

NOVA SCOTIA POLICE REVIEW BOARD

IN THE MATTER OF: The *Police Act*, Chapter 31 of the *Acts* of 2004 and the Regulations made pursuant thereto

- and -

IN THE MATTER OF: An appeal filed by **Jeanette Rogers**, Complainant, against Cst. Ryan Morris, Cst. Justin Murphy and Cst. Donna Lee Paris, all of Halifax Regional Police, requesting a review of a decision made by Supt. Colleen Kelly dated November 22, 2018.

BEFORE: Hon. Simon J. MacDonald, Vice-Chair
Patrick H. Curran, Board Member
John Withrow, Board Member

COUNSEL: Jason T. Cooke & Ashley Hamp-Gonsalves, Counsel for Jeannette Rogers
Brian Bailey, Counsel for Constables Justin Murphy & Donna Lee Paris
James Giacomantonio, Counsel for Constable Ryan Morris
Edward Murphy, Counsel for HRP

HEARING DATES: June 21 – 25, 28 & 29 and September 8, 2021

DECISION DATE: November 29, 2021

INTRODUCTION

[1] This matter came before the Nova Scotia Police Review Board due to circumstances resulting in the unfortunate death of 41-year-old Corey Rogers during the overnight June 15 – 16, 2016, following his arrest by officers of the Halifax Regional Police.

[2] Mrs. Jeannette Rogers, Corey Rogers' mother, filed a Complaint against Constables Justin Murphy, Donna Lee Paris and Ryan Morris under the provisions of the *Police Act* Regulations (N.S. Reg 230/205) concerning their actions in relation to Corey Rogers on the night of his death.

TIMELINE

[3] The Board has reviewed the evidence and sets forth the following timeline for guidance as to the occurrence of events on June 15 and 16, 2016 from the time that Constable Ryan Morris arrives at the IWK until the death of Mr. Corey Rogers on June 16, 2021 at the Prisoner Care Facility (PCF).

June 15, 2016:

On or about:

10:37 PM – Cst Ryan Morris receives a call from dispatch requesting presence at the IWK in relation to a reportedly intoxicated man there to see his baby and refusing to leave.

10:40 PM – Cst Morris arrives on scene at the IWK.

10:43 PM – Constables Murphy and Paris arrive on scene at the IWK.

10:45 +/- PM - (Approximate) Constable Morris arrests Corey Rogers and places him in the police car.

10:50 PM – Cst Morris radios dispatch that Corey Rogers is banging his head on the plexiglass divider between the front and back seats of the police vehicle (sometimes referred to as “silent patrolman”).

10:55 PM – Cst Morris arrives at the PCF with Corey Rogers.

10:56 PM (Approximate) - Cst Murphy and Paris arrive at PCF very shortly after Cst Morris.

11:00 PM – Special Constable informs the officers that Mr. Rogers could be brought into the PCF.

11:01 PM – Cst Paris places the spit hood on Mr. Rogers.

11:03 PM – Constables Murphy, Paris and Morris carry Corey Rogers into the PCF.

11:07 PM – Constables Murphy and Morris pull Corey Rogers to Cell 5.

11:08 PM – Cory Rogers is placed in Cell 5.

11:09 PM – Constables Paris, Murphy and Morris return to the Booking Area.

11:12 PM – Constables Murphy, Paris and Morris depart the PCF.

11:33 PM – Corey Rogers begins vomiting.

11:41 PM – earliest time Corey Rogers could have died (Report of Post Mortem Examination, Tab 6, p.161).

June 16, 2016:

On or about:

1:53 AM – EHS notes death was declared at 1:53 AM (Report of Post Mortem Examination)

The Post Mortem Examination report, Tab 6, p.161 states, “The video labeled “PCF” of booking and his jail cell shows:”

- 11:06 PM fluid resistant hood over head and face, designed to prevent transmission of body fluids in place at approximately 11:06 June 15, 2016.
- 11:08 PM Spit hood remains in place, over face.
- 11:11 PM Spit hood remains in place.
- 11:12 PM– 11:14 PM Spit hood remains in place.
- 11:33 PM to 11:41 PM Spit hood remains in place over face.

FACTS AND EVIDENCE

[4] Mr. Rogers was highly intoxicated when the officers encountered him at the IWK. Constable Morris stated the following in his General Occurrence Report:

Rogers was very intoxicated as he chugged half a pint of cinnamon whiskey as I pulled up to him. Rogers could barely stand up and almost fell several times, could smell a strong odour of alcohol coming from his breath, his speak (*sic*) was slurred, and eye (*sic*) were bloodshot and glossy.

[5] Before arresting Mr. Rogers and putting him in Constable Morris’ police car, the officers allowed him to smoke a cigarette provided by his girlfriend, Ms. Spindler.

