

IN THE MATTER OF
ONTARIO REGULATION 123/89
MADE UNDER THE POLICE SERVICE SCT R.S.O. 1990, C.P. 15
AND AMMENDMENTS THERETO

AND IN THE MATTER OF
SERGEANT THERON MOUNSEY BADGE NUMBER #817
POLICE CONSTBLE PAUL GRIGORIOU BADGE NUMBER #3425
AND THE
DURHAM REGIONAL POLICE SERVICE

JUDGMENT

APPEARANCES

MR. ALEX SINCLAIR.

For the Durham Police Service

MR. BILL MACKENZIE

for Sergeant Theron Mounsey.

BEFORE;

Deputy Chief Terence Kelly (ret)

York Regional Police

Hearing Officer

Judgment Date:

October 9th, 2014

JUDGMENT**SERGEANT THERON MOUNSEY BADGE NUMBER 817****POLICE CONSTABLE PAUL GRIGORIOU BADGE NUMBER 3425****DURHAM REGIONAL POLICE SERVICE****OCTOBER 9TH, 2014.**

DEPUTY CHIEF TERENCE KELLY (RET:) before dealing with judgment in this matter, I wish to thank Mr. Bill MacKenzie, defence counsel, and Mr. Alex Sinclair, the Service prosecutor, for their able arguments and exhibits tendered, all of which have assisted me in reaching my decision.

Sergeant Theron Mounsey, badge Number 817, has pleaded not guilty to one count of Insubordination. Police Constable Paul Grigoriou Badge Number 34225 has pleaded not guilty to one count of Unlawful or Unnecessary Exercise of Authority laid under the *Police Services Act*. These charges have been adequately detailed in the Notice of Hearing.

In general the rules of evidence will be followed. If there is an easing of the rules it is essentially in an attempt to arrive at the truth while balancing the need for fairness towards the officers and also ensuring natural justice.

Charge Number 1 – Insubordination alleges on or about the 10th day of October, 2012 Sergeant Theron Mounsey, did without lawful excuse disobey, omit or neglect to carry out any lawful order, thereby committing the offence of Insubordination, Contrary to Part V, clause 80(1) (a) of the Act as amended, and clause 2(1) (b) (ii) of the Schedule “Code of Conduct”, O. Reg. 268/10, as amended under the act.

Statement of Particulars.

On October 10th, 2013 Sergeant Mounsey was working the central Cell Block as the Supervisor in Charge. An accused party was brought in and held for a bail hearing. While in custody the accused spoke with Sergeant Mounsey and requested medical attention for his injuries. Sergeant Mounsey arranged for the attendance of the paramedics and the accused was transported to hospital. Once he was cleared medically he was brought back to the cells and lodged.

The accused filed a complaint with The Office of the Independent Police Review Director with regards to the conduct of the officers and the force used by them while he was in custody.

Sergeant Mounsey’s duty notes were obtained and reviewed. They contain no notation in regards to his conversation with the Complainant about his injuries, or any steps he took as a result.

Charge Number 1 – Unlawful or Unnecessary Exercise of Authority alleges on or about October 10th, 2012, Police Constable Paul Grigoriou, did use unnecessary force against a prisoner or other person contacted in the execution of duty, thereby committing the offence of Unlawful or Unnecessary Exercise of Authority, contrary to part V, clause 80 (1) (a) of the Police Services Act, as amended, and section 30, clause 2 (1) (g) (ii) of the schedule code of Conduct, O. Reg 268/10, as amended under the Act.

Statement of Particulars.

On October 9th, 2012, the Durham Regional Police Service arrested the complainant Joseph Briggs. He was subsequently transported to the central; East Division in Oshawa on October 10th, 2012. Mr. Briggs was paraded before the Officer in Charge at the central East Division; he was taken to a room and searched. While being searched he alleges that he was pushed up against a wall repeatedly, had his arms bent behind his back and was grabbed by the throat without provocation.

The first witness for the prosecution. Mr. Joseph Briggs, testified on October 9th, 2012 he was arrested for driving while disqualified, flee police and dangerous operation of a motor vehicle. The police officer approached him, questioned why he didn't stop for the ride check, he also asked him for his drivers licence, registration and insurance. He stated other officers arrived on the scene and subsequently searched his vehicle. He was arrested and transported to 19 Division in Pickering, paraded before a Sergeant and asked to identify himself. Mr. Briggs said he was being somewhat difficult initially. At number 19 Division he was informed of his charges again, and that's all he can remember. The officers then removed him to a holding room here he was searched. He does not recall if his pockets were searched. He was removed from this location by Constable O'Connor and told he was going to be transported to No 17 Division in Oshawa as he was going to be held for a bail hearing

