

**IN THE PROVINCIAL COURT OF NOVA SCOTIA**

**Citation:** R. v. Parr, 2007 NSPC 24

**Date:** May 15, 2007

**Docket:** 1583371

**Registry:** Halifax

**Between:**

Her Majesty the Queen

v.

Shane Parr

**DECISION**

**Judge:** The Honourable Judge Jamie S. Campbell

**Heard:** July 6, 2006, October 13, 2006 and April 11, 2007, in  
Halifax, Nova Scotia

**Charge:** Criminal Code 267 (b)

**Counsel:** Robert MacCarroll, for the Crown  
Duncan Beveridge, for the Defence

## **By the Court:**

[1] Bouncers have probably been a feature of the Halifax bar and tavern scene since 1749. They are now more formally known as security staff to reflect a more professional attitude. There is, however, still little gentile about what they are hired to do.

[2] Shane Parr is a bouncer. He has been charged with assault causing bodily harm contrary to section 267(b) of the Criminal Code. The charge arises from an incident in the early morning hours of July 16, 2005, when Michael Murphy was forcibly ejected from the establishment where Mr. Parr is employed and then restrained on the street while waiting for the police.

### Facts:

[3] There were a number of witnesses who could testify as to what happened when Mr. Murphy was on the street being restrained. What caused Mr. Murphy to have been ejected from the bar and the course of events that brought him to the street are another, perhaps less clear and perhaps less significant matter.

[4] On the night of July 15, 2005 Michael Murphy and his friends Jody McNamara and Brian Baldock went downtown for a night out.

[5] They arrived at 12:15 am at an establishment known as the Dome, which is a complex of bars all under the same roof.

In the bar:

[6] Mr. Murphy's evidence was that he had gone to the men's washroom. He overheard someone make a remark about how difficult the bouncers were at the Dome and voiced his agreement. He came out of the washroom sometime between 1:15 am and 1:30 am. He said that he heard a doorman say "Excuse me, you're going to have to leave". He presumed that this was not directed at him. He was then grabbed by the arm by the doorman/ bouncer who he identified as being the accused, Mr. Parr. Mr. Murphy's evidence was that Mr. Parr then accused him of having been in the women's washroom and told him that he would have to leave.

[7] Mr. Murphy recalled that at that time he wanted to go to tell his friends that he was being thrown out of the bar. He was then grabbed by the thumb of his right hand, with his arm put behind his back and frogmarched down the stairs to the entrance of the bar.

[8] Mr. Parr for his part denied having had any involvement with Mr. Murphy at this point. Mr. Parr maintained that he did not become involved with Mr. Murphy until Mr. Murphy had already been removed from the bar.

[9] Mr. Parr's evidence is consistent with that of Mr. Christopher Wilmot who was then the head of security at the Dome. He confirmed that Mr. Parr had been scheduled to work that night and was noted on the schedule as being a "floater". Mr. Wilmot heard a radio call about a patron

being held in handcuffs waiting for police to arrive. When he came upon the scene Mr. Murphy was being held by two staff members, Brian Morton and Adam Cooper. Mr. Parr arrived moments later and replaced Mr. Morton holding Mr. Murphy.

[10] That is consistent with the evidence of Constable Jason Wilmot who observed the recording of the incident from the security camera operating on the street. That showed Mr. Murphy being held by two members of staff, then Mr. Wilmot arriving and shortly after, Mr. Parr arriving to relieve one of the other members of staff in restraining Mr. Murphy.

[11] The security policy of the bar requires that the security staff person who is involved in ejecting the patron not be the one who holds him for police to arrive. The policy is intended to avoid inflaming already potentially volatile situations. The version of events given by Mr. Parr and Mr. Wilmot is consistent with circumstances in which that policy had been followed.

[12] The only evidence that places Mr. Parr with Mr. Murphy inside the bar is Mr. Murphy's testimony. He said that Mr. Parr was the person who spoke to him, marched him downstairs, held him and inflicted his injuries. Given the contrary evidence of Mr. Parr and Mr. Wilmot and the difficulties with regard to Mr. Murphy's later identification of the individual involved, the more reliable evidence is that Mr. Parr did not become involved with the situation until Mr. Murphy was out on the street.

