the station to show injuries to the face. She referred to Exhibit #12 the occurrence report and the need to go to a hospital.

Niagara Detention Center refused admittance until medical assistance was rendered to Bryan Clark. Hoy argued the responsibility of the police is to take care of persons in custody which means medical care not just warm clothes. She states from evidence received it was the same distance to travel to the hospital as it was to proceed to the station.

Clark stated his jaw is sore and possibly broken and he made no other complaints. He was polite and this makes his complaint genuine. Hoy concurred with the submissions of the prosecution. Hoy agreed the subdural hematoma was not part of this charge against Constable Parperides.

There were some discussions made by Mr. Black in regards to the Notice of Hearing in which he stated he saw the Notice of Hearing one week prior to the Hearing. He objected to the wording and both Mr. Segal and Ms. Hoy raised objections to this issue due to the fact the defense has had the NOH since July 30, 2019.

The position of the Tribunal on this issue is mute. There was no issue at the beginning of the Hearing and I believe it is too late to argue the issue at this point after all the evidence has been presented and submissions have been made for this Hearing.

In *Legal Aspects of Policing* at pages 6-93 the author (Paul Ceysens) states the following in relation to guidance in Neglect of Duty counts:

In Ontario, a peace officer commits Neglect of Duty when he or she “without lawful excuse, neglects or omits promptly and diligently to perform a duty as a member of the police force.”

The leading judicial decision concerning failure to promptly and diligently discharge duty is *P.G. v. Police Complaints Commissioner* (1996) 90 O.A.C. 103 (Div. Court). This case considered the provisions of the Ontario scheme as stated above.

In *P.G.*, the Divisional Court ruled that either of two situations is required in order to establish neglect of duty:

1. “there was some element of willfulness” in the police officer’s neglect; or

2. "there was a degree of neglect which would make the matter cross the line from a mere performance consideration to a matter of misconduct".

The Ontario Civilian Commission on Police Services as it was known at that time has ruled that the employer must establish that the police officer was required to perform a duty, and that he or she failed to perform this duty because of neglect, or did not perform the duty in a prompt and diligent manner. If these two burdens are established, the police officer bears the burden of establishing lawful excuse.

I have considered the cases supplied to me by Counsel. I have read the cases supplied to the Tribunal and while not always on point, have found them to be instructive in my deliberations.

The issues before this Tribunal can be outlined in the decision of the Ontario civilian police Commission as outlined in the above paragraph.

There is no argument that Bryan Clark is known to Constable Parperides and in the past they have met in a police capacity as well as on the street while Constable Parperides was off duty. There is certainly no animosity between these individuals and they have always been cordial and polite to one another according to the testimony of Constable Parperides which I believe to be true.

I also believe that Constable Parperides was genuinely concerned when he stated he did not wish that on anyone. (*relating to the broken jaw and subdural hematoma*)

General Order 3.206 is quite clear. It states:

When a person in the custody of the police requires, appears to require or requests medical aid, all members are responsible for ensuring that the appropriate medical attention is obtained prior to transport and /or processing. When the prisoner refuses medical attention, and there is any doubt regarding his/her capacity to make a rational decision, the arresting officer shall take the prisoner to hospital immediately.

The Notice of Hearing further states that Constable Parperides was advised of a serious injury.

In the General Order at Section 2.16 the definition of serious injury is defined:

Serious injury means ...injuries that are likely to interfere with the health or comfort of the victim and are more than transient or trifling in nature and will include serious injury resulting from sexual assault.

The definition continues however in my mind it is not applicable to the case before this Tribunal.

Constable Parperides in his testimony main concern with Bryan Clark after he placed him under arrest was to get him to the station to get him out of his wet clothes. He was concerned about hypothermia. We can observe from the videos in the booking room that some clothes were removed. His outer clothing and his wet socks were removed. Parperides stated the clothes were dry. No other clothing or dry socks or footwear was given to Clark. Parperides did have Clark attend to his burn injury on his foot with gauze and ointment supplied in the booking room. This was the extent of the assistance given to Clark.

Clark while at the booking room in the presence of Parperides complained about his sore or broken jaw. At this point I realize it becomes the responsibility of the Booking Sergeant and he has retired. My point is that Parperides heard this complaint again.

What do we know that Parperides was aware of in regards to Bryan Clark on December 27, 2013.

