

CITATION: Knox et al. v. HMK et al., 2024 ONSC 6650
COURT FILE NO.: 27546/17
DATE: 2024-12-02

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:)
)
DANIEL KNOX, HARRISON KNOX and)
SHERRY COLE) *D. Charney, for the Plaintiffs*
)
Plaintiffs)
)
– and –)
)
HIS MAJESTY THE KING IN RIGHT OF)
ONTARIO (MINISTRY OF) *E. Wagner/M. Chung, for the Defendants*
COMMUNITY SAFETY AND)
CORRECTIONAL SERVICES),)
CONSTABLE LUIGI BRUNI,)
CONSTABLE MARIO POSTERARO,)
CONSTABLE PETER VAN DEN)
DIEPSTRATEN, CONSTABLE KEITH)
NICOLE and SERGEANT KEN SPAHR)
Defendants)
)
)
)
) **HEARD:** February 7, 8, 9, 10, 11, 14, 15,
) 18, October 3, 4, 5, 6, 7, 11, 12, 13,
) December 14, 15, 16, 2022, January 12,
) 2023, Written Submissions

GAREAU J.

REASONS FOR DECISION

INTRODUCTION

[1] This case proceeded to trial remotely. Counsel attended by Zoom and all witnesses called by the parties testified by Zoom. The trial was set for eight days in February 2022 but was not completed in that time and a further 12 days were needed to complete this trial.

- [2] Due to the length of the trial and the nature of the case, the court requested written submissions to be prepared and filed. There was a delay in releasing this decision due to personal circumstances that I experienced, and extensions were granted with the approval of the Chief Justice.
- [3] The case before the court involves the plaintiffs' claim that they were unlawfully arrested and subjected to unlawful force by police authorities during the course of their arrest. The plaintiffs claim that as a result of the actions of the defendants, which amount to false arrest and battery, that they have suffered injuries and are entitled to damages as a result.

FACTUAL BACKGROUND

- [4] The plaintiff, Daniel Knox, is the father of the plaintiffs, Harrison Knox, and Sherry Cole. The plaintiff, Daniel Knox, operates a company known as "Tree Men & A Chainsaw". This is a tree and hedge maintenance company with approximately six employees. Harrison Knox was employed by this company as a head arborist and from time to time, Sherry Cole was also employed by the corporation.
- [5] Two other employees of the corporation were Calvin Lynn and Daniel Campbell. On June 11, 2014, Lynn and Campbell were travelling in a red company truck in a northerly direction on Highway 17 North. Harrison Knox was in a separate company vehicle travelling in the same direction. The company had a job scheduled at Island Lake and the vehicles were in transit to that job.
- [6] At one point along the route, the Tree Men & A Chainsaw red company truck passed in a manner that was unsafe, veering into oncoming traffic. Vehicles that were occupied by Cindy Grenier and Wendy Grenier, and a separate vehicle occupied by John Vanderloo Sr. and John Vanderloo Jr. were following the red truck, and the truck with a trailer was observed what was occurring with the red truck.
- [7] The two Tree Men & A Chainsaw vehicles and the Grenier vehicle and the Vanderloo vehicle pulled over at the Highway 548 turnoff to Searchmont in an old, abandoned Esso gas station lot. When all the vehicles arrived in the lot, the red vehicle was blocked in by the Grenier and Vanderloo vehicles. The Grenier vehicle pulled in front of the red truck and the Vanderloo vehicle pulled behind the red truck. Wendy Grenier telephoned the Ontario Provincial Police.
- [8] Harrison Knox telephoned his father, Daniel Knox. Harrison told his father that "he'd better get here quick before I hammer someone". At some point, Harrison telephoned his father again to tell him that the company vehicle was blocked in and stuck by the other vehicles and had a flat tire. Daniel Knox called the Ontario Provincial Police and while on Northern Avenue within the city limits of Sault Ste. Marie, Sherry Cole made a telephone call to the Ontario Provincial Police. The Ontario Provincial Police dispatcher told Sherry Knox that Daniel Knox should pull his vehicle over and not attend at the scene. Both Daniel Knox and Sherry Cole ignored this direction from the Ontario

Provincial Police and continued travelling out of Sault Ste. Marie along Highway 17 North, enroute to the Esso gas station lot at Searchmont.

- [9] Meanwhile, at the Esso gas station parking lot at the Searchmont turnoff, an altercation took place between Harrison Knox and John Vanderloo Sr. There was an attempt to extricate the red truck, which was unsuccessful. Vehicles collided with each other, and the red truck was left with a flat tire.
- [10] Officer Keith Nicolle of the Ontario Provincial Police was the first to arrive at the Esso parking lot. He was followed by Officer Mario Posteraro. Officer Nicolle was aware of a complaint of the red truck being driven aggressively and a fight which took place in the parking lot. Posteraro spoke to John Vanderloo Sr. who indicated that he had been assaulted by Harrison Knox. Posteraro observed bruising to John Vanderloo Sr. Harrison Knox was without injury. Officer Posteraro placed Harrison Knox under arrest, handcuffed him, and placed him in the rear of his cruiser. Officer Nicolle was engaged in arresting Calvin Lynn, the driver of the red truck for dangerous operation of a motor vehicle and taking statements from witnesses at the scene, particularly Cindy and Wendy Grenier.
- [11] At this point, Officers Nicolle and Posteraro were engaged in continuing their investigation by taking statements from various witnesses at the scene. Within minutes of Harrison Knox being placed in the rear of Posteraro's police cruiser, Daniel Knox and Sherry Cole arrived at the Esso gas station parking lot. At the time of their arrival, arrests had been made, individuals had been taken into custody, and the situation was under control. Daniel Knox exited the driver's side of the truck, and Sherry Cole exited the passenger side of the truck. Then all hell broke loose.

The Evidence on the Issue of Liability

Daniel Knox

- [12] All three plaintiffs testified. At the time the trial commenced in 2022, Daniel Knox was 66 years of age. He was a widower for nine years by that point and the father of three children, Michael Cole, Sherry Cole, and Harrison Knox. Daniel Knox acknowledged in his evidence that the death of his wife on December 17, 2013 "had a significant impact on him" and it was apparent that at the time he gave his evidence he was still suffering adversely from her death.
- [13] It was the evidence of Daniel Knox that he was sitting at home on June 11, 2014 when he received a call from Harrison Knox that he was blocked in at the Esso parking lot and that he could not go to work. Daniel Knox testified that Harrison told him that he'd better get there before he hammered someone. Subsequent to this call, Daniel Knox received a call from his grandson who told him that Harrison was arrested and was in the back of a police cruiser. Dan Knox testified that he called the Ontario Provincial Police "to get someone over there to straighten out the situation". Daniel Knox decided to go to the scene. He understood that the police were on the scene and that his attendance at the

scene was not required. Daniel Knox also acknowledged in his evidence that while he was travelling to the scene, he was advised by the Ontario Provincial Police to pull over and that he ignored those instructions and did not pull over. His explanation for not doing so was “my crew and family needed help”. His intention was “to take care of business”, to get his truck on the road and his crew back to work. Daniel Knox testified that he asked Sherry to call the OPP while they were enroute “to see if the OPP were taking care of things”. Daniel Knox testified that when he entered the Esso station parking lot, he pulled next to a police car. He saw his son Harrison motioning him to the police car, so he went over to the car and opened the door to see what Harrison wanted. It was the evidence of Daniel Knox that when he opened the police cruiser door, he understood that Harrison was in custody. Harrison was handcuffed behind his back. As soon as he opened the police cruiser door, Daniel Knox heard an officer say to get away from the cruiser, so he walked toward the officer. Daniel Knox testified that as soon as he got close to the officer he was told to get on the ground, that he was under arrest, and that Officer Nicolle grabbed his bicep and that he pulled his arm back. Daniel testified that he did not know why he would be under arrest. As he put it in his evidence, “I am thinking for what – I didn’t do anything. I’m minding my own business.” Daniel Knox testified that at this point he sees officer Posteraro and that Posteraro has his taser out and tells him to get on the ground and has his taser pointed at him.

- [14] The aforementioned interaction between Daniel Knox, Officer Nicolle and Officer Posteraro are not captured on video. A portion of their subsequent interaction is captured on video. This video is contained in the joint document brief, Book 1, Tab 4, and was entered as Exhibit 2 at the trial. The video is one minute and nine seconds in duration. In the video the police keep telling Daniel Knox to get on the ground, that he is under arrest. Daniel Knox keeps walking around. The video shows Sherry Cole telling her father to get on the ground. Daniel Knox testified that he was not getting on the ground because he did nothing wrong. One video depicts Dan Knox going to the front of the red truck. One of the officers says, “you are not getting out of here”. Officer Posteraro tries to grab Mr. Knox’s right arm. Mr. Knox pulls away from him. It was the evidence of Daniel Knox that he pulled away from Officer Posteraro because “I didn’t believe he had any right grabbing me”. It was also the evidence of Daniel Knox that he “understood that the police were trying to arrest me”.
- [15] Daniel Knox testified that he was not trying to escape; that he was just trying to get the police officers to talk to him. At this point Officer Posteraro deploys his taser, twice. Once initially, and once again when Daniel Knox was trying to get up on his feet. The interaction directly before the taser being deployed and at the time the taser was deployed is captured on the video.
- [16] Daniel Knox describes the effect of being tasered like being electrocuted. He described pain and “a continuous jolt of electricity going through my body”. Mr. Knox described the police “piling on top of me” and being very rough. Mr. Knox described himself as “calm the whole time”. As he put it in his evidence, “I knew not to aggravate these fellows”.

- [17] After being tasered, Daniel Knox describes standing up and being walked to the police cruiser with Officer Bruni “kicking the heck out of me” in his Achilles heel area. It was the evidence of Daniel Knox that he was kicked from behind “15 to 20 times” and that he got into the police cruiser on his knees. Daniel Knox described these actions of the police officers in the face of him being “quite compliant”.
- [18] It was the evidence of Daniel Knox that from his vantage point he could see the arrest of his daughter Sherry Cole taking place. The evidence of Daniel Knox was that Officer Van Den Diepstraten slammed Sherry Cole over the hood of the police cruiser and was choking her with her sweater twisted around her neck. Mr. Knox’s view was that Sherry was getting “beat up” by this police officer. Officer Van Den Diepstraten continued to choke Sherry and also kneed her in the back. Mr. Knox testified that Sherry was trying to fight the officer off and was kicking her leg back in an attempt to get the officer off of her. Eventually other officers assisted, including Officer Posteraro, and Sherry Cole was handcuffed and placed in the back of Van Den Diepstraten’s police cruiser. It was the evidence of Daniel Knox that when this was accomplished, the officers patted each other on the back and gave each other “high 5’s” in celebration.
- [19] Daniel Knox testified that eventually he was brought to the Ontario Provincial Police Station with a comment by Officer Bruni that “I thought lumberjacks were supposed to be tough”. Mr. Knox remained at the police station before being released three to four hours later. Daniel Knox was charged in an Information with three counts of resisting arrest, two relating to Officer Posteraro and one relating to Officer Nicolle, and two counts of assault, one relating to Officer Nicolle and one relating to Officer Posteraro (Exhibit 4). The Crown sought a fine of \$1,500 in their initial screening form (Exhibit 5). Ultimately, the charges against Daniel Knox were withdrawn in exchange for a donation to the Alzheimer’s Society in the amount of \$300, received on October 21, 2014. It was the position of Daniel Knox that he did nothing illegal, and the donation was made without his consent or instructions by his counsel, Donald Oraziotti, K.C. It was the evidence of Daniel Knox that when he found out that Mr. Oraziotti had negotiated a withdrawal of the charges in exchange for a donation that he fired him and wanted to take the matter to court.
- [20] In cross-examination, Daniel Knox admitted that he knew that Harrison was in police custody when he went to the police cruiser and opened the door. Mr. Knox disagreed with the suggestion that by opening the door he made it possible for Harrison Knox to get out of the police cruiser. Mr. Knox is 6-foot-2 and weighs 250 pounds. He is admittedly bigger than any of the police officers he was involved with on June 11, 2014. In cross-examination, Daniel Knox was adamant that he did not push Officer Nicolle. His evidence was that he only pulled his arm away. In the video, the hand of Daniel Knox is shown to be closed and raised above his head. Mr. Knox testified that this is when he was pulling his hand back. Mr. Knox acknowledged that he was told by the police officers several times to get on the ground, but he remained upright and moving around. Mr. Knox acknowledged that his daughter Sherry Cole urged him to get on the ground but that he ignored those instructions from his daughter. It was the evidence of Daniel Knox that when Officer Posteraro tried to grab his wrist that “I pulled away from him”.

