

# ORIGINAL

IN THE MATTER OF: Law Enforcement Review Act  
Complaint No. 3804

AND IN THE MATTER OF: An Application pursuant to  
Section 13(2) of The Law  
Enforcement Review Act,  
R.S.M. 1987, c L75

BETWEEN:

R. D. ,

Complainant,

- and -

CONSTABLE J. K. , and  
CONSTABLE K. J. ,

Respondents.

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TRANSCRIPT OF PROCEEDINGS had and taken before The Honourable Judge Lismer, held at the Law Courts Complex, 408 York Avenue, in the City of Winnipeg, Province of Manitoba, on the 15th day of June, 2000.

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APPEARANCES:

MR. R. D. , in person.

MR. P. MCKENNA, for the Respondents.

MR. D. GUENETTE, for the Commissioner, Mr. G. Wright.

NOTE: For the purposes of distribution, personal information has been removed by the Commissioner.

1 JUNE 15, 2000

2

3 THE COURT: Are you R D ?

4 MR. D : Yes, sir.

5 THE COURT: You seem to be, according to a picture  
6 in the file from the Commissioner, that has a picture of  
7 you. All right. And, and you're the applicant for the --  
8 you're applying for a review of the Commissioner's decision?

9 MR. D : Yes, sir.

10 THE COURT: Do you, do you understand what I'm  
11 saying?

12 MR. D : Yes, sir.

13 THE COURT: And you're here to make the  
14 application by yourself without a lawyer; is that correct?

15 MR. D : Yes.

16 THE COURT: All right. And just before we start  
17 there are other persons in the court who will identify  
18 themselves for the record.

19 MR. MCKENNA: Your Honour, my name is McKenna.  
20 I'm here on behalf of the respondent officers.

21 THE COURT: Yes. Do you understand he's the  
22 lawyer for the, for the two police officers?

23 And it's Mr. Guenette, Denis Guenette?

24 MR. GUENETTE: That is, that is correct, Your  
25 Honour, on behalf of the Commissioner, who is present in the  
26 courtroom with, with one of his investigators.

27 THE COURT: Yes.

28 MR. GUENETTE: We have not yet asked for standing,  
29 Your Honour. Traditionally in the past we have. I think at  
30 the moment we're simply here on a watching brief.

31 THE COURT: Right. And there's a lady who stood  
32 up.

33 MS. J : I am C -- I'm not his lawyer,  
34 but he's not very good with his English so if there's

1 something he has difficulty understanding I'll try to help  
2 him understand it.

3 THE COURT: Thank you.

4 THE COURT: C ...

5 MS. J : J .

6 THE COURT: J . You're, you're not an official  
7 interpreter, you're a friend of --

8 MS. J : I am, I am a friend.

9 THE COURT: Do you understand that?

10 MR. D : Yes, sir.

11 THE COURT: You received a letter from the  
12 Commissioner, Mr. D , advising you of his decision;  
13 is that correct?

14 MS. J : Yes, he --

15 THE COURT: You're nodding. Just if you could  
16 answer yes or no, so I could hear --

17 MS. J : He has a letter.

18 MR. D : I have a letter that came from  
19 landlord and ...

20 THE COURT: Right. And then you filed a letter of  
21 April 6th asking for a review, and this is the review of the  
22 commissioner's decision not to proceed further; is that  
23 right?

24 MS. J : Yes.

25 THE COURT: And it is -- you have the right and,  
26 and you have the -- and it is up to you to show me where the  
27 Commissioner made a mistake, and that is what you're  
28 prepared to do today?

29 MS. J : We have a letter from R 's doctor,  
30 who he'd seen after the incident. We're not sure the  
31 Commissioner made a mistake, but we do feel that we weren't  
32 heard correctly, and what he says happened is what happened,  
33 and he wants something done about that, and --

34 THE COURT: Well, let him speak for himself, and

1 with your assistance. You, you weren't there; were you?  
2 MS. J : No, I wasn't.  
3 THE COURT: Yes. I, I want to hear from him, not  
4 from you.  
5 MS. J : Okay.  
6 THE COURT: I want you to assist him to make sure  
7 that I hear everything that he has to say.  
8 MR. D : Yeah.  
9 THE COURT: You say you have a letter from the,  
10 from the doctor?  
11 MR. D : Yes, sir. I have a -- I get the  
12 real one, it came from my doctor. It's right here.  
13 THE COURT: Is that Dr. -- what is the doctor's  
14 name?  
15 MR. D : Dr. N .  
16 THE COURT: Yes. I'm, I'm looking for the letter  
17 on the file.  
18 What date is the letter that you have?  
19 MR. D : Pardon me?  
20 THE COURT: What date is, is the letter that you  
21 have from your doctor?  
22 MR. D : June 7. Can I --  
23 THE COURT: Let's see, just one moment.  
24 I -- there is on the file a letter from Dr. N  
25 dated August 23, '99 saying that you consulted him on June  
26 7, '99; is that letter perhaps dated August 23rd?  
27 MR. D : No.  
28 THE COURT: I see. Can you just show it, show it  
29 to the lawyers, and then they can pass it on to me.  
30 Did you ever receive a copy of the letter that Dr.  
31 N wrote to the Commissioner dated August 23, '99?  
32 MR. D : Yes.  
33 THE COURT: Have you had a copy of that letter?  
34 MS. J : I don't think you did.