On the street:

[13] Once he was taken outside, Mr. Murphy said that he went to his knees and got up quickly.

He was agitated and asked for the bouncer's name so that he could lodge a complaint. He described the bouncer as being uninterested and having said, "Get out of here, you're an asshole".

[14] Mr. Murphy evidence was that he insisted on getting the bouncer's name. At that point, he was put against the outside wall of the bar, by a person who he was "pretty sure" was the first bouncer he had spoken with. That person was replaced by another who he says held him for a while. Mr. Murphy's evidence was that he was concerned about re-injuring his shoulder and tried to free his hands from behind his back. He felt his right upper arm being twisted and pinched.

[15] Mr. Murphy acknowledged that at this point in the process he was very angry and very rude. He said that he was not given a reason for being detained, but was told that he was being held for the police.

[16] He was then put to the sidewalk, face down and felt something being put around his wrists. He also felt the weight of someone on his back.

[17] Mr. Joel Hitchcock was working the parking garage across the street. He saw the doorman or bouncer known as “Sugar”, and whom he identified as the accused, Mr. Parr,

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involved in an incident in the early morning hours of June 16, 2005. He saw Mr. Parr assisting one of the other doormen in controlling a person who was being held. Mr. Hitchcock’s evidence is consistent with Mr. Parr’s evidence and with Mr. Murphy’s. He places Mr. Parr as one of the staff members restraining Mr. Murphy.

[18] The person was handcuffed, struggling and loudly protesting. They put the person down to the ground. He was not, on Mr. Hitchcock’s evidence, thrown forcefully to the ground, though it does not appear to have been done daintily. The person was held down for some time, continuing to struggle. Mr. Hitchcock saw no blows being administered. The person, Mr. Murphy as it turns out, was then released. As he left Mr. Hitchcock smelled alcohol from him as he walked by and noted that he appeared to have been drunk.

[19] Donna Maclean was the night manager for the Prince George Hotel, which is located across Market St from Cheers bar, which is part of the Dome complex. She heard screaming from the person being detained. She found the screaming disturbing and unusual. The person was screaming that he had done nothing wrong and was being hurt. The screaming lasted, in her estimation, about 25 to 30 minutes. She saw the person pinned to the ground for about 15 minutes. During that time she did not see the person struck. Ms. MacLean testified that after the person was released by the bouncers he appeared to be walking straight and appeared to be

sober.

[20] Mr. Murphy testified that Gary Muise the bar manager arrived. Mr. Murphy said that he asked Mr. Muise if he could get the bouncers to untie him. Mr. Murphy said that Mr. Muise told

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him that if he would walk away and cause no more problems he would be released. Mr. Murphy's evidence was that he was then released.

[21] Mr. Gary Muise testified that he had indeed attended the scene, after hearing about it over the radios used by his security staff. He testified that Mr. Murphy was given the opportunity to leave if he calmed down and promised to go without causing more trouble. Mr. Muise's evidence was that Mr. Murphy initially would not agree to that and Mr. Muise considered Michael Murphy's behaviour to have been irrational. Mr. Murphy did finally agree and was let go. That evidence was consistent with the testimony of both Mr. Parr and Mr. Wilmot.

[22] It is clear that Mr. Murphy was struggling and highly agitated. He was under the influence of alcohol, though his level of intoxication is impossible to determine. He maintains that he was sober, as does his friend Jody McNamara. Ms. Maclean had the same view. Mr. Hitchcock believed he was drunk. Based on his behaviour and the hour Mr. Muise and Mr. Parr both believed he was intoxicated to some extent. Constable Murphy who arrived later, also believed

that Mr. Murphy was drunk and testified that he told Mr. Murphy that he could be arrested for being drunk in public. Mr. Steve Jarrett, another security officer believed him to be extremely drunk.

[23] Whether or not Mr. Murphy was in fact drunk he was resisting the restraint and struggling

quite forcefully. Mr. Murphy was brought to street level and continued to resist. He was restrained against the wall by Mr. Morton and Mr. Cooper. Mr. Parr arrived to relieve Mr. Morton and was

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told by his coworkers that Mr. Murphy was being held because he had attempted to hit a doorman. Mr. Parr held Mr. Murphy against the wall until he and Adam Cooper were instructed by Chris Wilmot to put Mr. Murphy to the ground. While on the ground Adam Cooper took control of Mr. Murphy's upper body and Mr. Parr held his legs. He was held in that fashion until Gary Muise said that Mr. Murphy should be released.