- [21] It was the evidence of Daniel Knox that when he opened the police cruiser of Posteraro for his son, Harrison Knox, that there was a “blast of heat like a blast furnace that he felt”. A report with respect to the weather on June 11, 2014 from Environment Canada (Exhibit 17) was put to Mr. Knox by the defendants’ counsel. This report indicated that it was 16 degrees Celsius at 12:00 noon that day, and 18 degrees Celsius at 2:00 p.m. on that date. Mr. Knox continued with his assertion that there was a blast of heat from the car in which Harrison Knox was lodged.
- [22] Daniel Knox indicated in cross-examination that he sought no medical treatment with respect to the kicks to his leg by the police officers and had no explanation as to why he sustained no bruising to his leg or ankle area as a result of these 15 to 20 hard kicks by the officers.
- [23] As to the donation that was made with respect to the criminal charges laid against him, it was the evidence of Daniel Knox in cross-examination that when he made the donation, he understood that all the charges would be dropped and that was a factor in making the donation.

Harrison Knox

- [24] Harrison Knox testified that he has worked for Tree Men & A Chainsaw on a fulltime basis since 2007, and at the time of the incident he was the crew leader. It was the evidence of Harrison Knox that on June 11, 2014, he was driving north on Highway 17 from Sault Ste. Marie with the intentions of dropping the dump box truck at the abandoned Esso gas station at the Searchmont turnoff and then heading to Island Lake to do a scheduled job. Harrison’s vehicle was ahead of the other company vehicle, the red truck, and his vehicle arrived at the Esso lot first. The Grenier vehicle arrived and pinned his vehicle in. It was the evidence of Harrison that the Grenier women were screaming at him and calling him a “goof” to which Harrison replied, “let’s go – move your fucking truck”.
- [25] Harrison Knox admitted that he had an altercation with John Vanderloo Sr., but Harrison describes this as an attempt to push Vanderloo away from him. It was the evidence of Harrison Knox that Vanderloo put his arms out to grab him and that he responded by grabbing Vanderloo underneath his arm pits to push him away. It was the position of Harrison Knox that the bruising to Vanderloo depicted in the photographs in Exhibit 20 “was bruising and scratching from me holding him away”.
- [26] Harrison Knox acknowledged in his evidence that he telephoned his father, Daniel Knox, and told him that he’d “better get there quick before I hammer someone”. After the altercation with Vanderloo and after his vehicle was struck and the tire blown, he sat on the chipper vehicle and waited for the police to arrive. After the police arrived, the officer spoke to Vanderloo Sr. and to one of the Grenier women. After that, an officer came to him and told him that he was under arrest for dangerous driving. He replied that he was not driving the truck on the highway. Another officer returned and told Harrison

that he was under arrest for assault. Harrison was then handcuffed and brought to the police cruiser.

- [27] Harrison Knox described the handcuffs as being really tight and high on his wrist, above the bone on his wrist. He remembers being “anxious and distraught” while in the police cruiser. It was also Harrison’s recollection that it was hot in the police cruiser and was warm enough to sweat without exertion. It was the evidence of Harrison Knox that all of his happened around 1:00 p.m. Although Exhibit 17 (the Environment Canada report) indicates that it was 18.2 degrees Celsius at 1:00 p.m., Harrison indicated in his evidence that “it seemed warmer to me”.
- [28] It was the evidence of Harrison Knox that he was in the police cruiser for approximately 20 to 25 minutes before his father, Daniel Knox, arrived at the scene. Harrison tried to get his father’s attention as soon as he got out of the truck. His father opened the cruiser door and Harrison swung his legs out of the cruiser. It was at this point that Harrison heard Officer Nicolle say to “get away from the fucking car” and “get on the fucking ground” to his father. Harrison Knox testified that Officer Nicolle grabbed Daniel Knox by the arm, by the bicep, and that Dan pulled his arm back. When Daniel Knox was told to get on the ground, he replied “what for” according to the evidence of Harrison Knox. Harrison Knox was adamant in his evidence that Daniel Knox did not push Officer Nicole. Harrison Knox describes the officers as “beating on my father” and testified that he was concerned for his father’s safety because he saw “how badly they were beating on my father”.
- [29] Harrison Knox recalls someone telling him to get back into the police cruiser and he complied. Harrison Knox recalls his father being tasered, Officer Bruni kicking his father in the back of the legs, and stomping the back of his father’s ankles. This all occurred while Daniel Knox was not resisting the officers. Harrison Knox describes Sherry Cole as “screaming and distraught”.
- [30] It was the evidence of Harrison Knox that his sister Sherry Cole was being “roughoused” by police officers. He described her being “slammed” over the hood of a vehicle and being pushed and held with a knee to her back. He described Sherry Cole’s response and one of struggling with the police officers and screaming at them “what the fuck are you doing”.
- [31] Harrison Knox testified that he was taken to the Ontario Provincial Police station by Officer Posteraro. He was charged with assault and dangerous operation of a motor vehicle and released on a promise to appear (Exhibit 22). The charges were ultimately resolved on October 20, 2014 by Harrison Knox entering into a peace bond not to go near John Vanderloo Sr. and John Vanderloo Jr. In his evidence, Harrison Knox indicated that he was in full agreement with the disposition of the criminal charges against him by a peace bond. He testified that “I thought they were excellent terms” and that “it seemed like a good choice for me”. In response to the question put to him in examination in-chief as to why he did not go to trial, Harrison Knox replied that “I just wanted to get it over with. It caused me stress. I wanted my guns back. I didn’t want to go to court and

get wrongfully convicted and have the judge believe the police who I knew were liars”. Harrison Knox indicated in his evidence that he didn’t understand that by agreeing to a peace bond would prevent him from bringing a civil action.

- [32] In cross-examination, Harrison Knox acknowledged that he was in court when the peace bond was entered into. Harrison Knox acknowledged that it was Calvin Lynn who was driving the red truck. In cross-examination, Harrison testified that Officer Nicolle spoke to him about driving but did not indicate that he was under arrest for driving the vehicle, just under arrest for assault. Harrison Knox disagreed with the suggestion put to him in cross-examination that Posteraro’s vehicle was running while he was in it. Harrison Knox admitted in cross-examination that he never sought medical treatment for heat exposure and that he didn’t complain about the handcuffs on his wrists when they were applied. It was the evidence of Harrison Knox that the pain in his right wrist was ‘excruciating’ due to the handcuffs being improperly applied, but admitted that he didn’t immediately see a physician, didn’t go to the emergency department, and didn’t miss any work with respect to his right wrist.

Sherry Cole

- [33] Sherry Cole testified that at the time of the June 11, 2014 incident she was 45 years of age, on a disability survivor’s pension, and was working on and off at her father’s business as well as operating a dog grooming business on her own. It was the evidence of Sherry Cole that her brother Harrison called her father twice indicating that the company vehicle was blocked in, rammed, and that a tire was blown. Sherry testified that her father telephoned the OPP and that she made a call to the OPP when she was in her father’s vehicle on Great Northern Road in Sault Ste. Marie. Sherry was advised by the Ontario Provincial Police dispatcher to pull over. It was the evidence of Sherry Cole that she thought that she was instructed to pull over because she was on the phone and not instructed to pull the vehicle over so not as to attend the scene. While on Great Northern Road, Sherry received a telephone call from her son Daniel Campbell who advised that Harrison was arrested and placed in a police cruiser. With all this information, Sherry Cole and her father Daniel Knox travelled to the vacant Esso gas station lot at the Searchmont turnoff on Highway 17 North.
- [34] Sherry Cole testified that when they arrived at the lot, her father went to the police cruiser, and she heard a police officer yell to him to get away from the cruiser and get down on the ground. Her father continued to walk toward the police officer Nicolle who tried to grab her father’s arm, causing her father to pull his arm back. Sherry Cole testified that Daniel Knox did not push Officer Nicolle. She testified that she was threatened with the taser. Her father’s response to being told to get on the ground was “I’m not getting on the ground. I am not a dog.” Sherry Cole testified that events unfolded rapidly. As she put it, “it all happened quickly”.
- [35] Sherry Cole confirmed in her evidence that she told her father to get on the ground because she felt the police officers were going to taser him. She testified that she ignored the directions from the police officers to step back because she was worried about her

father. As Sherry Cole put it in her evidence, “I was very confused as to what was going on”. Ms. Cole denied that her father cocked his fist toward Officer Posteraro. It was her evidence that Posteraro grabbed her father’s right arm, and that Daniel Knox pulled his arm away, much like he did with Officer Nicolle. Sherry Cole testified that her father did not push either Officer Nicolle or Officer Posteraro. Sherry Cole did acknowledge in her evidence that she pushed Officer Posteraro after he tasered Daniel Knox. Sherry Cole testified “it was just instinct to help him”.

- [36] Sherry Cole testified that after the video ended, Daniel Knox is walked to the police cruiser with an officer on each arm and an officer behind him, kicking him in the back of the legs. Ms. Cole was unsure as to how many kicks to the leg there were but believes that it was more than two or three times, without her father resisting in any way. Sherry Cole describes herself as being pretty angry and upset at that point and is “sure that I was very loud”. Once Daniel Knox was in the cruiser, Sherry Cole was walking toward his truck at which point another police officer (Constable Peter Van Den Diepstraten) came “flying in from the highway, exited his vehicle and karate kicked the door shut”. Ms. Cole was told she was being arrested. As Ms. Cole indicated in her evidence, “now I was angry”. Sherry Cole testified that at that point in time, Officer Van Den Diepstraten threw her on the hood of the vehicle with his knee and forearm on her back and twisting her shirt causing her to choke. Sherry Cole testified that “I felt violated” and her response was to kick out her back leg in an attempt to kick the police officers off of her. Handcuffs were “aggressively put on her” according to Sherry Cole. She was placed in the police vehicle and transported to the Ontario Provincial Police detachment.
- [37] Ultimately, Sherry Cole was released from the police station on a promise to appear on a charge of obstructing a police officer, with an additional charge of assault being laid according to a replacement Information (Exhibit 41). As to the disposition of the charges and how that occurred, it was the evidence of Sherry Cole that it was her father, Daniel Knox, who “was the one making all the decisions” and giving the orders to the lawyer. The charges against Sherry Cole were withdrawn in exchange for her making a donation in the amount of \$10.00 to the CNIB. Ms. Cole testified that she did not ask anyone or instruct anyone to make a donation on her behalf and that she doesn’t “remember if I knew it was happening at the time”.
- [38] In cross-examination, Sherry Cole was examined about the suggestion that she thought she was asked to pull over by the OPP dispatcher because she was on a cellphone. She acknowledged and admitted in cross-examination that she was told to ask her father to pull over and stop and that she herself asked her father to pull over and stop. In cross-examination, Sherry Cole testified that Officer Nicolle never told her father that he was under arrest for obstruct and that she did not hear Officer Nicolle tell her father that he was under arrest for assault. In cross-examination, Sherry Cole acknowledged that the taser was never pointed at her and when the taser was fired at her father, she started to yell at the police officers, calling them “cocksuckers” and that she shoved Officer Posteraro “to prevent him from tasering a second time”.