1 MR. D : A copy?

2 MS. J : Of the letter that you're speaking  
3 about I don't think he knows anything. I think the only  
4 letter he has is the one --

5 THE COURT: Don't -- would you please just stick  
6 to what he says. You don't know what he knows, or what he  
7 doesn't know. Do you understand? I don't want to be curt  
8 with you, but I want to make sure that I get information  
9 from him.

10 MS. J : Okay.

11 MR. D : I can't remember, sir, if I have.

12 THE COURT: I see. All right. Has counsel had a  
13 chance to look at this letter?

14 MR. MCKENNA: I have, Your Honour. If I may  
15 there's, there's some case law on this very subject that I  
16 would like to present to you.

17 THE COURT: As to additional evidence?

18 MR. MCKENNA: That's exactly right. This, this  
19 letter I can tell you is made -- is dated May 15, 2000.  
20 This would have been after the decision of the Commissioner  
21 to not proceed any further, so this would be additional  
22 evidence.

23 Your Honour, this decision that I'm, I'm handing  
24 you is a decision of Judge Chartier and it is --

25 THE COURT: I'm aware of the decision.

26 MR. MCKENNA: Oh.

27 THE COURT: I have, I have it from when it was  
28 circulated with it's original name --

29 MR. MCKENNA: All right.

30 THE COURT: -- and then with the names deleted --

31 MR. MCKENNA: Yes.

32 THE COURT: -- and then this is the -- well, it  
33 was originally B (phonetic), is the complainant.

34 MR. MCKENNA: That's right, yes.

1 THE COURT: Yes.

2 MR. MCKENNA: I have -- I've given you the one  
3 with the, the names deleted, and perhaps I can just refer to  
4 it as the Chartier decision of May -- Judge Chartier  
5 decision of May 30, 2000, and I would refer you to page 19  
6 of that decision, Your Honour.

7 THE COURT: You're objecting to that letter being  
8 in in order that he have his full review in his mind?

9 MR. MCKENNA: That's right. I, I -- the, the  
10 nature of the review, Your Honour, is your --

11 THE COURT: With no, no additional evidence, I'm  
12 aware of that.

13 MR. MCKENNA: That's right. Is your reviewing  
14 the, the manner in which the Commissioner conducted the  
15 investigation.

16 THE COURT: It's not a hearing de novo, that's  
17 accepted, I agree.

18 MR. MCKENNA: That's right, yes.

19 THE COURT: And, and the reason I'm maybe a little  
20 short here is a man who has difficulty with language, there  
21 are two high powered lawyers and here's himself without a  
22 lawyer, with an interpreter who has very limited skills in  
23 interpreting.

24 MR. MCKENNA: Yes.

25 THE COURT: It's a little one-sided and if we're  
26 going to go on the technical approach I'll adjourn or that  
27 he have counsel appointed.

28 MR. MCKENNA: That's fine.

29 THE COURT: Do you understand what he's saying?  
30 What he's saying is correct. That this is a review of, of  
31 the Commissioner's decision based on what was before him at  
32 that time, and is the -- I take it that the -- and, and  
33 counsel can advise me that this, that this letter of May  
34 15th relates to, and this is what Mr. D states,

1 relates to an examination of June 7, '99; is that correct?

2 MR. MCKENNA: That's correct.

3 THE COURT: Well, there's a letter, there's a  
4 letter on, on file of August 23rd from Dr. N to, to  
5 George V. Wright, the Commissioner, and is this letter about  
6 any further, any other examination after June the 7th?

7 MR. MCKENNA: No, it, it speaks only of the June  
8 7, 1999 examination.

9 THE COURT: Yes. And, and I understand what  
10 you're saying, but this letter, even though it's a different  
11 letter and the lawyers have not seen it, but it relates to  
12 the very same examination that Dr. N talked about in  
13 the letter that he gave the Commissioner. Now, this man  
14 doesn't know whether he had a copy of this letter or not,  
15 and he obtained one directly from Dr. N, and I would be  
16 surprised if the letter was different in any material  
17 particular from what was provided to the Commissioner, and  
18 it seems to be in fairness, as this is what he had,  
19 especially as he can't remember whether he received a copy  
20 of, of that August 23rd, letter, that I have a look at it.

