

Citation:

Date:

File No: C02-0723  
Registry: Victoria

**IN THE PROVINCIAL COURT OF BRITISH COLUMBIA  
SMALL CLAIMS**

BETWEEN:

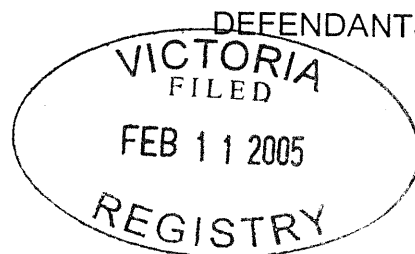
**DENIS WOODWARD**

CLAIMANT

AND:

**CAPITAL REGIONAL DISTRICT  
ANDREW DOLAN AND GARRET LEGAULT**

DEFENDANTS



**REASONS FOR JUDGMENT  
OF THE  
HONOURABLE JUDGE J.M. HUBBARD**

Counsel for the Claimant:

Robert Moore-Stewart

Counsel for the Defendants:

Troy DeSouza

Place of Hearing:

Victoria, B.C.

Date of Hearing:

October 20 & 21, 2004

Date of Judgment:

February 9 2005

[1] The Claimant has sued the Defendants for general and punitive damages for false arrest and detention and civil assault which allegedly occurred on December 19<sup>th</sup>, 2001.

[2] The Defendants, Andrew Dolan (Dolan) and Garret Legault (Legault), were at that time Bylaw Enforcement Officers with the Capital Regional District (CRD).

[3] The Claimant was the owner of a Great Pyrenees dog known as "Pork" and a small farm situate at 6500 East Sooke Road near Sooke, BC.

[4] Dolan and Legault attended at 6500 East Sooke Road at around noon on December 19<sup>th</sup>, 2001 as a result of a complaint from a neighbour that he was being bothered by Pork and had had to defend himself with a hockey stick.

[5] Pork had earlier, as a result of having bitten a jogger on October 31<sup>st</sup>, 1999, been designated a vicious dog by the CRD under its Animal Regulation and Impounding Bylaw and was required to be kept muzzled and on a leash at all times.

[6] The Claimant lived in Oak Bay at the time and was in the habit of leaving Pork alone at his farm at 6500 East Sooke Road to guard his livestock overnight.

[7] Dolan and Legault found Pork to be unleashed and unattended when they arrived but were unable to catch him.

[8] The Claimant then arrived and there was an interaction between the Claimant and Dolan and Legault which has given rise to this claim.

[9] There are two different versions of what happened.

THE CLAIMANT'S VERSION

[10] Denis Woodward (Woodward) says that when he got out of his truck Dolan and Legault within a few seconds advanced towards him and one of them pushed him on the left hand shoulder. He said that something may have been said before this but he couldn't remember what.

[11] He said further that he then said "stop pushing me" or "you're assaulting me" or words to that effect and that within a split second he was bent down and was being pummelled on the back, legs, shoulders, head and neck.

[12] He said that he was told to get down on the ground but couldn't because of a leg injury and told Dolan and Legault that he couldn't. He said that the pummelling went on for 3-4 minutes and that he was then handcuffed at the conclusion of the beating.

[13] He said that a ticket was put in his ticket pocket and that an RCMP Officer subsequently arrived. He was advised that he was being charged with assault and resisting arrest and released on an Appearance Notice.

[14] These charges against Woodward were subsequently stayed apparently on the grounds that there was no reasonable likelihood of conviction.

[15] Woodward subsequently received medical attention for bruises and abrasions to his back, shoulders and arms, a tender index finger and bruising to his left thigh. Full particulars are set out in the Certificate of Readiness (Exhibit 2) and photographs (Exhibit 3).

[16] The Claimant called two witnesses, Louise Paterson and Robin Graham.

[17] Louse Patterson said that she was driving along East Sooke Road with her daughter Robin Graham when she came across the altercation.

[18] She said that she saw Woodward being restrained by one Enforcement Officer, that Woodward had what she called "the Manacles" on and the other Officer was using what she described as a club to hit him in the back and the legs. She said that she didn't count the blows but she was taking notes of what she saw between 12:25 pm and 12:40 pm. These notes were marked Exhibit 8.

[19] Robin Graham said that Woodward was not resisting and that he was hit 4 to 5 times on the back of the legs and the centre of his back towards the shoulders. Whilst it is not totally clear from her evidence as to when she believed Woodward was cuffed her evidence at page 116 line 36 of day one of the transcript after describing the hits was:

And then, of course, it was the pushing him down on the car, and holding him like that while the other person cuffed him and such".