- [39] In cross-examination, Sherry Cole admitted to intending on leaving the scene as the fourth officer (Officer Van Den Diepstraten) arrived on the scene and arrested her. She testified that no police officer told her that she was under arrest, which was different to her evidence on examination for discovery on September 26, 2017 when she testified that she didn't remember being told that she was under arrest.
- [40] It was the evidence of Sherry Cole that the lawyer, Donald Oraziotti, K.C., acted without instructions in disposing of the charges against her. Sherry Cole acknowledged in cross-examination that no complaint was made against Mr. Oraziotti to the Law Society of Ontario. As Ms. Cole put it in her evidence, "I left it entirely to my dad".

Steven Summerville

- [41] The plaintiffs called Steven Summerville as an expert witness. Without objecting by the defendants, Mr. Summerville was qualified as an expert to provide opinion evidence in the following areas:
- (a) The education and training of police officers in Ontario in relation to
 - (i) Application and use of force by police officers;
 - (ii) Duties and use of force by police officers with respect to persons in custody;
 - (iii) Use of verbal communications by police officers to diffuse hostility between police officers and persons with whom they are dealing (de-escalation); and
 - (iv) Understanding and interpretation of the use of force framework.
- [42] Mr. Summerville has been qualified to testify as an expert 30 times in previous proceedings. He produced a 79-page curriculum vitae outlining his background as a police officer for just shy of 20 years, and since August 2021 in the private sector involved in security and training. Mr. Summerville indicated in his evidence that he has been retained by both police services boards and individual plaintiffs on a roughly equal basis and that he operates without an agenda.
- [43] Mr. Summerville produced a report in this matter found at Book 3, Tab 2 of the book of documents. Mr. Summerville, in his evidence, described the use of force model (Exhibit 42). As testified to by Mr. Summerville, most people are cooperative and voluntarily comply with police authorities thereby negating the need to use force. Mr. Summerville stressed that the Ontario use of force model is a guide for officers, it is not legislated. The officers themselves must assess the situation and select the most reasonable option.
- [44] In the Ontario use of force model, "passive resistance" is a challenge to authority with no physicality to it. "Active resistance" is a pushing or pulling back or walking away or walking toward a police officer. "Assaultive" behaviour involves actions or gestures that

would lead to a belief in the officers that they were physically assaulted. “Serious bodily harm or death” is a serious threat to someone’s safety.

- [45] In his report, Mr. Summerville indicated that taser use by police had to be done cautiously and the question as to whether there were more reasonable options available must be considered. Officers are taught to attempt to communicate with an individual, attempting to “talk them down”. In Mr. Summerville’s view, Constable Nicolle failed to do that in his interactions with Daniel Knox. Mr. Summerville felt that Officer Nicolle didn’t develop a rapport with Daniel Knox or try to solicit compliance from him in his dealings with him.
- [46] Mr. Summerville testified that it was appropriate to use a taser when a person displays a range of assaultive behaviour or active resistant behaviour. In the short video (Exhibit 2) played for Mr. Summerville, he indicated that it was his opinion that Daniel Knox displayed passive or active resistant behaviour but not assaultive behaviour. It was Mr. Summerville’s opinion that nothing in the brief video shows the officers were trying to de-escalate the situation. Mr. Summerville indicated that even with what he saw in the video, there was still an opportunity for the police officers to build a rapport with Daniel Knox and attempt to de-escalate the situation but they failed to do so. Mr. Summerville also indicated in his evidence that repeating the same commands over and over again is not helpful and is not consistent with police training or practice. Mr. Summerville described repeating nine times for someone to go down on the ground is “not helpful”. In the video, Mr. Summerville does not see a cocked fist by Daniel Knox. What he does see his Mr. Knox pulling his hand back, but this is not a threat to the police officers.
- [47] Mr. Summerville agreed with the question put to him by the court as to whether Mr. Knox’s non-compliance a sign of active resistance. Mr. Summerville indicated that it was. Gain, Mr. Summerville was of the opinion that it was the police officer’s approach in telling Daniel Knox to “calm down” and repeating the same commands to him over and over again that triggered an escalated response by Mr. Knox. Mr. Summerville was of the opinion that if the police officers had employed proper de-escalation techniques that the situation would not have escalated to the point it did.
- [48] As to the force employed by the police to get Daniel Knox into the police vehicle, Mr. Summerville indicated that if you accept that Daniel Knox was pulling away, the use of shin rakes (the heel of the foot rubbing or pushing into the shin to cause pain and lessen the resistance) is in accordance with police procedure. Mr. Summerville testified that prior to using a shin rake, the person should be told that force will be used if you do not get into the vehicle.
- [49] During his evidence in examination in-chief, the court asked Mr. Summerville about his opinion if the court finds as a fact that Daniel Knox pushed Officer Nicolle. Mr. Summerville indicated in response that if the court accepted that a police officer had been assaulted then the officer can take reasonable steps to place the person under arrest. Mr. Summerville testified that any time an officer is assaulted there is reasonable cause to place that person under arrest. As to the use of the taser, Mr. Summerville indicated that

if the court accepts active resistance was engaged then the use of the taser by police was appropriate. The exact exchange the court and Mr. Summerville is indicated below:

THE COURT: Mr. Summerville, whether Nicolle – Officer Nicolle used, you know, the proper technique to try to de-escalate, whether he did or whether he didn't, would you agree with me that at the moment Mr. Knox, Dan Knox, pushes the officer, if I accept that he did, that he's assaulted the officer?

A. Yes, sir, I would.

THE COURT: And then doesn't it become open season at that point?

A. Open season? What do you mean, open season?

THE COURT: Well, I mean, then the officer can use whatever force is reasonable to place this person under arrest.

A. In that context, yes, Your Honour.

THE COURT: All right. Thank you.

- [50] With respect to Harrison Knox, Mr. Summerville testified that if handcuffs are applied property as to location and tightness that you would not expect damage to the wrist to occur (the evidence of Dr. Darren Costain, which I will refer to later in my judgment, was that the damage that Harrison Knox is complaining about to his wrist could not have been caused by the handcuffs).
- [51] As to the police vehicle that Harrison Knox was placed in, Mr. Summerville's opinion is that it should have been locked and running. Mr. Summerville described reasonable police officer conduct as (a) locking the vehicle; (b) parking in the shade or running the vehicle with air conditioning; and (c) frequent checks on the prisoner's welfare.
- [52] In cross-examination, Mr. Summerville agreed with the suggestion that when it comes to the use of force that everything is contextual and in the perception of the police officer. Mr. Summerville agreed that there is a range of reasonable responses to any situation. Mr. Summerville agreed that once a person was lawfully arrested that it was the duty of the officer to take that person into custody and that a person lawfully placed under arrest would not be allowed to walk away.
- [53] Mr. Summerville testified that on the video Daniel Knox exhibited signs consistent with a person in crisis, as indicated by waving his arms around, his body language and mannerisms, his walking away, his placing his hands in his pockets. In Mr. Summerville's mind, it is evidence that Daniel Knox was upset. Mr. Summerville made it clear in his evidence that he is not suggesting that Daniel Knox was in crisis but rather that he exhibited signs consistent with a person in crisis.

- [54] With respect to Sherry Cole, Mr. Summerville agreed that if she shoved Officer Posteraro then this is assaultive behaviour in the use of force model creating reasonable grounds to exercise an arrest. When Sherry Cole was trying to kick the officer that was arresting her this is also assaultive behaviour in the use of force model. Mr. Summerville agreed with the suggestion that after an assault has taken place, verbal engagements are less likely to be effective. Mr. Summerville also agreed with the suggestion put to him in cross-examination that walking away from the police makes it more difficult to have communication.
- [55] Mr. Summerville disagreed with the suggestion put to him in cross-examination that Daniel Knox was given a lot of chances to submit to a peaceful arrest. It was Mr. Summerville's view that telling a person to calm down is not respectful. It is disrespectful and it serves to escalate the situation. Mr. Summerville's opinion was that nothing justified Daniel Knox being grounded by the police. Grounding is only justified when a person displays active resistant behaviour.
- [56] Mr. Summerville admitted in cross-examination that he never received training on the use of a taser. The taser came into use after he retired from the police force. Mr. Summerville cannot dispute the opinion of Chris Lawrence (the expert of the defendants on the use of force) that a taser is considerably safer than a baton or control techniques. Mr. Summerville testified that he saw nothing in the video that would suggest to him that Daniel Knox was attempting to get into the driver's side of his vehicle. Mr. Summerville also testified that if the court accepts the officer's evidence that he perceived Daniel Knox to be attempting to get into his vehicle, then there would be an imminent need to control him by the police officers.
- [57] Mr. Summerville agreed with the suggestion put to him in cross-examination that Daniel Knox is attempting to stand up when the second taser is applied by the officer. Mr. Summerville also agreed with the suggestion that double locking handcuffs is standard police procedure so that they cannot be put on too tight. Mr. Summerville indicated in his evidence that he would be surprised if police officers were not trained to lock cruiser doors and as a practice they don't do it. Mr. Summerville testified that due diligence and standard of care is to secure the prisoner and prudent practice is to lock the door. This is what Mr. Summerville teaches in the training he provides.
- [58] Mr. Summerville was called by the plaintiffs as their sole witness in reply. In his reply evidence, Mr. Summerville testified that time is needed to be able to de-escalate and allow a person to respond. De-escalation can't be accomplished in a few seconds or even in a minute. On the facts of our case, it took a very limited amount of time to try to de-escalate. A minute or seconds is not sufficient to attempt to de-escalate.

Cindy Grenier

- [59] Cindy Grenier was the first witness called by the defendants. She was following the red truck that veered into oncoming traffic on Highway 17 North, and she pulled into the vacant Esso lot at the Searchmont turnoff following the red truck and the other vehicle

owned by the plaintiff Daniel Knox. Ms. Grenier testified that she pulled in front of the red truck intending to get his licence plate number to call in to the police as she thought the driver might be under the influence of alcohol. She continued to block in the vehicle with her vehicle because she didn't want them leaving until the police got there. She observed four people get out of the red truck and walk toward the father and son (the Vanderloos). She believed that there was going to be a confrontation, so she got back into her truck. She never observed a confrontation take place. She observed the original driver of the red truck being arrested by the first officer who arrived who also wanted to get a statement from her mother. Other officers were arriving at the scene.