21 MR. MCKENNA: Your Honour, I'm prepared to move  
22 beyond that. I just -- I would like to reserve though the  
23 ability to argue that you ought not to take it into account,  
24 given that what you're, what you're, you're doing is  
25 reviewing the, the investigation and the conduct of the  
26 investigation by the Commissioner to see whether there was a  
27 problem with it, and it would not be fair to review it based  
28 on a document that the Commissioner did not have in his  
29 possession so --

30 THE COURT: Well -- no, I understand, that  
31 technically you're correct but from what I understand this  
32 letter relates to the very same exam that the doctor  
33 referred to in his letter to -- August the 23rd, and I  
34 expect that it will be almost identical or the doctor will

1 have some professional explaining to do if it is different.

2 MR. MCKENNA: My problem, Your Honour, and --

3 THE COURT: Technically you're correct --

4 MR. MCKENNA: Yes.

5 THE COURT: -- but here's a man without a lawyer,  
6 without (sic) a difficulty, and, and I know what you're  
7 saying, and he's entitled to a fair hearing, and to walk  
8 away feeling that he had a fair review --

9 MR. MCKENNA: Yes.

10 THE COURT: -- and, and I feel that under the  
11 circumstances that the technical -- your technical position  
12 ought to be extended to -- in order that, that another  
13 version of what is on the file, I'm referring to the letter,  
14 be before me.

15 MR. MCKENNA: Yes. I just wanted to note, Your  
16 Honour, for the record, that I don't get a copy of the  
17 medical report from the file so when you asked me earlier,  
18 is it the same as the one on the file I --

19 THE COURT: Oh, I see.

20 MR. MCKENNA: -- I don't have a copy of it.

21 THE COURT: That's why you were, you were not  
22 forthright, yes.

23 MR. MCKENNA: Yes. I, I don't have a copy of it.

24 THE COURT: All right. I'll, I'll read this  
25 letter.

26 This, this letter is very similar to the one that  
27 is on the file and the Commissioner had, when he  
28 investigated your matter; do you understand?

29 Mr. D : Yes, sir. The, the second one,  
30 sir, is a different, a different subject. That's bodily  
31 harm, I charge -- they charge me bodily harm before. That's  
32 -- the two of them they, they want to beat me. That's a  
33 different one.

34 THE COURT: No, but we're talking about the



1 letter. Let me just read to you what the letter that the  
2 Commission has says.

3

4 Thank you for your patience in  
5 waiting for this report. Mr. D  
6 consulted me on June 7, '99.

7

8 And that's the same date that your letter says talks about.

9

10 He stated that he was assaulted by  
11 a policeman around 2:49 a.m. of  
12 June 6, '99. He drank alcohol. He  
13 did not feel safe to drive home and  
14 pulled over to the curb of a street  
15 to rest.

16

17 That's what the letter says; do you understand?

18 That's what the doctor says; do you understand

19 what he's saying?

20 He says that you did not feel safe to drive home  
21 and you pulled over to the curb of a street to rest.

22 MR. D : No, sir, that's wrong. I, I went

23 to --

24 THE COURT: Listen.

25 MR. D: : -- parking lot.

26 THE COURT: I'm telling you what the doctor says,  
27 whether it's wrong or not I'm telling you what he says in  
28 his letter.

29

30 A policeman came and grabbed him by  
31 his neck. He was then pushed  
32 against something. The result was  
33 the soreness of his neck and left  
34 face.

1                   That's what the doctor says.    That's what he  
2 apparently had from you.

3  
4                   On physical examination I found  
5 that Mr. D                   had four  
6 superficial lacerations to his  
7 face, two of them were one inch  
8 long, and the rest were half an  
9 inch each. There were some bruises  
10 at the back of his neck at the  
11 hairline level.    His face was  
12 moderately tender on the left side  
13 near his left zygomatic arch.

14  
15                   Wherever that is.    Counsel is indicating it's a  
16 above your eyebrow.

17  
18                   There was tenderness of the third  
19 and fourth cervical vertebrae --

20  
21 That's at the back of your neck.

22  
23                   -- but the movements of his neck  
24 were within normal limits. The x-  
25 ray of his neck showed no  
26 abnormality. He told me that he  
27 did not need a painkiller for the  
28 pain. I saw him again for another  
29 injury unrelated to this incident  
30 on June 24, '99. His soreness of  
31 the neck and the laceration had  
32 healed.