Police involvement:

[24] While being restrained, Mr. Murphy had asked to speak with another member of the security staff, Steve Jarrett, whom he knew. Mr. Jarrett was described by Mr. Murphy as still being a friend, with no reason to fabricate information against him. Mr. Murphy testified that he went to Mr. Jarrett to tell him what had happened "for his own knowledge".



[25] Mr. Jarrett testified that Mr. Murphy had come running around the corner of the street to the entrance where he was working that night. Mr. Murphy explained to him that he had been beaten up by a doorman. He said that Mr. Murphy was upset and agitated and related how he had been ejected from the bar. He described Michael Murphy as been “absolutely extremely drunk”.

[26] Mr. Jarrett was concerned for his friend’s safety and wanted to make sure he got home. He gave Mr. Murphy his last \$20 and hailed a cab for him. Instead of getting into the cab, Mr. Murphy began running down Argyll Street in what Mr. Jarrett described as a “stereotypical drunk running” with his arms swinging to the sides.

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[27] Mr. Murphy walked back to the fraternity house on Robie Street where he found Mr. McNamara, who had come home earlier. According to Mr. McNamara’s evidence Mr. Murphy was very agitated about his altercation with the security staff and was claiming at that time that he had been beaten up. Mr. MacNamara recalled that he initially thought there must have been a reason or an explanation for that.

[28] Mr. MacNamara drove Mr. Murphy back downtown to find out what had happened.

[29] Police were dispatched to the bar at 3:16am. According to the evidence of Constable Justin Murphy, he and his partner, Constable Shaun Carvery, were unable to locate the person being held in custody by security guards at the scene. They spoke with the staff at the door of he bar and cleared the call. That simply meant that no further action was required. Mr. Murphy had

already been released and sent on his way.

[30] While still in the area the two police officers, Constables Murphy and Carvery, were approached by Michael Murphy and Jody McNamara. Constable Murphy concluded that Mr. Murphy was intoxicated at that time. Constable Murphy described him as being excited and belligerent. Constable Murphy warned Mr. Murphy that if he did not calm down he would be arrested for being drunk in a public place.

[31] Mr. McNamara was described as calm and sober. Mr. McNamara apologized to the police for his friend's behaviour.

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[32] Mr. McNamara recalled that his friend Mr. Murphy was emotional and upset but was not intoxicated.

[33] Mr. Murphy wanted the police to investigate what he claimed to be an assault on him by one of the door security staff. Constable Murphy told Mr. Murphy that if he wished to have the matter investigated he should either come to the police station or call when he was sober.

Issues:

1. To what, if any extent, was the accused, Shane Parr involved in use of force against Michael

Murphy?

2. To the extent that Mr. Parr did use force against Michael Murphy was that force justified?

Identification:

[34] Mr. Murphy did not identify a particular person to Constable Murphy. He gestured toward

the door of the bar, with no specific identification. He provided a description of the person alleged to have assaulted him in the statement to police given a few days later. In that statement he described the person as being a Caucasian male, approximately 5'8" to 5'11", 175 to 180 pounds, reddish blonde, short cut hair, no facial hair, wearing corrective glasses and appeared to be relatively new to the job. He was taking directions from another bouncer. That description does not at all fit the description of the accused, Mr. Parr.

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[35] Mr. McNamara also testified that Mr. Murphy pointed out to him the bouncer who had assaulted him. He could not remember whether this person was accused. Furthermore, the description that Mr. Murphy provided, of the person identified to him, was of a white male, in his 20's, 6 feet tall, with reddish brown hair, glasses, a little chubby, at least 200 pounds maybe a little less, clean cut, clean shaven and wearing black staff shirt and dark pants. That description does not match the description of Mr. Parr.

[36] Mr. Murphy's evidence as to who was involved is at best equivocal. He picked Mr.

Parr out of a photo lineup a year after the night in question and later identified him at trial as the person who removed him from the bar initially and held him for the duration. His identification of Mr. Parr however has not been consistent nor is it consistent with other more reliable evidence.