- [60] Cindy Grenier testified that at that point, Daniel Knox and Sherry Cole “flew in”. Ms. Grenier described them as being “very agitated and angry”. She observed Daniel Knox go up to the police cruiser and open the door. Officer Nicole told Knox that he could not do that and told him to stop. At that point, Daniel Knox and Officer Nicole were walking toward each other. Ms. Grenier described that Daniel Knox was ranting and raving. Grenier testified that there was “lots of agitation and anger” from Daniel Knox at the time he got to Officer Nicole. Daniel Knox and Officer Nicole met, and Mr. Knox pushed Officer Nicole, a shove toward his chest area. Ms. Grenier testified that “when they came together, Mr. Knox pushed the officer – a push, like a shove in the chest area”. Ms. Grenier was asked if it is possible that Mr. Knox only pulled away from the officer and did not push him, that it was a pull rather than a push to which Cindy Grenier replied, “A pull, no. No, it was a push.” At that point everyone started to come around. Daniel Knox was agitated and angry. Sherry Cole was verbal and upset and angry. At that point, Ms. Grenier describes there being “a big scuffle over there”.
- [61] Cindy Grenier testified that she never saw the taser being applied to Daniel Knox. All she saw is Mr. Knox going down and trying to get back up. She recalls Daniel Knox being put into the police cruiser by the officers. She described it “as a struggle” and that it looked like “he was trying to fight getting in there. He was trying not to get into the car.” She never saw Daniel Knox being kicked in the leg by the police officers.
- [62] As to Sherry Cole, Ms. Grenier testified that “I had no idea what she was doing.” She described that there was a lot of commotion going on and that she didn't remember the full details as to what Sherry Cole was up to. Cindy Grenier did recall a police officer trying to put handcuffs on Sherry Cole who resisted this and resisted being placed into the police cruiser. She described an officer having Ms. Cole's arms and that she was struggling. Ms. Cole's phone fell onto the hood of the vehicle and onto the ground and a police officer stepped on it with Ms. Grenier indicating in her evidence that there was nothing to lead her to believe that that was done on purpose. Ultimately, Ms. Grenier was allowed to go home and later attended at the police station to give a statement.
- [63] In cross-examination, Ms. Grenier was candid about having a difficult time remembering the details of the events and remembering the order of how things unfolded. In reading her statement to the police, Ms. Grenier acknowledged that events as she recalled in her statement were not in the right sequence. In her statement, she described the taser and after that, the push. Ms. Grenier testified “that's not what happened. I clearly messed

up.” Ms. Grenier described herself as very nervous when the statement was taken. Ms. Grenier was aggressively and effectively cross-examined on this point by counsel for the plaintiffs. It was clear that her statement did not reflect the sequence of events as they unfolded on June 11, 2014. Despite this cross-examination, Cindy Grenier was adamant that “everything I said in the statement was correct, it was just in the wrong order”.

- [64] Arrangements were made for Cindy Grenier to talk to counsel for the plaintiffs prior to trial. She did talk to counsel for the defendants, but in the end did not speak to counsel for the plaintiff. Ms. Grenier testified that “I didn’t know if it was the right thing to do, so I changed my mind. I was just scared of talking to you.” Cindy Grenier denied the suggestion put to her by plaintiffs’ counsel that she wanted to help the defendants but was not interested in helping the plaintiffs.
- [65] In cross-examination, Ms. Grenier admitted that blocking the vehicle in was all her idea. She indicated that she “was very upset. There was a bad pass. We all could have been killed.” On reflection, Ms. Grenier acknowledged that blocking the truck was probably not a good idea and “probably” led to the physical altercation between the drivers of the two vehicles.
- [66] Although she did not describe it that way in her statement, at trial, Cindy Grenier indicated that the push to Officer Nicolle by Daniel Knox happened before he was tasered. Ms. Grenier acknowledged that in part of her statement to police things were out of order. Ms. Grenier testified that “I missed that up. I know I did.” Regardless of the sequence of events, Ms. Grenier remained consistent both in her statement and in her evidence at the trial that the “officer went towards him, and he shoved the officer”, referring to Officer Nicolle and Daniel Knox.
- [67] In cross-examination, Cindy Grenier was continually pressed on her statement being at odds with her evidence at trial. In response, Ms. Grenier acknowledged and agreed that her statement is different than her evidence at trial, adding “the version I remember today is correct.” Ms. Grenier added in response that everything in her statement happened, but may not be in the proper order. As testified, “everything was so fast”.

Cst. Keith Nicolle

- [68] Ontario Provincial Police Constable Keith Nicolle was first on the scene at the vacant Esso lot on June 11, 2014. He testified that at 12:53 p.m. on that day he was made aware of a traffic incident with a truck driving aggressively and passing a black SUV with an oncoming car having to go onto the gravel to prevent a collision. Officer Posteraro arrived shortly after Office Nicolle. Posteraro started to speak to the occupants of the black SUV (the Vanderloos) and Nicolle began taking a statement from the person who called in the incident to the OPP, Wendy Grenier. Nicolle observed Posteraro arrest Harrison Knox. Nicolle testified that he was advised by the dispatcher that the owner of the company vehicles was travelling to the scene and that he was upset. Nicolle observed Daniel Knox and Sherry Cole arrive on the scene. The driver, Daniel Knox, went to the

Posteraro vehicle where Harrison Knox was lodged and opened the cruiser door. Nicolle yelled at Knox to get away from the vehicle.

- [69] It was the evidence of Keith Nicolle that after he yelled at Daniel Knox to get away from the vehicle, he started to walk toward him. According to Nicolle, Knox said “don’t tell me what to fucking do, my family is under arrest and there’s been accidents”. Nicolle testified that at that point, he walked toward Knox and told him to calm down, that they were conducting an investigation and that he needed to go back to his truck so the investigation could continue. Knox replied, “don’t tell me what to fucking do”. It was the evidence of Nicolle that he realized at that point in time Daniel Knox was not going to let the police continue their investigation, “so, I placed him under arrest. I told him he was under arrest for obstructing police. I reached out with my right hand to take physical control of him and then he pushed me back and told me that he wasn’t under arrest.”
- [70] The video (Exhibit 2) was shown to Officer Nicolle who went through the sequence of events in the video in his evidence. Nicolle was repeatedly telling Daniel Knox to get on the ground. Nicolle testified that it appeared to him that Daniel Knox might leave the scene when he was at his vehicle and that this was too much of a risk. As to Posteraro tasing Dan Knox, it was Officer Nicolle’s view that it was obvious from what is seen in the video that the police were not going to be able to take control of Knox without the use of the taser. Officer Nicolle described it as a “chaotic situation”.
- [71] It was the evidence of Officer Nicolle that after being tasered and when he was back up on his feet that Daniel Knox resisted going into the police cruiser. He stiffened his body and literally had to be pushed in the vehicle. It was the evidence of Officer Nicolle that he did not witness anyone kicking Daniel Knox in the back of the legs. While this commotion was ongoing, Nicolle observed that Harrison Knox was still outside the police cruiser. Nicolle told Harrison to go back into the cruiser and he complied.
- [72] As to Sherry Cole, it was the evidence of Officer Nicolle that she was screaming, yelling and swearing at the police officers. She was instructed by police to stop or back away from them, or she would be arrested for obstruction. Cole did not comply. Officer Nicolle and Officer Van Den Diepstraten placed Sherry Cole under arrest for obstruction. It was the evidence of Officer Nicolle that Sherry Cole resisted being arrested. Cole was put up against a police cruiser. Officer Nicolle testified that he did not kick or knee Cole. Nicolle testified that he did not see Officer Van Den Diepstraten strike Sherry Cole. Officer Nicolle described a “soft hand technique” being used to take physical control of Sherry Cole. Ultimately, Sherry Cole was placed in the police cruiser and transported to the OPP detachment.
- [73] When asked about attempts at de-escalation in examination in-chief, Officer Nicolle testified that Daniel Knox was upset from the beginning and that he was trying to calm him down and get him to go into his vehicle so the investigation could continue. Officer Nicolle testified that if Dan Knox had got on the ground as instructed, there would have been no need to use force on him. It was Officer Nicolle’s evidence that he believed that the use of the taser was the safest option for Daniel Knox who was upset, “not in crisis”.

- [74] Officer Nicolle testified that police cruisers lock from the inside automatically so that there is no need to lock them on the outside. He has never received training or instructions to lock a police cruiser from the outside.
- [75] Officer Keith Nicolle was subject to a lengthy and vigorous cross-examination. It started by Nicolle being referred to his notes in which he indicated that Dan Knox had pushed Officer Posteraro. The video (Exhibit 2) shows otherwise. Officer Nicolle was clearly wrong about this. The “will say” prepared by Officer Nicolle is also at odds with this. His “will say” states that “male pulled away from Posteraro”. Officer Nicolle agreed that there is a significant difference from his notes and his will say statement. Nicolle admitted that in the video you can see Dan Knox pull away from Posteraro and not push him. Officer Nicolle could not provide a satisfactory explanation to the court as to why the difference in his notes and will say exist and why he was in error about Dan Knox pushing Officer Posteraro. Nicolle testified that it might have been “a clerical error”. Nicolle stated that “What I believed to be true at the time until I reviewed the video. The video is clear that what I said was incorrect.” Officer Nicolle disagreed with the suggestion that he fabricated the evidence about Posteraro being pushed by Knox to justify tasing Daniel Knox.
- [76] The cross-examination of Officer Nicolle also highlighted the inaccuracy of his evidence about Harrison Knox getting out of the police cruiser. On page 38 of Officer Nicolle’s notes, he states that “he let the prisoner out of the car”, referring to Dan Knox. At trial, Officer Nicolle testified that he doesn’t remember if Harrison got out of the vehicle or not when Dan Knox opened the door. In the video (Exhibit 2) it can be observed that Harrison Knox is sitting in the police cruiser and then he gets out of the vehicle at a later time. The point is that Harrison Knox did not get out of the police cruiser immediately upon Dan Knox opening the door to the police cruiser.
- [77] It was the evidence of Officer Nicolle that he was justified in arresting Daniel Knox for obstruct in opening the car door to the police cruiser. As Nicolle put it in his evidence, “I could have arrested him for opening the car door. It was a criminal offence for Knox to open the car door.” Nicolle testified in cross-examination that he would not have arrested him for just opening the car door, and that “I arrested him for everything.”
- [78] It was Officer Nicolle’s view that the taser is an intermediate weapon and that a hands on would have been more of a use of force because of the possibility of injury. Officer Nicolle indicated in his evidence that as events unfolded that “it didn’t take very long to determine there would be no peaceful resolution to it.” As to the specifics of the push on him by Daniel Knox, Officer Nicolle doesn’t remember the specifics of the push, indicating that “it was nine years ago”. At page 41 of his notes, Officer Nicolle has stated that “I reached out and he grabbed my arm and pushed me back and said I’m not under fucking arrest”. His notes also indicate that Officer Posteraro came over at this point with his taser out. At discovery, Officer Nicolle testified that Posteraro didn’t come over to him at this point in time despite the argument. At trial, Officer Nicolle testified that “maybe” Officer Posteraro came over, but he wasn’t sure. Officer Nicolle admitted that his notes, his discovery, and his evidence at trial “can appear a little different”.