This appears to indicate that the blows were prior to the cuffing although she earlier had indicated to the contrary.

#### THE DEFENDANTS' VERSION

[20] The Defendant Legault testified that he had a conversation with Woodward when he arrived on the scene whilst Woodward was still sitting in his truck. He said that he

explained why they were there and that he would be issuing him a ticket for having a vicious dog at large. He testified that Mr. Woodward then said:

I will not accept anything from you. I do not like the CRD and I'll not accept a ticket.

[21] He said that Woodward then walked towards Dolan who told him to stop where he was and that "you're not going anywhere until Mr. Legault serves you with an MIT".

[22] At this stage he described how Woodward came into contact with a device called a "snappy snare" held by Dolan that they had been using to attempt to catch the dog "Pork". At this point he said that Dolan discarded the snappy snare and held up his hands to Woodward's chest and said "you're not going anywhere" having deployed his baton by racking it and placing it to his shoulder. He said that Woodward continued to try to step forward grabbed Dolan's hand and then began a physical struggle with Dolan whilst he was trying to arrest and handcuff him. At this time he said that Dolan advised Woodward he was under arrest.

[23] Legault testified further that he assisted Dolan by grabbing Woodward's left arm using a technique he had been taught in training known as "a straight arm bar position".

[24] As the struggle continued Dolan struck Woodward, according to Legault, with the butt of his baton in the right scapula rear shoulder area 3 times and then made a further strike with the side of the baton towards his legs which did not connect.

[25] He then described how Dolan used the baton as a lever to bring Woodward's arm into the handcuffing position and that he then managed to place the handcuffs on

both of Woodward's wrists. He said that no blows were struck after the cuffs were put on.

[26] He testified further as to a conversation with Louise Patterson and said that Woodward was held until Cst. McKenzie arrived at 12:50 pm.

[27] Dolan's testimony was similar to that of Legault and he said that he had to deploy the Baton to enable the two officers to handcuff Woodward as he was resisting arrest for assaulting a peace officer. He also testified that he struck Woodward only with the butt of the baton and that although he may have commenced a swing to strike him on the legs to bring him to the ground he did not complete the swing as Woodward said he had a bad knee. He said further that once both handcuffs were applied Woodward stopped resisting completely.

[28] Both officers testified that no blows were struck after the handcuffs were applied.

#### FINDING OF FACT

[29] Having considered all the evidence I am satisfied and find that no blows were inflicted on Woodward after he was handcuffed. This conclusion is supported by Woodward's own evidence.

[30] The issue that must be decided is whether the two officers were entitled to arrest Woodward and to use force in doing so and whether or not the force was excessive.

[31] Section 31 of the *Criminal Code* provides that:

Every peace officer who witnesses a breach of the peace and everyone who lawfully assists the peace officer is justified in arresting any person whom he finds committing the breach of the peace.....

[32] I am satisfied on the evidence that I heard that Woodward did obstruct and assault Dolan who was a peace officer attempting to perform his duties and that the officers were entitled to arrest him.

[33] It has been argued on behalf of Woodward that grossly excessive force was used but the symptoms and observations that are set out in the medical notes in the Certificate of Readiness, Exhibit 2 and shown in the photographs, Exhibit 3, do not support this argument.

[34] I heard from Retired Sergeant Donald Brown who was in charge of the Sooke Detachment of the RCMP at the time of the incident and is now the Chief Bylaw Enforcement Officer for the CRD that excessive force applied with a baton in the manner described by Ms. Paterson would cause considerable damage including breaking of bones. The medical evidence indicates only minimal injuries to Woodward.

[35] Section 525 of the *Criminal Code* provides:

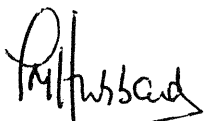
(1) Every one who is required or authorised by law to do anything in the administration or enforcement of the law.....

(b) as a peace officer a public officer.....is, if he acts on reasonable grounds, justified in doing what he is required or authorized to do and in using as much force as is necessary for that purpose.

[36] I find that officers Legault and Dolan were justified in using the force that they did use to arrest Woodward and that, therefore, neither they nor their employer, the CRD,

are liable for damages as claimed or at all. The claim is therefore dismissed in its entirety.

[37] With regard to costs and expenses, I am not inclined to award any to the Defendants in all the circumstances but there is liberty to apply to the court with regard thereto if they should be so advised.



J.M. Hubbard  
Provincial Court Judge