On arrival at 17 Division he was brought into the booking area and paraded before Sergeant Mounsey. He was told to empty his pockets, but doesn't believe he was searched. From here Constable Grigoriou and a special constable took him to a search room. At this location he was asked to take off his boots and socks, which he did. He then placed his hands in his pockets. He was told by Constable Grigoriou to remove his hands from his pockets or he will force him to. Mr. Briggs stated he was appalled by the officer's demeanour. He asked the officer if he was serious, then told the officer he was

cold. He believes the officer asked him again to take his hands out of his pockets. Mr. Briggs stated he took his hands out of his pockets, and then the officer just grabbed him and turned me around, pushing him into the corner. Mr. Briggs stated he began flexing at this time in order to avoid contact with the wall. The officer then grabbed his left hand and forced it up his back towards his shoulder to the point he was on his tiptoes. He started yelling at this time as he was in pain. Another person came into contact with his arm, the bending of his wrist started to ease a bit. He believes at this time they were handcuffing him. Mr. Briggs then started flexing again and was grabbed by Constable Grigoriou by the throat, his left hand on his throat and his right hand on the back of his neck for about 30 seconds. When asked if Constable Grigoriou was telling him anything at this time, he responded, he could have said, “ You need, you need to stop resisting. You need to stop. Mr. Briggs denied resisting the officer. Shortly after he was removed from this room. He stated the officer pulled at his wrists, then he pulled away from him, the officer again threw him up against a wall telling him to “stop it”. Stop resisting.”

At the cell area, he was placed in the cell stating the special constable punched him and as a result his head was hurting and his wrist were swollen because of the handcuffs.. Constable Grigoriou came by the cell area and he asked him for medical attention. The officer ignored him. A short time later Sergeant Mounsey came to the cells and he told him where he was hurting, showing him a lump on the right side of his head.

Mr. Briggs was then taken to see a doctor at the Lakeridge Hospital in Oshawa.

Entered at this time by the service prosecutor *Exhibit #4* a book of documents.

Mr. Briggs agreed with the service prosecutor that he had his hand x-rayed at the hospital, that it was quite swollen. After attending at the hospital for approximately one half hour he was returned to number 17 Division. Mr. Briggs was then taken to Tab nine

in *Exhibit #4*. He identified this document as his complaint to the O.I.P.R.D. He was then referred to Tab #10 and identified it as the transcript of the statement he gave to them.

The service prosecutor then asked him if at anytime during his incarceration on October 9th and the morning of October 10th, was he physically aggressive towards the officers. He responded no.

Under cross-examination by defence counsel, Mr. Briggs was taken through his statement he drafted for the O.I.P.R.D on December 6th, 2012. He was questioned why it took him until that date to file a complaint. Mr. Briggs advised the tribunal he was held in custody until November 14th. On that date he pled guilty to a charge of driving while disqualified and subsequently released, all the remaining charges were withdrawn.

He was then questioned in relation to his appearance before the booking sergeant at 19 Division. Mr. Briggs agreed he was initially uncooperative with the booking Sergeant. He was asked his name and he refused to give it to him. He agreed he may have refused to give his name on a least three occasions when asked. He was questioned if he could recall telling the booking sergeant that he had already given his name to the arresting officers and to get it from him. He stated, he doesn't remember.

Mr. Briggs agreed he was transported to Number 17 Division in Oshawa where he appeared on video for the first time in front of Sergeant Mounsey. When asked if he was provided with a copy of the video. He replied yes, however he has not watched it, as he does not want to revisit that. Mr. Briggs stated he stood before Sergeant Mounsey and responded to his questions, questions he was asked in the past. When questioned if he was handcuffed at this time, he couldn't remember. Nor could he remember the special constable removing the handcuffs at this time. He agreed he hadn't been searched at this time and was asked to empty his pockets, which he did, inside out. After which he was

asked to go to the search room. He agreed enroute to the search room he was asked by one of the officers to "Take his hands out of his pockets." In the search room he put his hands back into his pockets. He agreed at this time that neither the special constable nor Constable Grigoriou had an opportunity to actually physically pat him down or check his pockets. When questioned if the officers had asked him more than once in the search room to remove his hands from his pockets, he responded, "You could say that."

Defence counsel then asked if he was told in a stern voice by the officer to remove his hands from his pockets on a least three occasions, he responded "right." He stated at this time he was appalled by the officer's aggression, that he could read body language. He agreed officers also are trained to read body language, denying he showed any body language to the officers during his booking process.

Mr. Briggs agreed Constable Grigoriou grabbed him, turned him around and put him up against the wall and his face made no contact with it as he was using his body to prevent his face from hitting the wall. He agreed there was no punching, kicking or any other force used on him other than his wrist being pulled behind his back and being handcuffed, which resulted in his swollen wrist. When asked if he was flexing at the time of the handcuffing, he stated he was trying to stop the officer from banging him into the wall, that the officer was literally banging him up against the wall. When asked if he had mentioned in his statement to the O.I.P.R.D. he was constantly being banged up against the wall. He stated, initially no, I don't think so. His complaint was in regard to the bending of his wrist, he didn't receive any facial injuries or any injuries to the front of his body from being forced against the wall.