- [79] There is also a discrepancy between Officer Nicolle's notes and his testimony at trial about the involvement of Sherry Cole. In his notes, Officer Nicolle says that Sherry was screaming at the officers before her father, Dan Knox, was tasered. At trial, Nicolle indicated that it was not until Knox was tasered that the screaming by Cole started, but Nicolle also indicated that he might have been mistaken about this since Sherry Cole was screaming at them earlier. Officer Nicolle was unable to satisfactorily reconcile his evidence that Sherry Cole was trying to intervene to prevent her father from being arrested while at the same time telling him to get on the ground.
- [80] Officer Nicolle agreed with the suggestion put to him by plaintiffs' counsel in cross-examination that nowhere in the video clip (Exhibit 2) can you see Daniel Knox assaulting a police officer. Nicolle testified that Dan Knox was walking in the space of a police officer and that it was aggressive. Nicolle testified that what "he did was lunge at me", although it is difficult to see a lunging toward a police officer from observing the video.
- [81] Exhibit 3 is the promise to appear for Daniel Knox indicating that he is being charged with four counts of assault and one count of obstruct. Officer Nicolle acknowledged that this was wrong. One of the assault charges is based on the erroneous belief that Knox had pushed Posteraro. This was clearly wrong as seen in the video. As Nicolle put it in his evidence, "I don't know what was the thought in my mind". Apart from the push there was a suggestion that Knox also kicked Posteraro, although in the video you cannot observe Knox kick Posteraro. Nicolle testified that it was his understanding that the kick took place during the altercation when Dan Knox was being tasered.
- [82] Officer Nicolle testified that he did not apply shin rakes to Dan Knox. It was the evidence of Nicolle that Knox was "standing stiff" and was resisting being placed in the police cruiser. Nicolle testified that police cruisers are air conditioned and are generally kept running. Nicolle had no recollection about whether his vehicle was running or not, but indicated that "I do not see myself putting a person in a vehicle that is not running".
- [83] Officer Nicolle had no specific recollection of who told Sherry Cole she was under arrest, although page 45 of his notes indicates that "we placed her under arrest", referring to himself and Officer Peter Van Den Diepstraten. Both of them pushed Cole over the front of the vehicle, Nicolle indicating that she was resisting "slightly". It was the evidence of Officer Nicolle that there were no high-fives after Cole's arrest or comments to Daniel Knox. As Nicolle put it in his evidence, "I took no pleasure in all of this".

Cst. Mario Posteraro

- [84] Constable Mario Posteraro has been an OPP officer since 1999. At the date of the incident (June 11, 2014), he was fully trained on the use of the taser. At 12:50 p.m., Posteraro responded to a call from Wendy Grenier that there was an aggressive driver and that she was blocking in the driver at Highway 17 and 556 at the closed Esso station, and that a fight ensued. The scene was quiet when Posteraro arrived. He was asked to take some statements and spoke to John Vanderloo Sr. who reported that he had been

assaulted. Vanderloo identified the person who assaulted him. Posteraro testified that Vanderloo's arms pits were quite bruised. Posteraro arrested Harrison Knox for the assault on Vanderloo. Knox was without injuries. It was the evidence of Posteraro that to prevent a continuation of any further altercations, Harrison Knox was arrested and placed in his police cruiser. Posteraro described Harrison Knox as "very compliant".

- [85] Harrison Knox was handcuffed by Officer Posteraro. Posteraro testified that it was his practice to double lock the handcuffs to prevent the handcuffs from getting tighter on the wrist. Posteraro indicated that he "took his time" in handcuffing Harrison Knox and that the handcuffs were quite loose. Posteraro was adamant in his evidence that he left his vehicle running. As he put it in his evidence, "I always leave the car running. Absolutely I left the car running on June 11." Posteraro testified that he did not lock the cruiser from the outside because the cruiser door automatically locks from the inside so the prisoner cannot leave the vehicle.
- [86] It was Posteraro's evidence that "within minutes" of him placing Harrison Knox in the cruiser that Daniel Knox and Sherry Cole arrived on scene. They "caught my attention" as they came in quickly and braked quickly and gravel was displaced. Posteraro observed Daniel Knox go to his cruiser and open the cruiser door. He could see Harrison Knox's feet on the ground, but Harrison was still in the cruiser at that point in time. Posteraro then overheard an argument between Officer Nicolle and Dan Knox. They are facing each other at that point. Posteraro heard Nicolle say to Knox "You are under arrest for obstruct". It was the evidence of Officer Posteraro that "I see Knox push Constable Nicolle", after which he could hear Nicolle say to Knox that he now was under arrest for assaulting a peace officer.
- [87] When Posteraro heard this exchange, he went to Dan Knox and Officer Nicolle. This took only seconds, according to Posteraro. Sherry Cole was involved by this time. According to Posteraro, Cole was in Nicolle's face and being very aggressive. Posteraro testified that "Cole was very confrontational". It was the evidence of Posteraro that Cole grabbed his arm as he approached her. Posteraro testified that he reached for Dan Knox's hand and said that he was under arrest, and he pulled it back and shoved his left shoulder. Referring to page 35 of his notes, when Posteraro asked Dan Knox to get on the ground, Knox replied "screw you. You can't tell me what to do. I am nobody's bitch – you can't tell me what to do."
- [88] It was the evidence of Officer Posteraro that at that point, he took his taser out and told Dan Knox that he'd be tasered if he didn't get on the ground. Posteraro testified that prior to the video starting they were walking along the parking lot following Daniel Knox. Knox started to walk to the driver's side door of his truck. At that point in time the taser was deployed.
- [89] Officer Posteraro testified that he deployed the taser because Daniel Knox had assaulted two police officers, he was actively resisting, and he was heading toward his vehicle. It was the evidence of Posteraro that Knox was going to his vehicle and if he had gotten into his vehicle, he could use it as a weapon, or it is possible that there may have been

weapons in the vehicle. Posteraro indicated that the taser was applied for all these reasons and the fact that Dan Knox refused to comply with our orders and “he was not going to have it”.

- [90] Officer Posteraro testified that once the taser was deployed, Dan Knox was trying to get up and one of Knox’s legs caught the left side of Posteraro’s groin area. Posteraro testified that after viewing the video, he does not believe that this was an intentional act by Dan Knox. It was Officer Posteraro’s evidence that as he was over Dan Knox, “Cole shoved me from behind so hard I had to jump over Knox”. The shove to Posteraro by Sherry Cole is readily apparent on the video (Exhibit 2). Posteraro testified that Knox was trying to get up and was not complying to direction, so he was tasered a second time. As Posteraro put it in his evidence, Daniel Knox was not complying – “He wanted to be in control of the situation”.
- [91] As to getting Daniel Knox to the police cruiser once he was back on his feet, Officer Posteraro describes Dan Knox as being “stiff” and not wanting to get into the police cruiser. Posteraro led Knox by one arm with Officer Nicolle on the other arm. Constable Bruni arrested. Officer Posteraro describes Daniel Knox as having to be “forced into the back seat of the cruiser”. It was the evidence of Posteraro that Bruni was in front of Knox and that Bruni did not kick Knox. Posteraro did see Bruni apply one shin rake to Daniel Knox. Posteraro reported that there was no celebration, no laughing or no high-fives after the arrest had been completed.
- [92] Exhibit 54 is a use of force report that Officer Posteraro completed as a result of the incident. The taser was noted in that report as being effective and the reason it was deployed was “in order to protect self, prevent escape, and effect arrest”. It was Officer Posteraro’s view that using the taser was the best option available given the situation. Other options such as the baton, pepper spray, or the use of a handgun elevated the chance of injury. Posteraro testified that the taser had the less potential of anyone getting injured. Given the size of Daniel Knox (six-foot-three) and Posteraro’s size (five-foot-ten, 180 lbs.) there would likely be injuries if pressure points had been used. Posteraro testified that he has never received training not to use the words “calm down” when dealing with an individual.
- [93] As with Officer Nicolle, Officer Posteraro was cross-examined vigorously and extensively. Officer Posteraro was asked to draw a diagram of the scene – where individuals and vehicles and buildings were. It was suggested to Officer Posteraro that the diagram he drew at trial was “radically” different than the diagram he was asked to draw at discovery. Posteraro admitted that the diagram he drew at trial was a poor diagram but “the best recollection I have of nine years ago”.
- [94] Officer Posteraro testified that he obtained information from John Vanderloo Sr. before he arrested Harrison Knox. He said that Vanderloo told him he was assaulted and that he showed Posteraro his injuries. Before arresting Harrison Knox, Posteraro did not ask him for his side of the story. It was the evidence of Officer Posteraro that the information that he gathered “gave him reasonable and probable grounds” to make the arrest of Harrison

Knox and by doing so, he believes “that I did the right thing to prevent a situation from getting worse”.

- [95] When plaintiffs’ counsel suggested in cross-examination to Posteraro that it was possible that Harrison Knox’s handcuffs were too tight, Posteraro disagreed, indicating that “I know these handcuffs when I put them on, and he was very compliant, and the handcuffs were loose”.
- [96] Officer Posteraro testified that he saw Dan Knox go to his vehicle to open the door for his son. As Posteraro put it in his evidence, “This never happened in 24 years in my career where someone opened a cruiser door to let a prisoner out”. “Within seconds” of the cruiser door, Dan Knox and Officer Nicolle meet up. As to when Nicolle told Knox he was under arrest, at trial Posteraro said that it occurred while Nicolle approached Knox, whereas at discovery, Posteraro indicated it was when Knox and Nicolle were face to face. At discoveries, Posteraro describes what took place with Nicolle and Knox as “a conversation”. At trial, Posteraro refers to it as “an argument”. Posteraro was adamant in cross-examination that he remembers the shove by Dan Knox to Officer Posteraro, but had difficulty at trial recalling the specifics of the interaction between Officer Nicolle and Daniel Knox.
- [97] Officer Posteraro was firm in his evidence that he left his police cruiser running – “I always leave my car on – I run it all the time”. As with other witnesses, Posteraro recalls everything at the scene transpiring quickly. He described from the time Harrison was put in the car to Dan being tasered as happening “in minutes” although “it seemed like days”. In his note entries, Posteraro has Harrison being arrested at 13:18 and the taser being deployed at 13:34, a 16-minute difference.
- [98] In cross-examination, Posteraro agreed with the suggestion put to him by plaintiffs’ counsel that the video depicts Sherry Cole trying to de-escalate the situation. As to Nicolle never witnessing a push by Dan Knox on Posteraro, it was Posteraro’s evidence that Sherry Cole was in Nicolle’s face at this point in time as might explain why Nicolle didn’t see this. That is just speculation by Posteraro who admitted that he does not know why Nicolle did not witness this.

Cst. Peter Van Den Diepstraten

- [99] Constable Peter Van Den Diepstraten testified that he was dispatched to the Esso location on a 1078 call, which is equivalent to a 911 call for police. He came in the scene with his vehicle’s lights flashing and siren on. By his own admission, Officer Van Den Diepstraten was “coming in hard”. He arrived at 13:40 and described the scene as “absolute chaos”. He observed Sherry Cole red-faced, screaming, yelling with his fist clenched. Cole was not complying with Nicolle’s direction to get back or she was going to be arrested. Officer Van Den Diepstraten testified that he told Cole to get back or she was going to be arrested. He grabbed Cole’s left wrist, but she broke free and retreated. Officer Van Den Diepstraten testified that telling Cole to back off had no effect on her or her disengaging. Officer Nicolle told Sherry Cole that she was under arrest for obstruct.

Officer Van Den Diepstraten guided Sherry Cole to his police cruiser but Cole was not compliant and was trying to pull away. Officer Van Den Diepstraten put Cole over the hood of the cruiser and attempted to place handcuffs on Cole. Officer Van Diepstraten described himself as being “donkey kicked” by Sherry Cole which caused him to stretch out and lean on Cole to try to avoid being kicked in the groin area. Cole was described as trying to kick off the cruiser. With the assistance of Officer Nicolle, Officer Van Den Diepstraten got Sherry Cole handcuffed from behind and into the police cruiser.