33  
34 This is by June 24th.

1 I hope the information would be  
2 helpful to you. Thank you again  
3 for asking this report.

4

5 And in the letter of May 15th, that you brought,  
6 the doctor says:

7

8 Thank you for asking this report.

9 I saw R on June --

10

11 Well, this is a letter that's, that's addressed  
12 also to George Wright, but you had a copy of this letter?

13 MR. D : No, sir. That one --

14 THE COURT: Yes.

15 MR. D : -- I brought. No, sir.

16 THE COURT: And you didn't have a copy of that  
17 first letter?

18 MR. D : No, they invite me inside the Law  
19 Enforcement to, to see the letter.

20 THE COURT:

21

22 He stated that a policeman grabbed  
23 his neck and pushed him around 2:49  
24 a.m. of June 6, '99. His  
25 complaints were sore neck and sore  
26 left face. On the physical  
27 examination I found that he had  
28 tenderness of the C3 and C4 of the  
29 cervical spine.

30

31 Same as in the other letter.

32

33 There were four superficial  
34 lacerations of his neck which

1 measured one inch and a half an  
2 inch for each two lacerations.  
3 There were some bruises at the  
4 neck's hairline. The range of his  
5 neck's motion was within normal  
6 ranges. His face had no bruise,  
7 but there is moderate tenderness of  
8 the area near his left zygomatic  
9 arch. The x-ray of his neck showed  
10 no abnormality or fracture. He did  
11 not need any painkillers when I  
12 asked him, and after the  
13 consultation on June 7, '99 R  
14 had not complained about his neck  
15 again. I hope this information  
16 will be helpful. Thank you.

17  
18 And you see the two letters are, are pretty well  
19 the same, and the Commissioner -- what I want you to know,  
20 very clear, is that the Commissioner had this earlier letter  
21 when he was considering what steps to take on your  
22 complainant against the officers. Do you understand?

23 And I believe you were under the impression that  
24 the Commissioner did not have that information when he made  
25 the decision. That's what -- isn't that right?

26 You, you didn't, you didn't know that the  
27 Commissioner had this earlier letter?

28 MR. D : I know.

29 THE COURT: All right. What else do you want to  
30 say as to why the Commissioner -- why do you think he made a  
31 mistake in not taking any further action on the complaint?

32 The information that is on the file it, it shows  
33 that a, a citizen was -- or heard the honking of a horn in  
34 the area where he lived, and when he investigated he found a

1 person, which turned out to be you, with, with his head on  
2 the steering wheel, and that was honking the horn, and, and  
3 he, he didn't succeed in waking you up. He was concerned as  
4 to your health, and he went to get help from a neighbour,  
5 and attempts were made to wake you up, and you woke up  
6 briefly, and, and put -- and started the car. That's what  
7 the witnesses say.

8 MR. D : That's not right. No, sir.

9 THE COURT: Well I'm telling you that's what the  
10 witnesses say, and, and one of the witnesses who attended  
11 went to the rear of the car thinking that if you're going to  
12 back up he was -- he intended to, to bang on your, on your  
13 trunk hood so that you couldn't go away. That's what they  
14 say, and I believe that the Commissioner brought that to  
15 your attention, but in any case the police -- you say that's  
16 not so, you're, you're contradicting --

17 MR. D : That's not true.

18 THE COURT: -- you probably don't remember honking  
19 the horn either?

20 MR. D : I remember, sir. They used the  
21 flashlight on my head and my eyes --

22 THE COURT: Well, that was when the police came.

23 MR. D : -- and then banged me.

24 THE COURT: Yes, but the witnesses say that it's  
25 the horn that you were honking for about half an hour in the  
26 area that brought their attention. You probably don't  
27 remember that honking of the horn; do you?

28 MR. D : Yeah, I, I can't remember because  
29 I am sleeping.

30 THE COURT: Yes. And later, later you, you went  
31 through a breathalyzer, and a breathalyser, according to the  
32 report, showed that you had readings of 160 and 170 --