Mr. Briggs stated that Constable Grigoriou grabbed him around the neck after being handcuffed. When shown Exhibit #4 Tab#9 his statement to the O.I.P.R.D. where he told them the officer placed his right hand on my throat then he handcuffed me. He stated, as I

go back, I remember clearly, more than likely, they may have handcuffed me at that time. He agreed with counsel his memory of the events would be that much clearer then in December 2012 than they are now 16 months later.

Mr. Briggs when questioned about being escorted to the cells, denied pulling the finger of Constable Grigoriou, however agrees there were four officers escorting him to the cell area. In the cell, he advised Sergeant Mounsey he had some injuries and requested medical assistance. Sergeant Mounsey asked to see his injuries and he showed him the back of his head where he could feel a bump, however, at this time he did not complain about any injuries to his hands. He agreed that EMS attended the cell area and was subsequently taken to the Hospital where they x-rayed his right hand. He agreed the doctor upon examining it noted that his right hand; skin intact, slight puffy was what the medical personnel wrote. He was then questioned about the bump on his head. Mr. Briggs testified the bump on his head had nothing to do with Constable Grigoriou.

Upon his return to #17 Division he was placed in the cells, a short time later Constable Grigoriou took him for fingerprints. Mr. Briggs objected to being fingerprinted by the officer, telling him he didn't want to be fingerprinted by anyone. After removal of the handcuffs Mr. Briggs was fingerprinted, he told officer Grigoriou to take it easy as his hand hurts. He was then returned to his cell.

The next witness for the prosecution, Constable Leanne Everson, testified she is a member of the Durham Regional Police Service and presently in the administration branch of the training centre. She was directed to Tab #14 in Exhibit #4 that contained records pertaining to cell supervisor training. She noted Sergeant Mounsey received training pertaining to this on March 19th, 2010 by S/Sgt Elliot. Constable Everson was then directed to Tab #15 and identified this document as prisoner-care-control policy or directive. She was then asked what her understanding was in regard to these directives. She replied they are basically directives that tell us how to conduct business on a daily

basis. She was then asked if she would describe them as optional or mandatory, to which she replied 'I wouldn't say they were optional, no.

Under cross-examination by defence counsel, Constable Everson described her position at the training centre and the course relating to cell supervision. She was unaware of what was actually reviewed by Sgt. Mounsey during the course given by S/Sgt Elliott. She agreed with counsel that all directives are not necessarily mandatory, that some may allow the officers to use discretion. When questioned about the prisoner-care-and-control directive she was not aware whether or not it allowed the officer to use his discretion.

Constable Everson when questioned about the Durham Regional Police Versadex system agreed a cell sergeant when booking prisoners in are operating the Versadex system and further, officers can enter their notes on the system and lock them in.

The next witness for the prosecution, Police Constable Mark Minicola, testified he is a member of the Durham Regional Police Service and is presently attached to the training branch as a use-of-force instructor. Constable Minicola was asked to go to Tab #13 in the Book of Documentation and describe the use –of-force wheel. He described the wheel as a training tool used by officers to assist them in assessing their situation and what might be the appropriate use-of-force response. Constable Minicola stated the circumstances could change, in the use of force if the situation escalates, it could go from a soft approach to a physical approach. He was questioned what was his understanding of the Force with regard to the directives of the Durham Regional Police Service. Are they guidelines or are they mandatory. He believed they were guidelines as to how an officer handles himself during the situation.

Under cross-examination by defence counsel, Constable Minicola stated that every officer in the DRPS is required annually to take the use-of-force course. He described the use-of-force wheel as a training aid and all officers are aware of it. Constable Minicola agreed with counsel, part of the scenarios he teaches involve individuals who initially appear cooperative, however the situation, within moments, can turn completely almost deadly. The officer is always taught to be on guard for the behaviour of the subject to change. It is part of teaching officer safety.

When questioned with regard to an individual that, places their hands in their pockets, and would that be something an officer needs to be concerned about. Constable Minicola stated, based on the totality of what's going on it would be. The officer advised the tribunal they teach officers to have the hands available and visible. They instruct officers they are the delivery system, if there is a lethal object or a threat, it's generally the hands that will carry it out. When questioned if the officer makes a request to the subject and the subject resists it, does the officer move from the cooperative mode to the passive resistant mode. Constable Minicola agreed this would be the proper way to deal with the situation.

Defence counsel questioned the officer about handcuffing techniques taught to the officers. Constable Minicola stated they train officers to have physical control and to handcuff the individual to the rear so you are in control. If the individual is resisting a strike may be necessary to distract the person in order to gain control or simply just directing the arms or the body to get control while trying not to injure the person.

Regarding the search of an individual, the officers are taught, every time they take custody of an individual they search them; search every prisoner each and every time they take control. It is for everyone's safety to ensure that, somebody before has not missed anything or, during transport or at some other point, they haven't picked up anything new.

The next witness for the prosecution, Mr. Bernie Mueller, testified he is an investigator with the Office of the Independent Police review Director and has been so employed for the past three and a half years.