- [100] Officer Van Den Diepstraten indicated in his evidence that at no point did he strike Sherry Cole or kick her or “use his belt stuff on her”. At 14:05, Officer Van Den Diepstraten left the scene for the OPP detachment in Sault Ste. Marie with Sherry Cole in his cruiser. Officer Van Den Diepstraten denied the suggestion that he kicked close the Knox vehicle. At the station at 15:05, Sherry Cole was released from police custody on a promise to appear (Exhibit 39).
- [101] In cross-examination, Constable Van Den Diepstraten indicated that he was responding to a 1078 call, so he was concerned with officer safety when he arrived on the scene. He described Sherry Cole as upset, screaming and non-compliant. Officer Van Den Diepstraten described it as “an issue that needed to be addressed”. At one point in his evidence, Officer Van Den Diepstraten testified that he didn’t know Posteraro was on the scene and in cross-examination he testified that Posteraro told him to “get her off me”, referring to Sherry Cole. There is no reference to Posteraro telling Van Den Diepstraten to get Sherry Cole off him in the notes of Officer Van Den Diepstraten. Officer Van Den Diepstraten tried to explain this inconsistency in his evidence by stating that he didn’t see Officer Posteraro “immediately when I got there”. Officer Van Den Diepstraten’s will say statement indicates that he observed Posteraro when he arrived at the scene. This is at odds with his evidence at trial, Officer Van Den Diepstraten indicating that “Constable Posteraro is not a part of my recollection anymore”.
- [102] Counsel for the plaintiffs in cross-examination was able to point out to Constable Van Den Diepstraten that his notes do not contain many of the details he is giving in evidence at trial. When asked about this, Constable Van Den Diepstraten gave a long explanation that really did not explain or respond to this difficulty with his evidence.
- [103] The will say statement of Officer Van Den Diepstraten indicates that Bruni was pushing Cole back. At trial, Officer Van Den Diepstraten no longer recalled events this way, testifying that Bruni was telling Cole to get back, not pushing her back. Officer Van Den Diepstraten testified that he could not recall whose cruiser he put Cole over or exactly where the cruiser was in relation to the other cruisers. Officer Van Den Diepstraten described leaning on Cole’s tricep and shoulder area to keep her pinned to the cruiser. Officer Van Den Diepstraten testified that he had to stretch out while leaning on Sherry Cole to avoid being kicked by Sherry Cole. While Officer Van Den Diepstraten was leaning against Sherry Cole, she was pushing off the car in an attempt to resist, according to Officer Van Den Diepstraten. Officer Van Den Diepstraten testified that “I am not able to keep control of her. She is pushing away, and I am just trying to keep her up

against the car.” Eventually, Sherry Cole is placed in the police vehicle and transported to the police station.

Sgt. Kenneth Spahr

[104] Although Sgt. Kenneth Spahr is a named defendant in this action and called as a witness to testify at the trial, his role in this matter is marginal. As the acting Staff Sergeant, Officer Spahr was available if the investigating officer had questions or needed resources. These inquiries would be made to him. Officer Spahr attended at the scene at 1:41 and left the scene at 2:55 p.m. When he arrived, the commotion had ended, and the ambulance was there as the taser had been deployed. Officer Spahr testified that he did not use force on anyone, arrest anyone, or take anyone into custody. He did speak to Daniel Knox in the cell area at the OPP station and it was the evidence of Spahr that he could smell an odour on the breath of Daniel Knox which he believed to be alcohol.

[105] Sgt. Spahr indicated that there was a media release of the incident and charges laid and that in a driving incident a media release is mandatory (Exhibit 6). The name of Mr. Knox’s company was not put on the media release. In cross-examination, Sgt. Spahr agreed with the suggestion put to him by plaintiffs’ counsel that a name on a media release could damage a person’s reputation.

[106] Sgt. Spahr testified that on June 13, 2014, he was told by Officer Posteraro that John Vanderloo Jr. had videotaped the incident on his phone. This was viewed by Sgt. Spahr who burned two discs of the video (Exhibit 2).

Chris Lawrence

[107] Chris Lawrence is a former police officer, a former instructor at the Ontario Police College, a co-author of an RCMP report on the safety of taser use, and has been previously qualified as an expert in 75 cases involving police use of force. In the case at bar, Mr. Lawrence was qualified as an expert on education and training of police officers in Ontario regarding:

- (a) The application and use of force by police officers;
- (b) Police duties toward persons in custody and being transported;
- (c) Use of verbal communication and de-escalation; and
- (d) Understanding and interpretation of the use of force framework.

[108] Mr. Lawrence pointed out that the Ontario Use of Force Model (Exhibit 42) has the following direction at the bottom of the wheel:

The officer continuously assesses the situation and selects the most reasonable option relative to those circumstances as perceived at that point in time.

- [109] Mr. Lawrence described the technique of de-escalation as one of trying to build a rapport with the subject and engaging in active listening. He described de-escalation as a “reciprocal process”. As he put it, “if the subject doesn’t respond it is not going to be successful. You can’t de-escalate all by yourself.” Mr. Lawrence opined that when a subject turns and walks away they are not reciprocating. If there is no reciprocity then the officer must make an arrest as the officer is suppose to take control of the situation. Mr. Lawrence testified that “there is no receipt to follow that works in every situation. It’s common sense. You don’t let things get out of control.”
- [110] Mr. Lawrence testified that if an officer is attacked, he has to take action. If the subject is in flight, you have to take action. If excessive repetition of commands are ignored, if talking doesn’t get you anywhere, you have to take action. In commenting on Mr. Summerville’s objection to the use of the words “calm down”, Mr. Lawrence testified that the OPP is not trained on the use of the phrase “calm down”. It was Mr. Lawrence’s view that to suggest that in saying “calm down” is going to cause all of the problems is a bit of a stretch.
- [111] It was Mr. Lawrence’s evidence that if the court accepts that Officer Nicolle was pushed by Dan Knox, the police reaction would be consistent with police training. Mr. Lawrence indicated that “I don’t see a problem with that”.
- [112] The video (Exhibit 2) was played for Mr. Lawrence. It was Mr. Lawrence’s view that the police officers are trying to do things that are consistent with de-escalation, but he added that “talking to someone who is responding negatively is delaying the inevitable”. The law requires an officer to take physical control and the pulling away from police officers is active resistance. As Mr. Lawrence put it in his evidence, “there is a time for talking and a time to act”.
- [113] Mr. Lawrence describes Daniel Knox, as seen in the video, to be upset but not in crisis. He has the same opinion with respect to Sherry Cole. In Mr. Lawrence’s opinion, the attempts by the police officers to take physical control were consistent with police training. The view of Mr. Lawrence is that had Daniel Knox not pulled away from Officer Posteraro when he grabbed his arm in attempt to control him, the use of force would not have been necessary. As to the force used by the police on Daniel Knox, Mr. Lawrence indicated that he agreed with Mr. Summerville that the use of pepper spray or a baton strike was not appropriate and would have likely resulted in a higher chance of injury to Daniel Knox and to the police officer. It was Mr. Lawrence’s opinion that the use of the taser had less potential for injury. It is appropriate for the officer to deploy the taser not just when the subject’s behaviour has been assaultive, but also when the officer believes that there is an immediate need to control the subject. It was the opinion of Chris Lawrence that Officer Posteraro’s use of the taser on Daniel Knox was consistent with police training. When Daniel Knox tried to get up, the second taser response was consistent with police training, in the view of Chris Lawrence.

- [114] Mr. Lawrence testified that if a person is actually in crisis he should not be yelled at but Lawrence is of the opinion that Daniel Knox was “upset” but not in crisis, disagreeing with Mr. Summerville on this point. The use of a shin rake on Daniel Knox was consistent with police training, in Mr. Lawrence’s view. As he put it in his evidence, “that is the purpose of it – to get the subject into the police cruiser”. Mr. Lawrence also opined that Officer Posteraro properly applied the handcuffs on Harrison Knox. Mr. Lawrence was also of the view that there was nothing untoward in the officers pushing Sherry Cole up against the police cruiser to effect the arrest on her. As he put it in his evidence, “that’s done all the time”. Mr. Lawrence was also of the view that police officers are not trained to lock their police cruisers from the outside.
- [115] When asked in cross-examination about empathy and building rapport with a subject, Mr. Lawrence replied that “there is a time to talk and a time to act”. If it is appropriate in the circumstances, building rapport with a subject should be done. It was Mr. Lawrence’s view that the event was “gaining momentum” and there was no reciprocation on Daniel Knox’s part, although the police were following him around and giving him a chance to comply. Mr. Lawrence emphasized in his evidence that he believes in de-escalation and building rapport “if you have the opportunity and it is practical given the situation”.
- [116] It was pointed out to Chris Lawrence in cross-examination that the video shows that Daniel Knox was not told why he was under arrest. Mr. Lawrence agreed that telling a person why he is under arrest might help de-escalate the situation. Having said this, Mr. Lawrence also opined that “there comes a time when you move to the arrest stage to take control of the subject”.
- [117] Chris Lawrence agreed to the suggestion put to him in cross-examination that in the video it appears that Sherry Cole was trying to de-escalate, trying to prevent the situation from getting worse.
- [118] Chris Lawrence agreed that repeating words or commands that are not working is not helpful and is contrary to police training. Mr. Lawrence believes that using phrases such as “calm down” is going to come out as a part of a person’s background. Mr. Lawrence doesn’t remember the phrase “calm down” as one where there was an exact prohibition in police training. Mr. Lawrence was of the opinion that in the totality of the situation, Officer Nicolle’s use of the words “calm down” conformed police practice and procedure.

Dr. Darren Costain

- [119] Dr. Darren Costain testified as a witness for the defendants. Dr. Costain is an experienced orthopedic surgeon. He was qualified as an expert on the diagnosis and treatment of wrist pain and injuries. Dr. Costain examined the wrist of Harrison Knox. Dr. Costain testified that objectively there is a difference in size between the right and left wrist. Harrison’s right wrist is slightly swollen as compared to the left wrist. There is no instability in the wrist. There is no pain in the wrist. From viewing the wrist, the only

thing that Dr. Costain was able to ascertain is that Harrison Knox had some swelling of his right wrist.

[120] Diagnostic imaging confirmed a ligament tear in the right wrist. It was the opinion of Dr. Costain that the mechanical applying of handcuffs around the wrist would not be a cause of a ligament tear. The applying of the handcuffs likely aggravated a pre-existing condition that took several months to settle down. The right wrist problem experienced by Harrison Knox was more likely related to a previous altercation than to the application of handcuffs by police, in Dr. Costain's opinion.

[121] Dr. Costain was not shaken in cross-examination nor were his views about the right wrist of Harrison Knox altered. Dr. Costain was firm in his opinion the injury to Harrison Knox was not likely a result of applying handcuffs. The handcuffs brought the pain to light but did not cause it. The applying of handcuffs alone were not likely to bring it from an asymptomatic state to a symptomatic state, in Dr. Costain's opinion.