33 MR. D : That's right, sir.

34 THE COURT: -- and 160 is double permitted.

1 MR. D : Yeah. Excuse me, sir.  
2 THE COURT: Yes. No, I'm just reviewing what's,  
3 what's in the --  
4 MR. D : Yeah.  
5 THE COURT: -- report?  
6 MR. D : They say -- they call it care and  
7 control.  
8 THE COURT: Yes.  
9 MR. D : My place is across the street.  
10 THE COURT: Yes.  
11 MR. D : Why did they bring me inside,  
12 inside the Safety Building?  
13 THE COURT: What happened to that charge?  
14 MR. D : What charge?  
15 MS. J : You were convicted.  
16 THE COURT: Is, is that -- you were charged with  
17 care and control; is, is that charge finished, or, or is it  
18 still before the court?  
19 MS. J : It's been dealt with.  
20 THE COURT: Pardon me.  
21 MS. J : It's been dealt with.  
22 THE COURT: How was it -- what, what was the  
23 result?  
24 MS. J : He was convicted and he has his  
25 license suspended for a year and maybe after three months he  
26 can --  
27 THE COURT: Yeah, just a minute. Again did you  
28 plead guilty or were you -- or did you have a trial?  
29 MR. D : I plead guilty, sir.  
30 THE COURT: You pleaded guilty, and you had a  
31 lawyer?  
32 MR. D : Yeah.  
33 THE COURT: All right. So I take it the lawyer  
34 explained to you that you were in the car, in the driver's

1 seat, and the police found you with the keys in the  
2 ignition --

3 MR. D : No, sir.

4 THE COURT: No, no, I'm saying that that's why you  
5 pleaded guilty. Then why did you plead guilty?

6 MR. D : Okay, sir.

7 THE COURT: Do you understand?

8 MR. D : Yes.

9 THE COURT: In any case that's how the police --  
10 that's what -- according to the report that's what the  
11 police saw, and they tried to awake you at first without  
12 success, and they smelt alcohol from the inside of the car,  
13 they got you out of the car finally, you were staggering,  
14 and you took some -- you didn't see why you should be  
15 arrested because you said you weren't driving, and they  
16 explained to you that you had care and control, and you were  
17 arrested; is that right?

18 MR. D : Yes, sir.

19 THE COURT: And there is nothing in what I have  
20 said, and the police in your arrest there, using any  
21 excessive force and, and you said that the police called you  
22 a fucking asshole.

23 MR. D : That's right.

24 THE COURT: The police deny that they used  
25 excessive force or that they used that terminology, or any  
26 such words, but in any event you were placed in the car, and  
27 in the car you were banging on the glass partition, not once  
28 but several times. You don't remember that?

29 MR. D : What, sir?

30 THE COURT: That you were banging on the glass  
31 partition inside the police car?

32 MR. D : No, I didn't do that. I respect  
33 the policemen here, sir.

34 THE COURT: Yes, I see. Do you think that maybe

1 you were so tired and so, so much alcohol that maybe you  
2 couldn't remember everything?

3 MR. D : I remember that, sir. They can  
4 make their own law, they are policemen.

5 THE COURT: And, and you say that you didn't have  
6 the keys in the ignition, or --

7 MR. D : No.

8 THE COURT: -- you didn't start the car?

9 MR. D : No.

10 THE COURT: And you're saying that this private  
11 citizen is lying when he said he saw you starting the car --

12 MR. D : But I plead guilty on it.

13 THE COURT: -- is that right?

14 MR. D : Yeah.

15 THE COURT: That's what you're saying. But in any  
16 case you have to understand that the police are acting on  
17 information that they have, and what they see, and they saw  
18 a person that showed signs of having too much alcohol; do  
19 you understand? So they arrested you and then took you to  
20 the police station and when they took you out of the car you  
21 tried to break away suddenly, and you pushed one of the  
22 officers on the shoulder. That's what they say. Do you  
23 understand? That's, that's what the Commissioner, I think  
24 -- what the Commissioner must have told you when, when you  
25 were interviewed by the Commissioner, and the Commissioner's  
26 report, and in the course of your struggle there your, your  
27 chain -- you had a chain, a neck chain --

28 MR. D : Yeah.

29 THE COURT: -- that had broke and the police  
30 officer noted that you had it in your hand, and they looked  
31 on the floor and they found the part.

32 And they gave you the breathalyzer demand and you  
33 agreed, you didn't want to talk to a lawyer and you took,  
34 you took the two tests; do you remember taking the



1 breathalyzer tests?

2 MR. D : Yes, sir.

3 THE COURT: So I, I think you understand that a  
4 police officer is a person in authority, and has the right  
5 to do what is reasonable in order to make an arrest.

6 MR. D : Yeah.

7 THE COURT: And, and to use, and to use such force  
8 as is necessary to make an arrest, but the police officer is  
9 never excused in using too much force, what we call  
10 excessive force; you understand?

11 And all the information in the file indicates that  
12 the police, and this is what the Commissioner indicates,  
13 that the Commissioner found in the information, did not use  
14 excessive force, and the police officer -- and, and denied  
15 calling you the fucking asshole.