Mr. Mueller was questioned as to his understanding of the searches conducted on the person of Mr. Briggs. He stated his investigation showed the first search was conducted by Constable O'Connor at the point of arrest where his wallet was found and retained by the officer, and subsequently turned over to the sergeant at Number #19 Division. Mr. Mueller then viewed a video produced by the prosecution, which shows Mr. Briggs being paraded before the S/Sgt. and his wallet and other personal effects being handed over to him. He agreed that this would be the second search of Mr. Briggs.

When questioned if he was aware of Mr. Briggs being searched again. he stated his investigation led him to another video when he was brought into No #17 Division and paraded before Sergeant Mounsey by Constable O'Connor. Mr. Mueller upon watching the video stated it appears that Mr. Briggs pockets to some extent are turned outside by him. He stated this was obviously germane to the investigation as Constable Grigoriou during his interview revealed he had an issue with Mr. Briggs placing his hands in his pockets and was fixated on this. He had concerns about some weapons or contraband in there and he took steps based on Mr. Briggs either not taking his hands out of his pockets or not taking his hands out when he was told to.

The witness then viewed a second video that was not provided to defence counsel via disclosure. Mr. Mueller upon viewing it stated. With a degree of difficulty he can observe Special Constable Kehoe removing handcuffs from Mr. Briggs and there appears to some search like activity. However, his memory of previously viewing this video on a bigger screen Mr. Briggs ends up with his pockets turned inside out.

Mr. Meuller was then shown DRPS policies on prisoner, care, and control. Also areas of the policy that's applicable to central cellblock supervisors. When asked if it was communicated to him these policies were either optional or orders that had to be followed, he stated that was not communicated to him. However in his experience, they were orders signed by the Chief.

Under cross-examination by defence counsel. Mr. Meuller agreed even after viewing this video on a much larger screen it does appear that Special Constable Kehoe is the one dealing with Mr. Briggs. Constable Grigoriou appears to be some distance away engaged in some other activity.

Entered at this time were ***Exhibit #5*** four previously viewed videos on one disc. ***Exhibit #6*** a single page document regarding notes of Police Constable O'Connor. ***Exhibit #7*** will-say evidence of Inspector Kimmerly.

The first witness for the defence, Police Constable Paul Grigoriou, testified his notes pertaining to his involvement with Mr. Briggs was placed in the Versadex system on October 10th, at 4:14am. Entered at this time ***Exhibit #8*** electronic note keeping. ***Exhibit #9*** Memo book and note taking procedure.

Constable Grigoriou then related his dealings with Mr. Briggs October 10th, 2012. At 1:39 a.m. Constable O'Connor brought Mr. Briggs into the central cellblock at #17 division. Constable Grigoriou stated there was no conversation with O'Connor with regards to him being searched. He has been trained that when there is a transfer of a prisoner from one police officer to another, the individual would be re-searched in the event there's any item the previous searches may have missed.

On arrival at the cellblock Mr. Briggs is paraded before Sergeant Mounsey the officer in charge of the cellblock area, where he is asked a series of questions. Constable Grigoriou describes Mr. Briggs as being cooperative. During this time Constable Grigoriou stated he was away from the booking area dealing with property removed from prisoners brought into the cellblock. When questioned if he observed Mr. Briggs emptying his pockets and turning them from the inside out at the booking desk. He replied, "He did not". Constable Grigoriou further testified, had he observed this, he would also conduct a search of the individual in order to satisfy himself, nothing had been missed. When questioned further about secondary searches and the reasons for them Constable Grigoriou related an incident on February 17th, 2009. A prisoner had been transferred over to him to be transported from #19 Division to #17 Division cellblock. During a secondary search he located some change and a large black folding knife in the prisoners rear pocket. Entered at this time *Exhibit #10* incident relating to secondary search February 17, 2009.

The officer then advised the tribunal that Mr. Briggs was then escorted to a small room that was utilized for searching prisoners in privacy. He explained the reason for doing this was to afford the individual being searched some privacy. In the event a situation may occur with the prisoner, it provides a sense of control for the officers. Also the use of this room for searching individuals comes from the direction of his supervisors, specifically, Inspector Kimmerly. When asked about *Exhibit #7* will-say of Inspector Kimmerly. He agreed this was the direction given to him.

Mr. Briggs entered the search room with himself and Special Constable Kehoe; upon entering the room Mr. Briggs placed both hands into his trouser pockets. S/C Kehoe instructed him to remove them. Officer Grigoriou stated the action of Mr. Briggs putting his hands in his pocket became a concern for him. Mr. Briggs eventually removed his

hands and at this time S/C Kehoe checked the frontal area of the prisoner, a few moments later Mr. Briggs returned his hand to his pockets a second time. Officer Grigoriou stated he told Mr. Briggs several times to remove his hands from his pockets; Mr. Briggs just glared at him. At this point he took physical control of him, turned him around and placed him facing the wall and took control of his arms to re-handcuff him. This then would allow him to do an effective search of the individual, as he was concerned he was concealing something in his pockets. Mr. Briggs at this time was pushing against the wall and flexing his muscles. He took control of his arms and used enough force to get his arms behind his back to permit him to handcuff him. He did not wrench his wrist or cause him any unnecessary pain; his objective was to effectively handcuff Mr. Briggs. Constable Grigoriou stated that it is possible he placed his hand on Mr. Briggs neck or head in order to control him during the handcuffing process. Once handcuffed Mr. Briggs settled down and S/C Kehoe completed the search of him.