[37] Mr. Murphy went back to the bar on the night of the incident along with his friend Mr. MacNamara. He described to Mr. MacNamara the person whom he claimed to have assaulted him. The description does not match that of Shane Parr.

[38] Mr. Murphy gave a description of the person to police. That description did not match the description of Mr. Parr but does match the description he had given earlier to Mr. MacNamara.

[39] Mr. Murphy said that Shane Parr had ejected him from the bar and was the person who held him while waiting for the police. That would not be consistent with the policy of the bar that employs Mr. Parr. The doorman who ejects the patron is not the same doorman who restrains the patron until the police arrive. It is also not consistent with the evidence of Mr. Parr and of Chris Wilmot. Mr. Wilmot observed Mr. Murphy being held by Brian Morton and Adam Cooper. It is not consistent with the evidence of Constable Withrow who testified that the recording of the incident shows two individuals holding Mr. Murphy and one of them being

replaced by Mr. Parr.

[40] Mr. Murphy's evidence as to identification of Mr. Parr as the person involved throughout is not reliable. His earlier descriptions of the person involved do not match Mr. Parr and Mr. Parr was not identified until a year later in a photo lineup. That lineup did not include pictures of anyone else involved in the incident.

[41] There is not sufficient reliable evidence to conclude that Mr. Parr was the person who was involved from start to finish. On the contrary, there is credible and reliable evidence to show that Mr. Parr was in fact not involved until Mr. Murphy was brought out onto the street. Mr. Parr was involved only in holding Mr. Murphy for the police to arrive.

[42] Mr. Murphy's evidence allowed for little doubt in his own mind as to whether Mr. Parr had been involved from the outset. There is reliable evidence that in this regard he was wrong. His level of certainty in implicating Parr affects the extent to which his evidence can be relied upon in considering the manner in which he was held and the identity of those holding him.

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[43] There is no reliable evidence to establish proof that Shane Parr did anything other than simply restrain Michael Murphy while waiting for police to arrive.

2. Reasonableness of the force used:

[44] Shane Parr came upon a situation in which two other individuals were holding Mr. Murphy. Mr. Parr understood from them that Mr. Murphy had taken a swing or made an aggressive move toward another doorman and that he was being held for the police.

[45] Section 494(1)(a) of the Criminal Code authorizes a private citizen to arrest a person whom he “finds committing an indictable offence”. Assault is a hybrid offence and for this purpose can be considered to be an indictable offence. Mr. Parr though did not find Mr. Murphy committing an offence. He came upon a scene where Mr. Murphy was being held for allegedly having committed the offence of assault. He was told that this has taken place and would, were he a police officer, have had reasonable grounds to have made an arrest under section 495(1)(a). He is however, not a police officer.

[46] Section 494(1) (b) provides that a person may make an arrest if he believes on reasonable grounds that the person being arrested has committed a criminal offence and is escaping from and freshly pursued by persons who have the lawful authority to arrest the person. Therefore, when a person has reasonable grounds, he may assist those whom he reasonably believes have the lawful authority to make an arrest in exercising that authority. Continuing restraint is part of

the process of making an arrest. The power to arrest and to exercise force in doing so, includes the power to hold the person.

[47] There is little to distinguish one who assists in restraining a person whom he believes to

have been lawfully arrested and one who arrests a person who is escaping from those who have arrested him. It would be unusual to say the least, if a person could legally assist in arresting a person who is fleeing but could not assist in preventing flight.

[48] Mr. Parr in this case, understood from Mr. Morton and Mr. Cooper that they had legally arrested Michael Murphy for an assault.

[49] In any event, the Crown did not assert that Mr. Parr acted illegally in using any force against Michael Murphy but argued that the force used was unnecessary and unreasonable. Section 25(1) of the Criminal Code provides that a private person acting on reasonable grounds in doing anything he is authorized to do in the administration or enforcement of the law, is justified in using as much force as is necessary for that purpose.

[50] Mr. Murphy did suffer bruises, contusions and a dislocated shoulder. The injuries sustained were not of a trifling or transient nature. The injuries in and of themselves do not answer the questions of whether the force used was reasonable.

[51] While some latitude is permitted to police officers who are under a duty to act the same latitude is not shown to those who do not operate under the same duty or in the same circumstances. *R. v. Assante- Mensah* [2003]S.C.J. No. 38, 2003SCC 38, [2003] 2 S.C.R. 3.