16 Now, some people talk, you've heard people talk  
17 every second word is the F, the F word --

18 MR. D : Yes, sir.

19 THE COURT: -- and some people in conversation  
20 talk, you fucking asshole and so forth. I don't know, and -  
21 - and I don't know whether, whether you talk like that or  
22 not, but if a person talks that way he wouldn't find that  
23 objectionable. You told the police you were a nice fellow  
24 so maybe you found it offensive, but the Law Enforcement  
25 Review Act provides that the police officer, under Section  
26 29, must behave in a standard that is acceptable, and, and  
27 one of the conduct prohibitions against the police officer  
28 is using oppressive or abusive conduct, or language, or  
29 being discourteous or uncivil, and here as I see it the  
30 police were drinking with -- were dealing with what was to  
31 them clearly a person who had too much alcohol, having care  
32 or control of a motor vehicle, a person who was not  
33 completely co-operative, and there was -- you didn't, you  
34 didn't, according to the police and all the information,

1 provide much resistance, but there was some resistance.  
2 Like you, you were arguing with the police about whether  
3 they had the right to arrest you, and you just wanted to go  
4 home to your wife, and I can see that -- and, and this is  
5 not unusual. I've sat in many cases involving drinking and  
6 driving that persons who drink too much do not recognize  
7 that they should have their freedom taken away, that they  
8 should be arrested, and obviously later when you consulted  
9 with a lawyer you concluded that the police had reasonable  
10 grounds to make the arrest, and you pleaded guilty, and, and  
11 one of the matters under the Code is that a police officer  
12 can be -- can, can fall under this disciplinary code if he  
13 makes an arrest without reasonable probable grounds, and  
14 that's, that's not the complaint here. Or if he uses  
15 unnecessary violence or excessive force. And the police --  
16 and all the information -- do you understand, they  
17 acknowledge that there was some force used, but that there  
18 was no -- that there was not too much force?

19 Now, why, why do you feel that the police used too  
20 much force?

21 Can you just ...

22 MS. J : Can I help him for a second?

23 THE COURT: Can you, can you just speak --

24 MR. D : He has no right, sir, to --

25 THE COURT: Pardon me?

26 MR. D : -- push me --

27 THE COURT: Pardon me?

28 MR. D : He has no right to push me and  
29 grab me like that to hurt me.

30 THE COURT: The --

31 MR. D : I respect the policemen here --

32 THE COURT: -- you're now talking about when you  
33 were already in the station, when you were taken out of the  
34 car; is that correct?

1 MR. D : Yeah, I go with them peacefully.

2 THE COURT: Yeah. That's right, you're right that  
3 the police officer has no right if you go peacefully to use  
4 any force that is not necessary, and that may be force such  
5 as what you say you don't like, that was used against you by  
6 pushing you, but the police officer said that when you got  
7 out of the car and you were under arrest that you suddenly  
8 pulled away and you hit one officer on the shoulder, and so  
9 what they did is they put you then against the car, and  
10 handcuffed you. That's, that's what is before me, and I  
11 think you will agree that if you -- it may be that you don't  
12 remember, maybe because of the alcohol, that you were not  
13 exactly co-operative, but do you not recognize that if you  
14 try to break away from a police officer, and when he has you  
15 under proper arrest, that he has the right to, to hang onto  
16 you and do what is necessary so that you don't escape?

17 MR. D : Can I talk, sir?

18 THE COURT: Yes. That was a question.

19 MR. D : Okay. There are policeman they  
20 can make their own law.

21 THE COURT: No, they can't make their own law.

22 MR. D : I don't know.

23 THE COURT: But you're a citizen and you can't  
24 make your own law either.

25 MR. D : No, I am a civilian, sir.

26 THE COURT: Well, you're, you're a citizen, a  
27 civilian, that's right.

28 MR. D : Yeah, yeah.

29 THE COURT: And you can't make your own law, too.  
30 Everyone is, everyone is under the same law, and, and the  
31 police are subject to a very strict code, and, and you see  
32 -- and furthermore at the very beginning, when the police  
33 searched you and you didn't, you didn't like being searched,  
34 and they found this butter knife -- is it --

