

**PROVINCIAL COURT OF NOVA SCOTIA**

**Citation:** *R v. MacInnis*, 2014 NSPC 106

**Date:** 2014-04-17

**Docket:** 2707573-2707575

**Registry:** Port Hawkesbury

**Between:**

Her Majesty the Queen

v.

Deborah Ann MacInnis

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**DECISION**

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**Judge:** The Honourable Judge Laurel Halfpenny MacQuarrie

**Heard:** April 16 and 17, 2014, in Port Hawkesbury, Nova Scotia

**Decision:** April 17, 2014

**Charges:** Section 270(2), 145(3) and 733.1(1) of the **Criminal Code**

**Counsel:** Cheryl Schurman, for the Crown  
Kevin Patriquin, for the Defence

**By the Court:**

[1] Deborah Ann MacInnis is charged on an information that:

On or about the 9<sup>th</sup> day of March, 2004, at, or near Port Hawkesbury, Nova Scotia, did assault Constable Tammy Wade and Constable Deepak Prasad, peace officers engaged in the execution of their duty contrary to Section 270(2) of the **Criminal Code**.

And furthermore at the same time and place did being at large on her undertaking given to a judge and being bound to comply with a condition of that undertaking to wit keep the peace and be of good behaviour without lawful excuse failed to comply with that condition by assaulting Constable Tammy Wade and Constable Deepak Prasad contrary to Section 145(3) of the **Criminal Code**.

And furthermore at the same time and place did, while being bound by a probation order made by the Nova Scotia Provincial Court on January 28, 2013, failed without reasonable excuse to comply with such order, to wit keep the peace and be of good behaviour contrary to Section 733.1(1) of the **Criminal Code**.

[2] This matter came on for trial before me yesterday. It was agreed by counsel that the probation order and undertaking that form the subject matter of counts two and three were properly exhibited before the Court and in force and effect on March 9<sup>th</sup>, 2014. Ms. MacInnis is presumed innocent throughout these proceedings and the burden of proof is on the Crown to prove all elements of all of the offences beyond a reasonable doubt.

[3] The Court heard evidence from Constables Prasad and Wade. The first issue in this case is whether the arrest of Ms. MacInnis at Mr. MacDonald's residence on the night of March 9<sup>th</sup>, 2014 was lawful. Cst. Prasad and Wade testified that they

attended at this residence as a result of a 911 hang up call. Once they attended at the residence at 2 Nova Court here in Port Hawkesbury, Nova Scotia they located a John MacDonald determined to be the owner or person in charge of that residence as well as Ms. MacInnis, the defendant and she was as I take it a visitor to that residence. According to Cst. Wade, Mr. MacDonald told her that the two of them, Ms. MacInnis and Mr. MacDonald had been drinking and that Ms. MacInnis' behaviour changed, she became upset and emotional and he, that is Mr. MacDonald wanted her to leave the residence and he was seeking the police assistance in that regard. Both officers were dressed in full RCMP issued clothing.

[4] Ms. MacInnis is someone known to both officers and well known according to their evidence. They both stated that she is a different person when she is drinking and when she is not.

[5] Within moments of being in the residence Cst. Prasad was able to determine that Ms. MacInnis was highly intoxicated. Her words were slurred, she smelled of alcohol and she was laughing uncontrollably. This latter characteristic being one that is typically exhibited by Ms. MacInnis according to Cst. Prasad when she is intoxicated. Ms. MacInnis made some sexually inappropriate comments to the

officers at this point. She stood up and she needed assistance. Cst. Prasad described her as extremely intoxicated.

[6] Ms. MacInnis' history as testified to by both officers is one of volatility. She can go from being calm to being out of control and inconsolable within seconds when she is so intoxicated. She also has a history of violence and in particular towards the police. Cst. Prasad has been assaulted by Ms. MacInnis in the past for which Ms. MacInnis has been convicted.

[7] Both officers testified they had serious concerns that if Ms. MacInnis were permitted to go home several possibilities loomed. They were concerned that she would commit further offences such as public intoxication or causing a disturbance, that her history of drinking has shown such a pattern, that they had made inquiries as to whether someone was at her home to take care of her and were advised that her son was in detox. They were aware that her partner, or former partner was in custody and they specifically asked Ms. MacInnis if there was someone that they could turn her over to so to speak, or if there was someone at her residence and the contrary was indicated. This was mid-March, it was cold and it was icy. These conditions were observed by both officers and Ms. MacInnis should she leave on her own accord had a series 100 highway to cross and a

lengthy walk to another area of the town. It was felt by both officers that this is something, because of her condition she would not be able to do safely.

[8] Both officers expressed grave concerns for her personal safety and her well-being in addition to the likelihood that she would as in the past commit further criminal offences. They agreed one with the other that Ms. MacInnis should be arrested for a breach of the peace violation in anticipation as to what would take place should she not be. Cst. Prasad expressed the view that he knows that this is something that police officers can have tremendous power when they use it and it is to be used sparingly. He felt this was without a doubt such a situation for the use of arresting Ms. MacInnis for what they jointly felt could be the consequence. Both police officers indicated Ms. MacInnis is a high risk individual in terms of further criminal offences, in terms of harm to herself or possibly medical distress because of her extreme intoxication and because she did not have another responsible person to care for her.