DISCUSSION/ANALYSIS ON THE ISSUE OF LIABILITY

[122] The power of the police to arrest without warrant for criminal offences is primarily governed by section 495 of the *Criminal Code of Canada*, R.S.C. 1985 c. C-46. This section reads as follows:

495(1) A peace officer may arrest without warrant

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

[123] Section 25(1) of the *Criminal Code of Canada* authorizes a police officer to use "as much force as is necessary" in the execution of their duties, including making and maintaining an arrest. In particular, section 25(1) reads as follows:

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

- (a) as a private person,
- (b) as a peace officer or public officer,
- (c) in aid of a peace officer or public officer, or
- (d) by virtue of his office,

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.

a) With respect to Daniel Knox

- [124] The short video (Exhibit 2) captures some of the salient interaction between Dan Knox and the police, including the taser being deployed, but the video does not show some of the most important interaction between Dan Knox and the police. In particular, the video does not show Mr. Knox's interaction with Officer Nicolle after he opened the police cruiser door, what was said by Mr. Knox and Officer Nicolle, and any physical interaction between them. What the court has to examine is the testimony of Daniel Knox, Officer Nicolle and Cindy Grenier to determine what occurred in the interactions between Daniel Knox and Officer Nicole prior to the video commencing.
- [125] Daniel Knox testified that when Constable Keith Nicolle approached him he was told he was under arrest, Nicolle grabbed his bicep and that he pulled his arm back. Daniel Knox was adamant that he did not push or shove Officer Nicolle. Keith Nicolle testified that he told Daniel Knox that he was under arrest for obstructing police, that he reached out with his right hand to take physical control of Daniel Knox at which point Knox pushed him. A crucial finding of fact is whether Daniel Knox pushed Constable Keith Nicolle before the taser was deployed.
- [126] Neither the evidence of Daniel Knox nor the evidence of Constable Keith Nicolle is perfect. There are problems with the evidence of both of them. I found the evidence of Daniel Knox at times to be exaggerated, embellished and self-serving. His evidence that he was kicked by Officer Bruni "15 to 20 times" in the back of his leg is hard to believe. Even his daughter, Sherry Cole, describes two to three kicks to the back of her father's leg, not the 15 to 20 times as described by Daniel Knox. Mr. Knox is left with no bruises or injuries to the back of his leg or medical treatment sought despite his assertion that he was kicked 15 to 20 times in the back of the leg. Daniel Knox describes "a blast of heat, like a blast furnace" when he opened the cruiser door where his son Harrison was lodged. This is despite the fact that the Environment Canada report for the weather that time of day (Exhibit 12) indicated that it was 16 degrees Celsius at 12:00 noon and 18 degrees Celsius at 2:00 p.m. These are not high temperatures that one would expect would generate the type of conditions in the vehicle that Daniel Knox described. Daniel Knox testified that he was trying to get the police officers to talk to him. I find that hard to believe when watching the video. Mr. Knox was not trying to engage the police. He was walking around, ignoring police commands and it appears from the video that he was not in the mood for communication. Daniel Knox likes to paint a picture of him being calm, compliant and wanting to cooperate with the police but what is depicted in the video shows otherwise. Daniel Knox would not agree with even the obvious in his evidence if it did not favour his case. He disagreed with the suggestion put to him in cross-examination that he made it possible for Harrison Knox to get out of the car by opening the car door for him. Despite the fact that the answer to this question is obvious, Daniel Knox would not agree to it.
- [127] I also find the assertion of Daniel Knox that he was unaware of the disposition of his charges and that his counsel negotiated a withdrawal of his charges in exchange for a monetary contribution to a charity difficult to believe. Mr. Knox was represented by

experienced criminal counsel. The charges were disposed of in a manner which was very favourable to Daniel Knox. Mr. Knox's assertion that he was in the dark about things is difficult to accept. Although Mr. Knox testified that he fired Mr. Orazietti when he did not follow his instructions, no complaint was made to the Law Society of Ontario about Mr. Orazietti.

- [128] The cross-examination of Constable Keith Nicolle exposed many of the inconsistencies and inaccuracies in his evidence. Officer Nicolle's notes describes Daniel Knox pushing Officer Posteraro. This was clearly an error as shown in the video (Exhibit 2) which does not show Dan Knox pushing Officer Posteraro. Officer Nicolle's will say statement is at odds with his notes on this point. His will say states that the "male pulled away from Posteraro". Officer Nicolle agreed that there was a significant difference between what was in his notes and what was in his will say statement about Daniel Knox pushing Officer Posteraro. Officer Nicolle could not provide a satisfactory explanation to the court as to why this difference existed, attributing it to a "clerical error".
- [129] Keith Nicolle was also inaccurate in his evidence about Harrison Knox getting out of the police cruiser. His notes indicate that Dan Knox "let the prisoner out of the car". At trial, Officer Nicolle could not recall whether Harrison got out of the car when his father opened the door. The video (Exhibit 2) shows Harrison remaining in the police cruiser when the door to the cruiser is opened. At discovery, Officer Nicolle testified that at the time he was pushed by Dan Knox, Officer Posteraro did not come over to him. Officer Nicolle's notes indicate that Posteraro did come over to him with his taser out. At trial, Officer Nicolle was unsure whether Officer Posteraro came over to him.
- [130] In his notes, Officer Nicolle indicates that Sherry Cole was screaming at the officers before her father, Daniel Knox, was tasered. At trial, Officer Nicolle indicated that it was not until Dan Knox was tasered that the screaming by Sherry Cole started. Officer Nicolle's attempt at trying to reconcile this evidence was unsatisfactory.
- [131] All of this would be concerning to the court if it were not for the evidence of Cindy Grenier. Ms. Grenier observed Daniel Knox open the police cruiser door where Harrison Knox was lodged. Ms. Grenier testified that there was "lots of anger and agitation" from Daniel Knox. Ms. Grenier observed Officer Nicolle and Daniel Knox meet. Ms. Grenier testified that Daniel Knox pushed Officer Nicolle, a shove toward the chest area. Ms. Grenier testified that "when they came together, Mr. Knox pushed the officer – a push, like a shove in the chest area". Ms. Grenier testified that Mr. Knox did not pull away from Officer Nicolle but rather pushed Officer Nicolle.
- [132] Cindy Grenier was cross-examined vigorously by counsel for the plaintiffs. She was candid in her admission that she had difficulty in remembering the sequence of events that afternoon, namely, in what order matters occurred. For instance, her will say to the police had a different order of events than her testimony at the trial. Despite events being out of order, Ms. Grenier was adamant "that everything I said in the statement was correct, it was just in the wrong order". Regardless of the sequence of events, Cindy Grenier remained consistent both in her statement and in her evidence at trial that the

“officer went towards him, and he shoved the officer”, referring to Officer Nicolle and Daniel Knox.

- [133] I found Cindy Grenier to be a compelling and credible witness. She was candid about the difficulties in her evidence, which she fully acknowledged. She would not commit to an answer unless she was satisfied that it was truthful. Unlike Officer Nicolle or Daniel Knox, Cindy Grenier is a disinterested third party without a vested interest in the outcome of the litigation. Even though her statement to police may not line up exactly with her evidence at trial, Cindy Grenier was consistent, firm and unwavering in both her statement to police and her evidence at trial that after Dan Knox was told to get away from the police cruiser and he and Officer Nicolle were walking toward each other, that when they met, Daniel Knox pushed Officer Nicolle in the chest area. On this, Cindy Grenier was clear, consistent and unwavering, and I accept her evidence on this point.
- [134] On the totality of the evidence, the court finds as a fact that after Officer Keith Nicolle and Daniel Knox walked toward each other and met, that Daniel Knox pushed Officer Nicolle in the chest area. This was not Daniel Knox pulling away from Officer Nicolle when he attempted to grab him. This was a push to the chest area of Officer Keith Nicolle by Daniel Knox. In my view, this has been proven on the evidence on a balance of probabilities.
- [135] Once Officer Nicolle was pushed, he had reasonable and probable grounds to arrest Daniel Knox on the charge of assault. An action of pushing a police officer would constitute assaultive behaviour in the use of force model (Exhibit 42). The plaintiffs’ expert witness, Steven Summerville, testified that if the court accepted that Daniel Knox pushed Officer Nicolle, that Daniel Knox assaulted the police officer and that at that point in time the officer can use whatever force is reasonable to place that person under arrest. As Steven Summerville put it in his evidence, “any time an officer is assaulted there is reasonable cause to place a person under arrest”.
- [136] As to the use of the taser, Steven Summerville was unable to dispute the opinion of Chris Lawrence that the use of the taser was considerably safer than the use of a baton or control techniques in attempting to take control of a subject that was under arrest. The plaintiffs’ expert witness, Steven Summerville, testified that if the court accepts that active resistance was engaged, then the use of the taser by police was appropriate. Mr. Summerville also accepted the suggestion that by walking away from the police that Daniel Knox was engaged in “active resistance”. It follows that if the use of a taser was a reasonable response to a person engaged in active resistance that the use of a taser was a reasonable response to a person engaged in assaultive behaviour. By walking away from the police and being non-compliant to the police commands to get on the ground, Daniel Knox was being actively resistant. By pushing Officer Nicolle in the chest area, Daniel Knox was engaged in assaultive behaviour. Both actions justified the police authorities to use the taser to attempt to take control of Daniel Knox and place him under arrest. I find that the use of the taser by the police was reasonable and justified on the totality of the evidence in this case. The police had reasonable and probable grounds to arrest Daniel Knox. The police use of force with respect to Daniel Knox, both in his being

tasered and afterward in placing him in the police cruiser, was lawful and justified on the totality of the evidence.

[137] Much time was spent in this case on the issue of de-escalation. It was the opinion of the plaintiffs' expert witness, Steven Summerville, that Officer Nicolle and the other officers involved did not adequately try to de-escalate the situation with Daniel Knox or attempt to establish a rapport with him or lines of communication with him. The defendants' expert, Chris Lawrence, was of the opposite view opining that de-escalation is a reciprocal process and that attempts were made to engage Daniel Knox but that he was not interested. The suggestion made by the plaintiffs is that the police were negligent in their attempts to de-escalate the situation. I do not agree. The police attempted to engage Daniel Knox, but the video clearly indicates that he was not interested in communication. The reciprocity needed to engage and de-escalate was not present. Daniel Knox did not stand still to have a discussion. He was constantly in motion. He walked away from police and even the plaintiffs' expert, Mr. Summerville, agreed that walking away from the police made it more difficult for the police to have communication with Daniel Knox. It was Mr. Summerville's view that the repeating of the words "calm down" was not an acceptable de-escalation tactic and that the repeating of these words only escalated the situation. I agree with the view of Chris Lawrence that if excessive commands are ignored, then action has to be taken and that repeating the phrase "calm down" will escalate the situation is a bit of a stretch. There is a time to talk and a time to act, as Mr. Lawrence put it, and if a person is walking away from you, is not communicative and is not following your commands, the time to talk has ended and the time to act has begun.

[138] It is not unfair to say that to a large extent Daniel Knox is the author of his own misfortune. He was told to stay away from the scene by the OPP dispatcher, but he ignored this suggestion. Immediately upon arriving at the scene, he opens the police cruiser door. He ignores the commands of police to get on the ground. He pushes Officer Keith Nicolle. He heads toward his vehicle. He continued to ignore the commands of the police officers and was engaged in active resistance and assaultive behaviour. This necessitated the use of the taser to control the behaviour of Daniel Knox and to place him under arrest.

[139] For the foregoing reasons, I dismiss the claims of Daniel Knox.