Once the search was completed, Mr. Briggs was taken to the cells. The officer stated he had one hand on his wrist and the other on his shoulder directing him to the cell area. He had bent his wrist in a pain compliance manner in order to walk him forward.

When questioned if he had any other contact with Mr. Briggs after he was lodged in the cells Constable Grigoriou stated he fingerprinted Mr. Briggs without incident prior to him being taken to hospital.

Under cross-examination by the service prosecutor, Constable Grigoriou was questioned with his regard to the use of the Versadex note-taking and making notes in his memo book. He stated the Versadex report (allows for a detailed report), allows the officer to create a detailed report on the Versadex computerized system. The memo book serves as a medium for recording information during an officer's tour of duty that cannot reasonably be expected to be recalled from the time of the event to the time when a Versadex record is created.

When questioned about receiving property belonging to Mr. Briggs. Constable Grigoriou stated he recalls receiving property and preparing a property bag from it. He agreed it would be a reasonable assumption another officer had searched Mr. Briggs.

He was then questioned as to his understanding of the way S/C Kehoe conducts searches of prisoners in the cellblock. He stated he has observed him on occasion asking prisoners to turn out their pockets but cannot comment if it is his standard practice. He does not recall the conversation between S/C Kehoe and Mr. Briggs at the booking desk as he was dealing with property some distance away. He noticed Mr. Briggs was being taken to the search room and at this time started to move towards them to accompany S/C Kehoe in the search room. He agreed on way to the search room S/C Kehoe asked Mr. Briggs to remove his hand from his pockets. Inside the search room he placed his hands in his pockets again and is immediately told to remove them. He was asked several times to do this, he did not remove them and just stared at him. That's is when he took physical control of him, guiding him, turning him to face the wall and brought his hand back to handcuff him.

When questioned if after handcuffing him, did he keep a certain amount of pressure on Mr. Briggs? Constable Grigoriou stated, once he was handcuffed he was under control and not moving. S/C Kehoe did a pat search of him to make sure he had no weapons.

Asked if he had his hand on Mr. Briggs throat, Constable Grigoriou denied this, stating he had his hand on the back of his neck to control him while he was being handcuffed. He agreed with counsel Mr. Briggs was yelling, "Stop hurting me."

Constable Grigoriou denied Mr. Briggs had asked him for medical assistance when being placed in the cells; his only other contact with him was when he was fingerprinted.

The next witness for the defence, Sergeant Theron Mounsey, testified he is presently a member of the Durham Regional Police Service and has been so employed for the past 24 years. On October 10th, 2012 he was the cellblock supervisor at No#17 Division. His duties included managing the staff at the central cellblock. He also outlined all of his administrative duties dealing with the courts and prisoners being held or released from #17 Division.

Sergeant Mounsey testified he was involved in the booking process of Mr. Briggs on October 10th, 2012. He was then taken to Tab #8 and Tab #5 in *Exhibit #4*. He identified this document as notes made by him in relation to Mr. Briggs. Sgt. Mounsey then explained his use of the Versadex system, which allows him to make electronic entries with respect to his contacts with individuals that are brought before him. He followed this procedure when dealing with Mr. Briggs. He explained the electronic notes on Mr. Briggs start when he first enters the booking system at No #19 Division, this allows him to see what has been recorded by other officers involved in the handling of Mr. Briggs.

Sergeant Mounsey described Mr. Briggs as being cooperative during the booking process. At this time he follows a template on Versadex as to the question asked of the individual. He stated he does not ask the prisoner to remove articles from their clothing. This is left up to other officers who will conduct a search of the prisoner and subsequently place them in the cells. He does not get involved in this process unless there is something glaringly wrong. Sergeant Mounsey stated Constable Grigoriou and S/C Kehoe took Mr. Briggs to the search room. He described the room as a small area where

officers conduct searches of prisoners. An area that has been in use since he took over the supervisory position at this location.

Sergeant Mounsey then advised the tribunal, once the officers were in the search room, he could hear a loud conversation between the officers and Mr. Briggs going back and forth. Essentially what he would describe as a screaming match. He could hear words to the effect, Take your hands out of your, pocket. I told you to take your hand out of your pocket.” This was being said by one of the officers. Mr. Briggs was shouting loudly, and he is saying, I’m taking my hands out of my pocket. When asked if he was able to see into the search room, he replied “no.”

Shortly after he observed Mr. Briggs being led from the search room in handcuffs in the control of officers, Grigoriou. He recalls the officer saying let go of my hand, upon looking towards them he noticed a pulling away motion by Constable Grigoriou, then the officer grabbing the prisoner and forcing him into the wall and the officer telling him to calm down. At this time he followed officers Grigoriou and Kehoe to the cell area, as he was concerned about the behaviour of Mr. Briggs towards the officers. He noted that because of the behaviour of Mr. Briggs in the cell area. It took three officers to calm him down.