[52] The amount of force permitted “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 the duty to the public good, the liberty interfered with and the nature and extent of the interference.” R. v. Simpson (1993), 79 C.C.C.(3d) 482 ( Ont. C.A.)

[53] As is often the case, much depends on context. Lord Bowen’s “man on the second deck of the Clapham omnibus” would have to be invested with extraordinary powers of circumspection to be able to mentally list, assess and weigh the multitude of factors that ought to be considered whenever reasonableness is called for.

[54] As Elbert Hubbard famously said “ Every man is a damn fool for five minutes a day. Wisdom consists in not exceeding the limit.” The law does not allow for that five minute grace period.

[55] While factors can be enumerated, and considerations weighed, one of the considerations that should form the context is, paradoxically, the complexity of the enumeration and weighting of factors. To some extent that is intuitive. There is a recognition that after the fact analysis

cannot replicate the circumstances with which the individual whose actions are being assessed was confronted. Whenever factors are calmly listed they may suggest that the person on the scene should have been able to address them, which in some cases at least, may be comparing



reflection with reaction, or measuring an intuitive response using tools of logic. Part of the context is more or less static. Part of the context is subject to constant change. Mr. Parr's status remains the same when acting as bouncer. That is static. The reaction of each person is different. That calls for moment by moment processing of information.

[56] Mr. Parr is not a police officer but a privately hired bouncer. While he was not acting in a public duty he was acting in a capacity that is intended to provide a level of protection to bar patrons and the public. Those who profit from the sale of alcohol bear some responsibility for the consequences and the presence of security staff is intended to go toward meeting that duty.

[57] Mr. Parr was restraining a person who, if not drunk, was at least agitated and not in the least cooperative. In restraining Michael Murphy he was obligated to protect Mr. Murphy from himself and to protect others from Mr. Murphy. Mr. Parr understood that Mr. Murphy had committed an assault. It was neither the time nor the place to enter into an inquiry about the circumstances surrounding the allegation.

[58] Mr. Murphy was struggling. Whether he was struggling in order to simply run away or to return to the alleged victim of the assault was not something the staff would have known or should reasonably have known. To prevent injury Michael Murphy was held against the outside

wall of the building. That was a reasonable course of action. The more he struggled the more force was required to prevent him from injuring himself.

[59] At that point, he could have remained calm, and waited for the police to arrive. He did not. He was belligerent and continued to struggle. If he were indeed falsely accused, that may have been an understandable if not entirely prudent response.

[60] While Michael Murphy was struggling he was a danger to himself and others. He had after all been accused of assault and appeared to have been drunk. The security staff placed handcuffs on him. That was reasonable in light of his continued resistance. Mr. Murphy was upset. He maintained that he had every right to be upset. From Mr. Parr's perspective however, he was dealing with a person who was a potential danger to himself and others.

[61] The bouncers told Mr. Murphy that if he did not calm down he would be placed on the ground. He continued to struggle. He was placed on the ground. He was not thrown to the ground but was brought to the ground according to standard procedures. The ground was cold and wet and he was dressed in a tee shirt and jeans. It was uncomfortable and unpleasant. Mr. Parr and his coworkers had to assess the risk of allowing him to remain on his feet. While on his feet he continued to present a higher risk to himself and others.

[62] Once he was brought to the ground, once again, Mr. Murphy could have taken a different course of action. Instead, he continued to resist. He required two bouncers to restrain him.

[63] Once the decision had been made to arrest and restrain Mr. Murphy some force would be required. The extent of that force was to a larger extent dependant on Mr. Murphy and his level

of resistance. He resisted vigorously. His injuries to some extent reflect that. Mr. Parr's choice, given that resistance, was to continue to exert force to maintain control or to let Mr. Murphy go, in his clearly very agitated state. Mr. Parr's decision was to maintain control by increasing the level of force. At that time, in that location, in light of the allegation of assault, and in light of Mr. Murphy's continued vigorous resistance and agitated state Mr. Parr's escalation in the use of force was measured and neither unreasonable nor unnecessary.

[64] I find him not guilty of the offence as charged.

Judge Jamie S. Campbell

Halifax Provincial Court