(b) *With respect to Harrison Knox*

[140] In my view, the police had reasonable and probable grounds to place Harrison Knox under arrest with respect to his assault of John Vanderloo Sr. Officer Posteraro interviewed John Vanderloo Sr. He observed bruising on Mr. Vanderloo Sr. which was consistent with an assault on Mr. Vanderloo. Officer Posteraro testified that he observed no similar bruising on Harrison Knox. Although Officer Posteraro did not get Harrison Knox's side of the story or version of events prior to arrest, there was no requirement for Officer Posteraro to do so. As noted in the Ontario Court of Appeal decision in *495794 Ontario Ltd. v. Barclay*, 2016 ONCA 656 at para. 84, before making an arrest that "police are not required to exhaust all avenues of investigation, establish that an accused has no

defence, or even obtain an accused's version of events". The standard of reasonable and probable grounds is not unduly high (*R. v. Buse*, 2010 ONCA 554 at para. 70) and the Supreme Court of Canada has cautioned courts against "second guessing reasonable exercise of discretion" by police and imposing "liability by hindsight" (*Hull v. Hamilton-Wentworth Regional Police Service Board*, 2007 SCC 41 at paras. 54 and 68).

- [141] I conclude that the arrest of Harrison Knox by Officer Posteraro was lawful. As to Harrison Knox being lodged in the police cruiser, I found it difficult to accept that it was hot like a furnace in the police cruiser given the weather conditions that existed on June 11, 2014. Officer Posteraro was adamant in his evidence that he left the police cruiser running. As he put it in his evidence, "I always leave the car running" and testified that he was "absolutely" sure that he left the car running when Harrison Knox was in it. I have no reason to doubt the evidence of Constable Mario Posteraro in this regard.
- [142] As to damage to the wrist of Harrison Knox by the application of the handcuffs on him by Officer Posteraro, it was the evidence of Steven Summerville that if handcuffs are applied properly as to location and tightness that you would not expect damage to the wrist to occur. It was the evidence of Dr. Darren Costain, which he was unshaken in cross-examination about, that the damage that Harrison Knox was complaining about to his wrist could not have been caused by the handcuffs. Therefore, it follows that more than likely Officer Posteraro is correct about the handcuffs, namely, that he took his time in handcuffing Harrison Knox, that he double locked the handcuffs to prevent the handcuffs from tightening on the wrist, which was his usual practice, and that the handcuffs were quite loose on the wrist of Harrison Knox.
- [143] On the totality of the evidence, I find that Harrison Knox was lawfully arrested by Officer Posteraro, that he was placed in a police cruiser that was running, and that the handcuffing of Harrison Knox was properly executed by Officer Posteraro who double locked the handcuffs to prevent tightening. I accept the uncontradicted opinion of Dr. Darren Costain that any injury to the wrist of Harrison Knox that he was complaining of was not caused by the handcuffs being placed on his wrist.
- [144] For the foregoing reasons, I dismiss the claim of Harrison Knox.

(c) *With respect to Sherry Cole*

- [145] Sherry Cole acknowledged and admitted in her evidence that she pushed Officer Mario Posteraro off of her father, Daniel Knox, when he was applying the taser to him. She did so with such force that Officer Posteraro lost his balance. This action by Sherry Cole was an assault by Sherry Cole. This gave the police reasonable and probable grounds to arrest Sherry Cole. There was nothing unlawful about the arrest of Sherry Cole. It was a lawful arrest by police.
- [146] On the totality of the evidence, there is no doubt that force was used to place Sherry Cole under arrest. Sherry Cole testified that she was walking toward her father's truck when Constable Peter Van Den Diepstraten arrived at the scene "flying in from the highway"

and kicked the door shut which angered Ms. Cole. It was Ms. Cole's evidence that Officer Van Den Diepstraten had her pinned on the hood of the vehicle. Ms. Cole felt "violated" and her response was to resist and kick her leg out in an attempt to kick the police officer off of her. Constable Peter Van Den Diepstraten testified that when he arrived on the scene he observed Sherry Cole, red-faced, screaming, yelling, with her fist clenched. Cole was not complying with directions. The officer describes Sherry Cole as being non-compliant and that she had to be restrained on the hood of the vehicle in an attempt to place handcuffs on her. Officer Van Den Diepstraten testified that Sherry Cole was attempting to kick him and with the assistance of Officer Nicolle, Sherry Cole was handcuffed and placed in the police cruiser. It was the evidence of Officer Keith Nicolle that Sherry Cole was resisting "slightly".

- [147] However slight, there is no doubt in my mind that Sherry Cole was agitated, upset, and generally worked up after Daniel Knox was tasered and while Officer Van Den Diepstraten was attempting to place her under arrest. There is no doubt in my mind that Sherry Cole was resisting Officer Van Den Diepstraten's attempt to place her under arrest and to secure physical control of her. There is no doubt in my mind that Sherry Cole was kicking at Officer Van Den Diepstraten and that he had to use physical force in the circumstance to effect her arrest. Was the use of force justified or in any way excessive? I conclude that the use of force on Sherry Cole was justified and necessary to place her under arrest and take physical control of her. The use of force was not excessive, and Sherry Cole sustained no injuries as a result of the use of force applied by Officer Van Den Diepstraten against her. It was the view of the expert Chris Lawrence that there was nothing untoward in the officers pushing Sherry Cole up against the police cruiser to effect the arrest on her. As Mr. Lawrence put it, "that's done all the time".
- [148] The court finds that Officer Van Den Diepstraten had reasonable and probable grounds to arrest Sherry Cole for assaulting Officer Posteraro and for obstruction. The use of force by the officers in placing Sherry Cole under arrest, handcuffing her and placing her in the police cruiser was justified, reasonable and lawful.
- [149] For the foregoing reasons, the claim by Sherry Cole is dismissed.
- [150] Given the court's finding that the arrest of all three plaintiffs was lawful and the use of force by the police was both lawful and justified, it is not necessary for the court to comment on whether the charges laid against the plaintiffs were resolved in their favour. The arrest of the plaintiffs was lawful and, therefore, any claim for malicious prosecution cannot succeed.

ISSUE OF DAMAGES

- [151] Although my finding on the issue of liability does not require me to comment on the issue of damages, I wish to do so briefly. In view of the evidence of Dr. Darren Costain, the damages that would be awarded to Harrison Knox would be minimal, in the \$15,000 range. Similarly, the damages to Sherry Cole would also be minimal, in the same range of \$15,000. Sherry Cole did not prove any long-term physical or psychological

impairment as a result of the incident. Her damages would be confined to the events of June 11, 2014 themselves, and as a result, any damages awarded to her would be minimal.

- [152] With respect to Daniel Knox, in his evidence, Mr. Knox described both physical and psychological impacts on him as a result of the incident on June 11, 2014. Mr. Knox described a sense of isolation, not having the same confidence that he had before, depression, obsession with the event to the point that he can't get it out of his head, sleep interruption and deprivation, and physical pain and soreness in his Achilles area as a result of being kicked.
- [153] Dr. Andrew Shaule is a registered psychologist who testified on behalf of the plaintiffs. Various testing was done on Daniel Knox. Dr. Shaule interviewed Mr. Knox for 40 minutes. As a result, Dr. Shaule diagnosed Daniel Knox with having (a) adjustment disorder with anxiety; (b) major depressive disorder; (c) features of post-traumatic disorder. Dr. Shaule described these difficulties as a reaction to the event with police and difficulty in adjusting his life as a result of his experience with the police. It was Dr. Shaule's view that these difficulties Daniel Knox was experiencing are as a result of his interaction with the police. As Dr. Shaule put it in his evidence, these diagnoses would not have been in place before the incident with police. Dr. Shaule recommended that Daniel Knox partake in 18 sessions of cognitive behaviour therapy with a counsellor and was of the view that Mr. Knox's progress will be poor unless he engages in "significant treatment". As of trial, Daniel Knox has not engaged in this course of treatment as recommended by Dr. Shaule who views this as him "missing an opportunity to improve".
- [154] Dr. Percy Wright is a clinical psychologist who was called as an expert witness by the defendants. Similarly with Dr. Shaule, Dr. Wright performed tests on Daniel Knox and conducted an interview with him. Unlike Dr. Shaule, Dr. Wright does not see all of Daniel Knox's difficulty as arising from his interaction with police on June 11, 2014. Dr. Wright's opinion is that Daniel Knox had pre-existing conditions prior to June 11, 2014, including the death of his wife, his difficulty with anger, and his relationship with his parents. Dr. Wright opined that Mr. Knox was suffering from adjustment disorder and anxiety but indicated that it was not clear that he was suffering from depressive disorder. Dr. Wright disagreed with Dr. Shaule's report and diagnoses that Daniel Knox is suffering from major depressive disorder and also disagreed that a single event - Mr. Knox's interaction with police - would lead to the conditions that Daniel Knox was experiencing. Dr. Wright does not agree that one single event can make a person, so he does not agree with Dr. Shaule that this event with the police is solely responsible for the difficulties that Daniel Knox is experiencing. Dr. Wright does agree, however, that there was an emotional impact on Daniel Knox as a result of his interaction with police. The June 11, 2014 incident exacerbated and aggravated conditions which Daniel Knox was experiencing.
- [155] Dr. Wright's view that Daniel Knox had pre-existing psychological difficulties prior to the June 11, 2014 incident with the police makes a great deal of sense. The court heard the evidence of Daniel Knox on the impact the death of his wife had on him and the

difficulty he was experiencing in trying to cope with the death of his wife. Daniel Knox described the death of his wife on December 17, 2012 as having “a significant impact on him” and that he was “very upset and grieving the loss of his wife”. Undoubtedly that was still a problem for him on June 11, 2014 that caused him emotional and psychological difficulties. It is also undeniable that the June 11, 2014 incident with the police aggravated any pre-existing emotional and psychological difficulties that Daniel Knox was experiencing.

[156] If I am incorrect in my conclusions about the arrest of Daniel Knox and the use of the taser on him by police, I would assess damages to Daniel Knox in the amount of \$75,000.

CONCLUSION

[157] The claims of all plaintiffs against all defendants, in its entirety, is dismissed. If liability had been established by the plaintiffs, I would have awarded damages to Harrison Knox and Sherry Cole in the amount of \$15,000 each, and to Daniel Knox in the amount of \$75,000.

COSTS

[158] I encourage the parties to reach an agreement on costs. In order to facilitate discussions, I am going to allow counsel the month of December 2024 to have fruitful discussions to reach an agreement on costs. If the parties are not able to agree to costs by December 31, 2024, then the court will receive written submissions on the issue of costs from the plaintiffs by January 17, 2025, and from the defendants by January 31, 2025. There shall be no right of reply. The written submissions are to be no longer than five typed pages, excluding bills of costs and offers to settle.

Gareau J.

Released: December 2, 2024

CITATION: Knox et al. v. HMK et al., 2024 ONSC 6650
COURT FILE NO.: 27546/17
DATE: 2024-12-02

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

DANIEL KNOX, HARRISON KNOX and SHERRY
COLE

- and -

HIS MAJESTY THE KING IN RIGHT OF ONTARIO
(MINISTRY OF COMMUNITY SAFETY AND
CORRECTIONAL SERVICES), CONSTABLE LUIGI
BRUNI, CONSTABLE MARIO POSTERARO,
CONSTABLE PETER VAN DEN DIEPSTRATEN,
CONSTABLE KEITH NICOLE and SERGEANT KEN
SPAHR

REASONS FOR DECISION

Gareau J.

Released: December 2, 2024