[6] Just before leaving the area of the IWK, the officers refused to allow Mr. Rogers to smoke a second cigarette and he became unhappy with them. He passively resisted being arrested, handcuffed, and put in the patrol car. During the 5-minute ride from the IWK to the PCF, Mr. Rogers banged his head against the “silent patrolman”. He continued to do so while waiting to be admitted to Booking after arriving at the PCF. He also spat in the direction of Constable Morris and uttered threats against the officer and his family.

[7] According to the Medical Examiner's Report, Mr. Rogers had "superficial abrasions" on his face. An abrasion is a scrape, affecting the upper layer or layers of skin.

[8] Because of a young person being processed in the PCF, there was a delay of several minutes before Mr. Rogers could be taken into the building. During that time, the officers decided to put a spit hood on him to prevent him from spitting on them. Constable Murphy, who had often used the devices, went into the PCF to get one. The packaging was removed before he obtained it, but it was one which Constable Murphy was familiar with. Constable Paris, who had used them before, put the spit hood on Mr. Rogers while he was still in the police car.

[9] When told they could bring Mr. Rogers inside, Constable Paris and Constable Murphy began to take Mr. Rogers from the police vehicle. Mr. Rogers tried to prevent them from doing so by jamming his feet under the plexiglass divider. Constable Morris had to get into the vehicle from the other side and pry Mr. Rogers' feet loose.

[10] Once outside the vehicle, Mr. Rogers took a few steps and then appeared to catch his foot and stumble. It isn't clear from the PCF video whether Mr. Rogers stumbled intentionally or by accident, but the officers thought it was a continuation of the passive resistance he had shown at the IWK and when they tried to get him out of the police vehicle. When his legs began to fold under him, the three officers together held him from going to the ground, picked him up and carried him inside, face down. Mr. Rogers did not resist. He was small and the officers had no trouble carrying him.

[11] When they reached the Booking counter area, the officers placed Mr. Rogers on the floor on his side with his legs spread, in what they called the recovery position. They did not drop him or strike his head against the floor. They removed his belt and shoes. They gave his belt and shoelaces to a Booking Officer for safekeeping. Constable Morris asked Mr. Rogers if he would walk into the cell area and he said no, then he asked why he was there and then moaned. Constable Morris asked Mr. Rogers a second time if he would get up and walk the rest of the way and got the same answer: "No". In reply, Constable Morris yelled "What good would that do?" Then he

and Constable Murphy lifted Mr. Rogers to his feet, but his legs folded beneath him and he went back down. At 11:07:34, the two officers began to pull him backwards on his bottom through the hallways and to Cell 5.

[12] The cell was too narrow for the officers to stand on both sides of Mr. Rogers. Constable Murphy finished pulling him into the cell, pivoting so as to bring Mr. Roger's head to the back part of the cell, face down, all in one motion. Mr. Roger's head did not appear to strike the floor. Constable Murphy seemed to carry out this manoeuvre without much exertion, as if Mr. Rogers were almost weightless. The manoeuvre appeared to be controlled and did not appear to cause harm.

[13] Constables Morris and Paris then entered the cell. Constable Murphy and Constable Morris each took one of Mr. Rogers' arms in order to remove the handcuffs from him. Constable Paris was the last one to enter. While the other two officers prepared to remove the handcuffs, she used her foot to move Mr. Rogers' lower legs apart and then bent down to apply some of her weight to his knees. This was a technique taught to Constable Paris for the purpose of preventing a person in custody from using his legs to resist or assault police. Constable Paris appeared to use only minimal force as she carried out the technique.

[14] After the handcuffs were removed from Mr. Rogers, the three officers left the cell, with Constable Murphy the last one out. Before leaving the area, Constable Murphy picked up Mr. Rogers' footwear and threw both shoes with considerable force, one after the other, towards the back wall of the cell, near Mr. Rogers head. The shoes did not appear to strike Mr. Rogers, but they came close to his head.

[15] Before returning to the Booking counter, Constable Morris spent a few seconds looking around the cell area. He testified that he spoke to Mr. Rogers briefly and was told to "Fuck off". Constable Murphy testified that Mr. Rogers had said the same thing to him moments earlier.

[16] Less than two minutes passed from when the officers left the Booking counter area with Mr. Rogers until they returned to that area without him. At that point, barely thirty minutes had passed from when the officers had encountered Mr. Rogers at the IWK, apparently fully conscious.

[17] After returning to the Booking area, Constable Morris and others engaged in a conversation, as follows:

11:09:35 Constable Morris: "Oh yeah, after that shit show, after dragging him around?"

Constable Murphy: "Yup."