When questioned about Mr. Briggs needing medical attention, Sergeant Mounsey stated one of the officers advised him that Mr. Briggs was requesting medical attention. As a result he entered the cell area and spoke with him. He advised Sgt Mounsey that his head hurts, Sgt. Mounsey upon checking him could see no obvious signs of injury, however he called the communications centre requesting they dispatch EMS personnel to the cellblock.

When questioned about his entries on Versadex regarding the fingerprinting of Mr. Briggs by Constable Grigoriou, he stated this was done prior to Mr. Briggs complaining about injuries. At no time was it brought to his attention that he was requesting medical assistance. When questioned about notes being made on Versadex and not copied in his memo book. He stated it would be duplicitous. The direction by the Chief of Police of Durham suggests that it is not necessary.

When questioned about Versadex vs. entries in his memo book Sergeant Mounsey stated he makes notes in his memo book, as he has in relation to Mr. Briggs as well as Versadex. That both provide a full accounting of his shift activity. He then referred to the Chief's position as it relates to directives; they are to be treated as guidelines. He further stated that in the process of booking prisoners he does not specifically go to the directives that deal with this. He makes notes in conjunction with the Versadex notes.

Entered at this time *Exhibit #11* Chief's video relating to service directives February 13, 2013. *Exhibit #12* Durham regional Police Service communications log.

Under cross-examination by the service prosecutor, Sergeant Mounsey was questioned with regard to his control of the audio at the control booth. He stated he had turned it off after his dealings with Mr. Briggs. However he turned it back on when they seemed to be getting into a shouting match. He turned it back off again as this is the usual confrontations he hears in the cellblock area. When asked if he recalled Mr. Briggs shouting "You're assaulting me; your hurting me." Sergeant Mounsey did not recall hearing this. His recollection of the events was someone saying; take your hands out of your pockets and Mr. Briggs shouting. It seemed like a back and forth yelling match. However he recalls at some point Mr. Briggs saying he was in pain and does not recall if the audio was on or off at this time. Sergeant Mounsey was then asked a series of questions with regards to notes he made on Versadex and in his memo book with regard

to what occurred between Mr. Briggs and officers Grigoriou and Kehoe but no notation of Mr. Briggs requesting medical attention. Sergeant Mounsey stated, he may have been distracted by something else, and cannot explain why he made no reference to it. However he noted on Versadex he had been removed to Hospital. Further he had contacted communications requesting a two-man unit to escort an ambulance with patient to hospital *Exhibit #12*.

The witness was then asked to go to tab #17 a document that speaks to prisoner care and control. He agreed the document concludes “by order of the Chief Mike Ewles.” These are orders, however, it is his understanding from the Chief these are guidelines. He was then asked a series of questions relating to the procedure and asked why as it says in the procedure to make note of the prisoners health and safety and failed to do so. He stated he didn’t see any visible injury on the prisoner. He called for an ambulance out of precaution, as he was aware there was an altercation in the cells between Mr. Briggs and the officers.

In his submissions the service prosecutor argues that the evidence of the complainant Mr. Briggs is clear and convincing, and certainly sufficient to conclude on a balance of probabilities that excessive force was used. The prosecutor spoke to the video taken during the process of booking Mr. Briggs at No #19 Division, stating its of very little relevance as it is a number of hours preceding his booking at No #17 division. It would be inappropriate to draw any inference from that video with respect to, the demeanour of the public complainant or his lack of cooperation inside the search room at, 17 Division. Further, the force used by Constable Grigoriou in the search room while handcuffing the complainant was excessive.

The prosecution argues with respect to the issue of excessive use of force and the allegations against Constable Grigoriou is the issue of credibility. The complainant gave very credible evidence with respect to the altercation in the search room and didn't attempt to embellish any of the facts.

In his submissions, defence counsel argues that Constable Grigoriou's evidence relating to the altercation in the search room was captured almost immediately after it In **Exhibit #4** Tab 7 his occurrence report on Versadex, Notes were drafted on October 10th, 2012 at 4:14 in the morning. The officer's memory of the events would have been fresh in his mind. Further it is a full and fair accounting on the evening in questions. Also the force used was minimal as it relates to the use-of-force continuum. Soft hand techniques involving the handcuffing of a prisoner.

With regard to Sergeant Mounsey, defence counsel argues the officer made adequate notes that evening on the Versadex computer system and also in his memo book with regards to events on the evening of October 10th, 2012. He agreed there could have been further information added by the officer with regard to the complainant's actual medical complaint. However, Sergeant Mounsey followed procedure and arranged for Mr. Briggs to be transported to hospital by ambulance where he would receive the proper medical attention if required. Further, it is clear from **Exhibit #11** Chiefs video as it relates to service directives, which are to be treated as guidelines allowing the officers to use their discretion.

Having listened carefully to all the witnesses, and read the exhibits entered pertaining to this matter, I agree with the submissions of defence counsel and the Service prosecutor that this case as it relates to the allegations against Constable Grigoriou is indeed one of credibility.