1 MR. D : I, I do like this, sir --  
2 THE COURT: -- no, butterfly knife.  
3 MR. D : I do like that when I said I come  
4 out, come out, and then I went out. I didn't say nothing.  
5 THE COURT: Well, they, they just -- the report  
6 says that --  
7 MR. D : I didn't push them.  
8 THE COURT: -- you were agitated, that you, that  
9 you weren't happy that you were being searched, but there  
10 isn't any, there isn't anything else that you objected, and  
11 the police searched you and found this, this illegal knife,  
12 and you said that you were using it for your protection  
13 because the police don't protect you. That's what the  
14 report says, and I think there's something that you used to,  
15 to kill something, I couldn't read that; is that -- this  
16 looked like you --  
17 MR. MCKENNA: A goat.  
18 THE COURT: -- that you killed a goat?  
19 MR. MCKENNA: I think that's the way I read it.  
20 MR. D : Yeah.  
21 THE COURT: That's what the report says that you  
22 used the knife to kill a goat.  
23 MR. D : We came from the farm on that  
24 time.  
25 THE COURT: Yeah. Well, I, I just had difficulty  
26 whether it was a goat or a dog, but I finally, in looking  
27 closely on the handwriting --  
28 MR. D : A dog, a dog -- a goat.  
29 THE COURT: -- read that it was a goat. All  
30 right.  
31 MR. D : Can -- excuse me, sir.  
32 THE COURT: Yes.  
33 MR. D : Can she speak for me, please?  
34 THE COURT: Well, as long as -- all right, what do

1 you want to say? As long as --

2 MR. D : Cause I have no --

3 THE COURT: -- as long as she is --

4 MR. D : -- lawyer.

5 THE COURT: -- as long as she is translating what  
6 you want to say.

7 MS. J : I, I think I am.

8 THE COURT: All right. You stand up and you tell  
9 her what you want to say, and what, what language are you  
10 going to be speaking?

11 MS. J : It's English, but he doesn't  
12 understand it very well.

13 THE COURT: Then how, how could you -- how could  
14 he communicate with you, and not with, with me?

15 MS. J : I didn't say he couldn't communicate  
16 with you, but I understand his facial expressions, and I  
17 think I know him, and he looks like he's frustrated, and he  
18 doesn't understand everything that you're saying, so I'm  
19 going to ask for him to seek legal representation and come  
20 back at a, at a better time when -- because I don't think he  
21 understands everything that you're saying because by looking  
22 at him he's getting frustrated, and he doesn't know exactly  
23 the meaning of everything that you're saying, and all he's  
24 trying to get across is that the police -- he feel the  
25 police did something that shouldn't have been done, and  
26 that's what he's here to explain about, but can he come back  
27 when he has the proper -- because I'm pretty sure someone  
28 told him -- he had told me -- this is why I came with him,  
29 and not a lawyer, because someone had told him on the phone  
30 not to bring a lawyer, and not to bring witnesses at this  
31 time, because it's not for that. It's just to speak about  
32 whatever, whatever. I don't know, don't know all the legal  
33 terms for this, but I don't think he understand everything  
34 that you're saying, and it might be a good idea for him to

1 leave now, and go see a lawyer.

2 Is that true; do you not understand everything  
3 he's saying?

4 MR. D : I want to get my lawyer --

5 THE COURT: No, I'm satisfied that he understands.  
6 I spoke slowly and clearly --

7 MR. D : I, I know a little bit --

8 MS. J : A little bit?

9 THE COURT: Just a minute. And I -- just a  
10 minute. I, I -- you sit down. I'm satisfied that he  
11 understood everything that I said. Like your position is  
12 that the police make their own law, what they said in the  
13 report is not true, and what you just said is true. Your,  
14 your main complaint is that they called you a fucking ass --  
15 just a minute, you listen to me.

16 That's what your main complaint is, they called  
17 you that name, that they weren't very polite, and, and that  
18 you did nothing, you came out of the car, you say, and they  
19 just pushed you against the wall, and that's what you're  
20 saying, and I -- isn't that right?

21 And I'm saying to you that the, the police deny  
22 it, they said that you tried to pull away and that you also  
23 hit one of the police officers. You're nodding not.

24 You see, young lady, like, he's -- throughout that  
25 he has been communicating with me about understanding, and  
26 I'm satisfied that I haven't been talking to a brick wall.

27 Is there anything else you want to say?

28 This letter that you gave me from Dr. N of  
29 May 15 is addressed to Mr. Wright. When -- how did you get  
30 a copy of this?

31 MR. D : I went there to get that and then  
32 I pay \$65 for that.

33 THE COURT: Oh, you went to, to Dr. N ?

34 MR. D : Yes, sir.

1           THE COURT:    Oh, I see.    And that was a  
2 paraphrasing, it would appear, of that earlier letter, and I  
3 read that letter into the record and you paid \$65 for it,  
4 and, and you should have it back.  I don't know if counsel  
5 need a copy of it.  It's essentially the same, the same  
6 letter.

7           When -- let me ask you this, Mr. D.    .  When  
8 you say that -- when you got out of the police car, and you  
9 say that the police assaulted you, was there anyone else  
10 present that you could call as a witness besides these two  
11 officers?