Constable Morris: "He was gonna get the benefit of the doubt with the kid, but after that? He earned that one."

11:09:40 Unknown: "Ha!"

11:09:50 Special Constable Gardner: "Role model father right there."

11:09:51 Constable Paris: "Oh yeah."

11:09:50 Constable Murphy: "He had enough energy to smash his head the whole way then to act like that"

11:09:58 Constable Murphy: "And refusing to walk."

11:10:00 Constable Morris: "Yeah the whole way back."

11:10:08 Constable Morris: "Listen. I was impressed though, how quickly he got that half pint down after I showed up. It was like one second, I was getting out, before I got out and around the side of the car, he killed it all."

On the video, Constable Morris can also be heard to say, at 11:09:45: "Fuckin' dummy", which seemed to be a continuation of his previous comment: "He earned that one."

ALLEGATIONS OF MISCONDUCT

[18] The Complaint was investigated by the Professional Standards division of the Halifax Regional Police (HRP) and the results were reported to Superintendent Colleen Kelly, the HRP Disciplinary Authority.

[19] Section 24 of the Police Regulations constitutes a Code of Conduct for municipal police officers in Nova Scotia. Following an investigation, the Disciplinary Authority dealing with a complaint categorizes the actions of subject officers in accordance with the kinds of disciplinary defaults those actions might constitute.

[20] The comments Constable Morris made in the Booking area, the way Constable Murphy threw the shoes into the cell and the failure of Constable Paris to ensure that EHS was called to check Mr. Rogers were considered as possible breaches of s.24(1)(a) of the Regulations:

- (a) acting in a disorderly manner or in a matter that is reasonably likely to bring discredit on the reputation of the police department.

[21] The failure of the officers to call EHS to protect Mr. Rogers from the risk caused by the combination of intoxication and the spit hood led to allegations against all three of possible breaches of s. 24(3)(a) and (f) of the Regulations:

- (a) neglecting to or, without adequate reason, failing to promptly, properly or diligently perform a duty as a member;
- (f) neglecting or lacking concern for the health or safety of a person in the member's custody.

[22] The way Constable Murphy threw the sneakers and flipped Mr. Rogers around in the cell and the technique Constable Paris used to prevent Mr. Rogers from trying to kick the officers in the cell were characterized as possible breaches of s.24(7)(b) of the Regulations:

- (b) Using unnecessary force on or cruelly treating any prisoner or other person with whom the ember may be brought into contact in the course of duty.

[23] The table below shows the conclusions reached by the HRP Disciplinary Authority, Superintendent Colleen Kelly, concerning the allegations of misconduct considered in this matter:

Table showing misconduct allegations sustained and not sustained by HRP

Section Number	Cst. Morris	Cst. Murphy	Cst. Paris
S.24(1)(a)	Sustained	Sustained	Sustained
S.24(3)(a)*	Not sustained	Not sustained	Not sustained
S.24(3)(f)	Not sustained	Sustained	Sustained
S.24(7)(b)	N/A	Sustained	Not sustained

[24] Mrs. Rogers was not satisfied with the decision of Superintendent Kelly made November 22, 2018. She wishes to appeal against any decision not to sustain an allegation, except allegations contrary to s.24(3)(a), and against the penalties imposed in relation to allegations that were sustained.

[25] Counsel wish to be heard on the matter of appropriate penalties at a later date on any disciplinary defaults that are upheld by the Board.

[26] In the matter of **Reiley v. O'Neill**, a decision of the Nova Scotia Police Review Board dated March 24, 2014 referred to as **O'Neill (Re)**, 2014 CanLII 12845 (NS PRB), the Board adopted the test for discreditable misconduct set forth in its earlier decision of **Ahigbe James v. Sergeant Kevin Smith [2005]**. At paragraph 51 in **Reiley**, *supra* the Board adopted the appropriate test for discreditable conduct as outlined by Paul Ceyskens' in his text, *Legal Aspect of Policing* wherein he stated at pages 6-16 the following:

Rather than making the difficult choice of which amount these approaches is appropriate for our case, we have combined elements from each and arrived at the following principles:

1. The test primarily is an objective one.
2. The Board must measure the conduct of the officer by the reasonable expectations of the community.
3. In determining the reasonable expectations of the community, the Board may use its own judgement, in the absence of evidence as to what the reasonable expectations are. The Board must place itself in the position of the reasonable person in the community, dispassionate and fully apprised of the circumstances of the case.
4. In applying this standard the Board should consider not only the immediate facts surrounding the case but also any appropriate rules and regulations in force at that time.
5. Because of the objective nature of the test, the subjective elements of good faith (referred to in the Shockness case) is an appropriate consideration where the officer is required by the circumstances to exercise his discretion.