There is no doubt credibility plays an important part here and, in making that comment, I am mindful of the fact that the onus is always on the Service prosecutor to prove its case on clear and convincing evidence.

As I have stated in previous decisions, my duty as a hearing officer, while ensuring procedural fairness and ultimately natural justice to both parties, is to listen to the testimony of witnesses, receive and review exhibits and weigh the evidence provided. At the conclusion, I must decide if there is sufficient “weighty and cogent” evidence that leads me to conclude that the evidence is clear and convincing and find that the subject officer has committed the misconduct. If I find at the end of the day, the evidence is not clear and convincing, it is my duty to find the officer has not committed misconduct and dismiss the allegation.

Mr. Briggs in his evidence in chief stated. He was arrested and transported to 19 Division, paraded before a booking sergeant and asked to identify himself, which he refused to do, telling the Sergeant to ask the arresting officers for the information. He acknowledged that he was being somewhat difficult initially with the booking Sergeant. Upon arrival at 17 Division he was cooperative with the booking sergeant responding to all of his questions. Once removed from this area, and proceeding to the search room, he placed his hands in his pockets. Under cross-examination he agreed he was told by one of the officers to remove his hands from his pockets, which he did. He also agreed inside the search room he again returned his hands to his pockets prior to the officers having any opportunity to actually pat him down or check his pockets. When questioned if he was told more than once in the room to remove his hands from his pockets, he responded, “You could say that”. It is clear from this evidence Mr. Briggs was again showing the same attitude he exhibited in his initial appearance at 17 division of being difficult and continuing to challenge the officers authority. The actions of Mr. Briggs in relation to putting his hands in his pockets after being directed several times to remove them, would

clearly cause the officers concerns and give reasonable suspicion to any police officer in these circumstances as to his intent.

When questioned by defence counsel with regard to Constable Grigoriou's contact with him in the search room. He stated the officer turned him around and put him up against the wall, his face made no contact with the wall as he was using his body to prevent this. He also agreed, he was not punched or kicked, or that any other force was used on him other than his wrist being pulled behind his back and being handcuffed, which resulted in his swollen wrist.

Police Constable Grigoriou in his evidence stated, he has been trained when there is a transfer of prisoners from one officer to another, the prisoner would be re-searched in the event the previous search may have missed items. He gave an example of this *Exhibit #10* finding a weapon on a prisoner when completing a secondary search. Constable Grigoriou to some extent corroborates the evidence of Mr. Briggs that he turned him around, pushing him against the wall, using enough force to get his hands behind his back to enable him to apply the handcuffs. He also had control of the back of his neck area to assist in controlling him, but denies grabbing him by the throat.

I have no doubt the action taken by Constable Grigoriou caused Mr. Briggs a great deal of discomfort. Also the flexing of the arm muscles by Mr. Briggs while the handcuffs were being applied would only increase the discomfort he was experiencing.

Police Constable Minicola testified with regard to use-of-force training given to officers of the Durham Regional Police Service. He was asked to go to Tab #13 in *Exhibit #4*. The National Use of Force Framework hereafter called the wheel. The device consists of two circles, one within the other. The inner circle describes the behaviour of the person

who is the object of police action. The descriptors start at cooperative and pass through the phases of passive resistance, active resistance and assaultive through grievous bodily harm or death. The outer circle describes the appropriate police response to the behaviour. Constable Minicola described the wheel as a training tool used by officers to assist them in addressing their situation and what might be the appropriate use-of-force response.

When questioned by defence counsel, officer Minicola agreed part of the scenarios he teaches officers involving individuals who initially appear cooperative, however the situation, within moments can turn completely, almost deadly. He agreed when dealing with individuals that continually place their hands in their pockets is something an officer needs to be concerned about. He stated, they teach officers to ensure the individual's hands are available and visible. The hands are a delivery system. If there is a lethal object or threat, it's generally the hands that will carry it out.

Mr. Meuller the investigator from the O.I.P.R.D. testified about the video of Mr. Briggs at the booking desk of 17 division, which shows Mr. Briggs pockets to some extent are turned outside. He stated this was obviously germane to the investigation as Constable Grigoriou during his interview revealed he had an issue with Mr. Briggs placing his hands in his pockets and was fixated on this as he had concerns about weapons or contraband in there.

With regard to the turning out of the pockets by Mr. Briggs at the booking desk, there is no evidence before this tribunal Constable Grigoriou was present during this time. However, there is some evidence presented showing the officer at this time dealing with property at a location other than the booking desk. I agree with Mr. Meuller that the action of Mr. Briggs placing his hands in his pockets is germane to this investigation, in

that it would give the officer concern upon observing Mr. Briggs doing this repeatedly after being told not to.