[9] Cst. Prasad said that it is the job of the RCMP and he, as an officer therein to protect people including Ms. MacInnis in these circumstances. He agreed with Mr. Patriquin that the RCMP do not arrest every individual who they find to be intoxicated but for the reasons he stated she was not an intoxicated person who was

without a history of further criminal or quasi-criminal behaviour or who could reasonably or safely be taken home and left alone. It was the evidence of Cst. Wade that Ms. MacInnis needed to be in a controlled environment.

[10] Mr. Patriquin argues that the police acted appropriately in responding to the 911 hang up however had no basis to arrest Ms. MacInnis for an anticipated breach of the peace. That the evidence before the Court is that she was in a home and agreeing to leave. That this was not a breach of the peace nor was there any statement or outward intention indicated by her so as to suggest to the police she was going to engage in criminal or quasi-criminal activity. He argues that the RCMP did not have enough to suggest that her past conduct would be repeated and that this situation was not covered by any authority that they are vested with.

[11] Mr. Patriquin referred the Court to the well-known decision in **Hayes v. Thompson and Bell**, 1985 Carswell BC 36 for support of his position. Thompson however goes on to confirm notwithstanding Justice Hutcheon's feelings that such should come by a legislation, that the common law right to arrest for anticipated breaches of the peace is maintained. This is also the opinion of the Nova Scotia Court of Appeal decision in **Reid v. DeGroot and Brown**, 1964 42 CR 252 and as outlined at paragraph 9 of the **Thompson** decision.

[12] As noted at page 13 and 14 of **Thompson** members of the RCMP swear of affirm an Oath of Allegiance and Office pursuant to the RCMP act. Such include duties assigned and those duties are based on their respective Provincial Legislation and powers and duties as outlined. Justice Hutcheon says that such includes, “The common law power to arrest for an apprehended breach of the peace”.

[13] Here in Nova Scotia section 42 of the Nova Scotia Police Act which covers both RCMP and Municipal Police and I guess SIRT officers at this point as well includes powers and duties pursuant to legislation as well as the common law and that is specifically stated in section 42.

[14] The Crown refers the Court to the decision in **Brown v. Durham Regional Police Force** 1998 CarswellOnt 5020 and paragraph 60 and 61 therein:

It is well established that in acting in furtherance of their duties, the police need not point to express statutory authority for every action they take which imposes some limitation on individual liberties. In *Dedman, supra*, Le Dain, J., for the majority, wrote, at p.32:

It has been held that at common law the principal duties of police officers are the preservation of the peace, the prevention of crime, and the protection of life and property...

The common law basis of police power has been derived from the nature and scope of police duty.

61 In considering the scope of the common law police power, LeDain J., at p.33, adopted the two-step approach taken in *R. v. Waterfield*, that approach requires first, that the police be acting in the execution of their duties...

And Mr. Patriquin, as a side note agreed that that was in fact correct in this case in terms of responding to the 911 call.

...and second, that in all the circumstances, the police conduct constitutes a justifiable interference with individual liberty. In *R. v. Simpson*, at p.499, the analysis required at the second stage of the *Waterfield* approach was described in these terms:

...the justifiability of an officer's conduct depends on a number of factors including the duty being performed, the extent to which some interference with individual liberty is necessitated in order to perform that duty, the importance of the performance of that duty to the public good, the liberty interfered with, and the nature and extent of the interference. ...

63 In determining whether police conduct comes within the common law ancillary doctrine, the nature of the police duty giving rise to that conduct is important. **The police have a duty to prevent crime and keep the peace.** They also have a general duty to 'protect life' which extends beyond their crime prevention and peacekeeping functions. (emphasis added)

[15] Finally in the **Khatchadorian** case 1998 CarswellBC 1735 Mr. Justice Hall for the British Columbia Court of Appeal states at paragraph 13:

I suppose what is comes to is that the police must always have reasonable basis to invoke the power of arrest for an alleged breach of the peace....

[16] In Ms. MacInnis' case both police officers articulated fairly their concerns regarding Ms. MacInnis should she leave the MacDonald residence. These were not frivolous or unsubstantiated concerns. They were concerns based on their first hand dealings with Ms. MacInnis in the past which included her mental health status, her volatility while intoxicated, other assaultive behaviour including that towards police and other general criminal behaviour. Furthermore they queried her



as to the availability of a responsible person to oversee her and no one was attainable. Ms. MacInnis according to both officers was simply not drunk but was extremely intoxicated to the point they feared for her physical well-being and health.

[17] In all these circumstances I find that Cst. Prasad together with Cst. Wade acted on a reasonable basis in the arrest of Ms. MacInnis for what he reasonably believed would be the consequence or consequences should she be permitted to leave the Mac Donald residence.

[18] On the issue of whether spitting as described by both officers by Ms. MacInnis constitutes an assault this Court rules and relies on the reasoning in **R v. EBK** 2002 YKYC at page 6 at paragraph 38 therein.

[19] In all of the circumstances Ms. MacInnis had been arrested by law and her conduct by spitting according to that decision and which I clearly agree with in all of the circumstances was an assault. I find Ms. MacInnis guilty on that charge and the two subsequent related breach offences.

Laurel Halfpenny MacQuarrie, JPC.