Mr. Segal in his summation spoke about a Constellation of Facts that Constable Parperides was aware of and I agree with these points:

Segal argues that Parperides knew the following:

- Clark had high speed chase with stolen vehicle
- there was a collision
- lost control of vehicle in ditch and struck trees
- this may have contributed to the head injury (cut nose, cheek, nondisplaced fracture)
- terrain tracked over to flee vehicle, slippery, hard, snowy and ice)
- swampy terrain, treacherous and bitterly cold
- violence used to affect the arrest
- Parperides heard commands and noises from his radio and in the air during the resist phase of the arrest.
- knew on arrival that force was utilized
- Clark on back with handcuffs
- struggle known with no doubt force utilized
- Escorts Clark back to cruiser
- Clark complains about a sore jaw, maybe broken
- Clark stated he was kicked and punched

Additionally to the above I believe it is also important to add from the evidence of Constable Parperides that:

When he got back in car Clark told him jaw was sore – maybe broken. Parperides sarcastically responded with ...*What do you expect..you steal,crash a truck...run through the bush and resist two police officers.. sure your jaw is sore.* Parperides had no doubt that Clark was struck and slapped. He stated he saw a bit of Clarks face through the plexiglass partition of the cruiser.

Parperides stated he had seen lots of broken jaws however he did not see anyone talking the way Clark was speaking. He was totally normal. Clark never asked Parperides to take him to the hospital or to call an ambulance.

At this point Constable Parperides again spoke about the wet clothes and this also appeared to be the reason also not to take him to the hospital because he relayed that he would sit there in triage for a long time in wet clothes. These are issues that are not known to Constable Parperides and ones he certainly should not be deciding.

He stated they may have to wait for a long time for an ambulance if one was requested. Again, he is six minutes from the hospital. Why would you not drive the victim to the hospital for medical assistance. He advised the Service does not transport to hospital. I find that position difficult to understand. There may be situations where EMS is required and it is proper, but not in this situation and distance to the hospital.

The other issue with Constable Parperides is that on at least two occasions he advised Bryan Clark to tell the booking officer he had a sore or broken jaw prior to arrival at the station. He also relayed this to the booking officer I believe and it also is on the tape.

If there was no concern about the jaw and he testifies that he knows what a broken jaw looks like and how the movement of the jaw operates because of the numerous fractures he has observed why the concern in relating this to the booking officer. He did testify that he was not passing the buck on to the Booking Sergeant. That statement is hard to swallow with the insistence of making the injuries known to the booking officer.

Exhibit 10 depicts three photos of Bryan Clark on the night in question. Constable Parperides states there were no injuries or visible injuries. It is evident to me and I find that injuries are self-evident to the face of Bryan Clark. When you culminate this with the known facts and events of the evening I believe and find that Bryan Clark required medical assistance. He may not have asked for medical assistance, however he did complain on numerous occasions and this is where Constable Parperides should have taken the complaint in a serious manner and transported him to hospital to have the arrested party assessed for medical aid considering the overwhelming facts of that evening relating from the incident to the eventual arrest.

I am aware of the Doctors evidence in their testimony. They indicate that this fracture was not a serious injury. They did acquiesce to the point if there family member had the same circumstance they would have brought them to the hospital. The issue and their assessment of the injury to determine it was not serious were based on the clinical notes provided to them. Constable Parperides did not have these notes and could not operate with hindsight. He did reflect in his evidence that after dealing with this issue for seven years he would have taken Clark for medical assistance and I commend this officer for stating this point.

With all the facts and information that Constable Parperides had in relation to the events of December 27, 2013 I find that there was more than adequate evidence presented to support the facts as outlined in the Notice of Hearing.

Bryan Clark advised Constable Parperides on numerous occasions of his sore and or broken jaw which can be classified as a serious injury. Constable Parperides did not take Clark for medical assistance prior to processing him as directed in the General Order but instead directed him to advise the booking officer he had a sore or broken jaw.

The accepted quality of the evidence that is required to be met in the prosecution of matters such as these is *clear and convincing evidence*, which has been described as:

“weighty, cogent and reliable evidence upon which a trier of fact, acting with care and caution, can come to a reasonable conclusion that the officer is guilty of misconduct.”

It is my finding that the Prosecution has met this standard in the Tribunal on this allegation against Constable Parperides.

Decision:

Based on all the evidence brought before me in this Hearing, it is the decision of this Tribunal that Constable George Parperides is GUILTY of Neglect of Duty as stated in the allegation contained in the Notice of Hearing.



M.P.B. Elbers, Superintendent

September 30, 2020