12           MR. D           :  No, sir.

13           THE COURT:  Yes.

14           MR. D           :     Inside, inside the Safety  
15 building, sir.

16           THE COURT:  Yes.  All right.  So that there would  
17 be no additional witnesses that you can call --

18           MR. D           :  No, sir.

19           THE COURT:  -- and, and I already told you, and  
20 you know, at the scene, where you were in the car, there  
21 were the three civilian witnesses, and they give evidence  
22 that supports the police side as to your being in the car  
23 with the ignition, and in your -- and sleeping, so that  
24 there, there are no additional witnesses that you --

25           MR. D           :  I have -- excuse me, sir.  I have  
26 a witness there.  The caretaker of that building.

27           THE COURT:  Yes.

28           MR. D           :  I don't know where he is now.  
29 He's gone.

30           THE COURT:  What -- all right.  What, what did he  
31 see?

32           MR. D           :  No key in the ignition, the motor  
33 is not running.

34           THE COURT:  Was he, was he at the, was he at the

1 car, or was he in his, in his --

2 MR. D : No, outside.

3 THE COURT: He was outside, but there were these  
4 other witnesses, one witness said he saw the key in the  
5 ignition, and he actually -- just a minute. But he actually  
6 says he saw -- he heard you start the car.

7 MR. D : No, sir.

8 THE COURT: Well, that's what -- you may disagree  
9 and, and I suggest to you that maybe the alcohol does not  
10 make you so reliable as to what happened, because there's a  
11 man who's got nothing against you it seems, he says that you  
12 -- that he was afraid that you were going to drive away, and  
13 then you went back to sleep.

14 MR. D : I don't know where -- my witness,  
15 my witness --

16 THE COURT: Yes.

17 MR. D : -- is the superintendent of that  
18 building. I don't know where he's now. He's gone.

19 THE COURT: No, but you say that he was outside  
20 the car, and you -- according to the information the police  
21 officer actually looked directly in to make sure where the  
22 ignition key was. When you're outside the car, from the  
23 outside of the car when your window's almost all up, you  
24 can't see whether there's an ignition in the key (sic) or  
25 not, but -- so that I can't see how this witness could help  
26 you, but I'm simply asking whether there are any additional  
27 witnesses that could, that could help you, if there was a  
28 hearing, a full hearing, before a provincial court judge,  
29 and you're saying that there aren't any additional  
30 witnesses, and even this caretaker, and I don't see how this  
31 caretaker could help you, but you say you don't even know  
32 where this caretaker is?

33 MR. D : The caretaker told me, I'm going  
34 to be one of the witness, and then my witness is gone, I



1 don't know where is he.

2 THE COURT: Well, that's right. You say you don't  
3 know where he is now?

4 MR. D : But I know he's the caretaker of  
5 that building. I went back there, he's not caretaker any  
6 more there. I don't know where is he.

7 THE COURT: Is there anything else that you want  
8 to say?

9 I asked him.

10 MR. D : I need to get my lawyer.

11 THE COURT: Well, you, you had an opportunity.  
12 This is for review. I had all the information. You said  
13 there are no further witnesses, and -- see there's a lot of  
14 information for me to read. The Commissioner's here, the  
15 two lawyers are here, you had ample opportunity to get a  
16 lawyer, and I'm not going to permit an adjournment. I feel  
17 that, that I was able to communicate to you effectively,  
18 and, and I'm satisfied that the Commissioner came to a  
19 correct conclusion. His finding was a reasonable one and  
20 anything that you've said, and I'm satisfied that you  
21 communicated to me, did not satisfy me that he made a  
22 mistake, and that is my decision, that I uphold the  
23 Commissioner's finding, and as far as I'm concerned that  
24 concludes the matter.

25 THE CLERK: Order, all rise.

26 THE COURT: All right.

27 THE CLERK: This hearing is now closed.

28 MR. MCKENNA: Typically at the end of these types  
29 of hearings --

30 THE COURT: Oh, yes, of course.

31 MR. MCKENNA: -- publication ban pursuant to --

32 THE COURT: Yes, publication ban.

33 MR. MCKENNA: -- Section 13(4.1) --

34 (PROCEEDINGS CONCLUDED)

JUNE 15, 2000

[25]

CERTIFICATE OF TRANSCRIPT

I, MARLEEN BELL, hereby certify that the foregoing pages of printed matter, numbered 1 to 24, are a true and accurate transcript of the proceedings recorded by a sound recording device that has been approved by the Attorney-General and operated by court/clerk, Judy Cohn, and has been transcribed by me to the best of my skill and ability.

*Marleen Bell*

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