The evidence that has been presented indicates that Mr. Briggs from the initial booking at 19 Division and his subsequent arrival at number 17 Division, although cooperative at times showed a disrespect for people in authority that were clearly performing their duties with regard to processing a prisoner in their custody. I have no evidence to suggest any physical strikes were administered, although Constable Grigoriou did testify that he might have controlled the head and upper body area in order to handcuff Mr. Briggs. Both parties indicated there was struggling with Constable Grigoriou trying to get Mr. Briggs hands behind his back so that he could be handcuffed. Clearly Mr. Briggs flexing of his arm muscles made this procedure much more difficult which resulted in him feeling a great deal of discomfort, which may have resulted in the puffiness to his wrists.

The use of force necessary to adequately control a none-compliant individual in order that he can be handcuffed varies. If the person does not comply, the use of force is escalated. The officer applying the force must use only as much as necessary to gain control.

The evidence in relation to the use of force does not lead me to believe that Constable Grigoriou used force beyond what is necessary to gain control of Mr. Briggs, so the situation could be controlled and a proper search of his person could take place before placing him in the cells. It is my finding given the actions of Mr. Briggs outside the search area and in side the search room of placing his hands in his pockets, the force utilized to handcuff him was reasonable given the circumstances.

Having assessed all of the evidence in relation to the force used I have no basis to believe the force applied was excessive to gain control, therefore the threshold for to me to find guilt is absent.

Based on my findings I find Constable Paul Grigoriou, Badge Number #3425 not guilty on the charge of Unlawful or Unnecessary Exercise of Authority.

With regard to the allegation against Sergeant Mounsey there has been a great deal of evidence placed before this tribunal with regard to Versadex computerized report system. Constable Leanne Everson testified that the system allows officers to effectively do their notes on it. Once a report is completed it can then be locked in. she further stated when a report is done on this system and locked in, officers can use this report as their original notes when testify in court. She agreed with defence counsel, the purpose of using Versadex and locking it in is to create the same integrity for that report as one might find in an officers notebook. Further, it alleviates the necessity of duplicating everything.

Sergeant Mounsey in his evidence testified when initially processing Mr. Biggs at 17 division he was using the Versadex system as it contains a template for questions to be asked of prisoners upon their arrival. Further, given the role of the booking sergeant and at times dealing with the number of individuals being brought before him it would not be practical to enter this information into his memo book. Once entered into the Versadex system, the information is locked and the information is accessible to other officers throughout the Region. When questioned by the service prosecutor with regard to directives issued by the Chief of Police pertaining to his duties as a cellblock supervisor, he agreed these directives are orders from the Chief. However, the Chief had produced a video *Exhibit #11* February 2013 to advise the rank and file of the Durham Regional Police Service.

Upon reviewing this video the Chief speaks to the importance of directives. He states in part, and I quote, ” *Directives themselves when they were created are intended as guidelines, steps to follow. They are simply guidelines; it is up to the officer to articulate why they didn’t follow the directive, if an officer can articulate why he didn’t follow the guideline the service is fine with that.* Unquote”.

Introduced as *Exhibit #8* a directive pertaining to **Electronic Note Keeping**. Which stated. The methods of record keeping have changed dramatically over the last number of years. The DRPS in its commitment to organizational excellence and improved effectiveness has reflected those changes by altering our note taking practices to include electronic processes.

It is essential that accurate timely records be made of an officer’s activity and to reduce, where practicable unnecessary replication and duplication.

One can understand officers using directives as guidelines, rather than mandatory orders from the Chief of Police. It would appear more emphasis is placed on the Versadex system with regard to note taking rather than memo books. Sergeant Mounsey when dealing with Mr. Briggs on the day and question used the Versadex system, however he also made entries in his memo book with regard to what he had observed during the removal of Mr. Briggs from the search room to the cells by officer’s Grigoriou and Kehoe. He acknowledges the fact that he did not note the actual medical complaint regarding the alleged injuries Mr. Briggs complained about and that there should have been more information noted pertaining to this.

Throughout this process I have kept in mind the presumption of innocence and the requirement that defendants are entitled to an acquittal unless the case against them is proved on clear and convincing evidence. We require as a routine part of their duties that police officers conduct investigations and complete the necessary reports to the best of their abilities and in compliance with the service policies. On occasion officer’s fail to

complete reports accurately. It is important in all circumstance when conducting an investigation that the subsequent reports describing an incident and circumstances surrounding it contain all the information so the correct decisions can be made to determine the outcome. I note *Exhibit #11* was made sometime after this incident, however it indicates that there was confusion by officers over the directives issued under the signature of the Chief of Police, as to whether they are mandatory or merely a guideline prior to the video being released. There is obviously some clarification that needs to be made to the rank and file, which ones are and should be mandatory rather than using them as a guideline and allowing officers to use their own discretion.

I cannot conclude that I am comfortable with the way Sergeant Mounsey handled this investigation and the accuracy of the documentation submitted by him. However I have no clear and convincing evidence before me that Sergeant Mounsey willfully neglected to perform these duties as required under service policies.

Based on my findings I find Sergeant Theron Mounsey, Badge Number #817 not guilty of the count of Insubordination against him.

**Terence Kelly
Deputy Chief (retired)
York Regional Police
Hearing Officer**