[27] The Board also notes with interest the comments of Southin, J.A. in **Roy v. British Columbia (Attorney General)** 2005 BCCA 88. Although that case was primarily one involving alcohol from a civil liability aspect, the comments of Justice Southin are of interest especially where she says at paragraph 37 and further at paragraphs 39, 40, and 41.

[37] Here, the learned judge analyzed the policy as if it were a statute. She founded on the words "questionable consciousness", but the question was whether these peace officers, acting reasonably according to the standards of their profession, ought to have recognized that Mr. Roy's condition was one of "questionable consciousness" rather than that of the usual passed out drunk.

...

[39] In the absence of evidence that peace officers in Canada generally know the difference and are expected to recognize the difference between a person obviously inebriated who is merely "passed out" and such a person who is on the verge of central nervous system failure (the standard of care), the learned judge could not properly find that these officers failed in their duty to Mr. Roy to take reasonable care.

[40] It may well be that either the Royal Canadian Mounted Police, in their policy manuals, or the Attorney General of British Columbia, in his office as Minister in charge under the *Police Act*, should lay down as a requirement that peace officers confronting someone who is "passed out" should do those things which the learned trial judge sets out in paragraph 128 of her reasons.

[41] But in the absence of evidence that those are the standards of peace officers in Canada it was not, in my opinion, for the learned judge to impose her standard. In coming to this conclusion, I think it right that we remind ourselves of what the principal duty of a peace officer is. It is to keep the Queen's peace, an obligation which includes the prevention of crime and the detection of criminals. Peace officers are not emergency services personnel and cannot be held, unless and until they receive similar training, to a standard which would be appropriate for such persons.

[28] Although the actions of the police officers in this matter do not resemble those in the case of **R. v. Crocker**, 2017 NLTD(G) 176 and **R. v. Dunne**, 2014 MBPC 60, the Board is cognisant of the words of Anderson J.A. in **Bottrell v. R.** (1981), 1981 CanLII 339 (BC CA), 60 C.C.C. (2d) 211 (B.C. C.A.):

In determining whether the amount of force used by the officer was necessary the jury must have regard to the circumstances as they existed at the time the force was used. They should have been directed that the appellant could not be expected to measure the force used with exactitude. [p. 218]

This passage was also referred to in **R. v. Nasogaluak**, 2010 SCC 6, [2010] 1 S.C.R. 206.

[29] It should be noted that counsel for Mrs. Rogers also argued that if during the transport and during the events of the evening Mr. Rogers was making threatening remarks against the police officers, especially Constable Morris. Counsel argue the officers should have charged him with uttering threats under the *Criminal Code*. It is normally at the discretion of the police officers as to what charges they lay. See: **R v. Beaudry** 2007 S.C.C 5. Given the circumstances existing at the time the Board finds the officers exercised their discretion honestly and reasonably in not pursuing threat charges.

ISSUES

[30] If the Board finds any of the officers committed one or more of the defaults not sustained by Superintendent Kelly, then Mrs. Rogers wishes to be heard on the matter of penalty. Mrs. Rogers also argues that the penalties imposed for those disciplinary defaults that were sustained were inappropriate and wishes to speak and argue for a more severe penalty to be imposed on the sustained disciplinary defaults.

[31] The Board, first of all, wishes to acknowledge that no matter what it decides as a result of this hearing it cannot possibly revive and bring back the life of Corey Rogers. To that end the Board expresses sympathy to Mrs. Rogers as it did during the hearing but is mindful that it must deal with the allegations before the Board.

[32] The Board, as it assessed the evidence, concluded some of the evidence was applicable to one or more of the various allegations of disciplinary defaults and has considered same accordingly.

[33] After considering all of the evidence, including Exhibits, in this matter, as well as the various briefs supplied by all counsel, the Board has come to the following findings and conclusions in this matter.

[34] The officers' involvement with Mr. Rogers began outside the IWK hospital to which Constable Morris was dispatched. Constables Murphy and Paris arrived in case support was needed. At that point in time one has to consider if, in fact, Constable Morris had the authority to place Mr. Rogers under arrest. The evidence clearly reveals that Mr. Rogers consumed a half pint of cinnamon whisky as Constable Morris pulled up. The constable said he observed that Mr. Rogers could barely stand up and almost fell several times, he could smell a strong odour of alcohol come from his breath, his speech was slurred and his eyes were bloodshot and glossy.

[35] Constables Paris and Morris noted when speaking with Mr. Rogers that they smelled liquor coming from him and Constable Morris at Exhibit 1, Tab 3, Page 125 said Mr. Rogers could barely stand up and speech was slurred, eyes were bloodshot and almost fell over several times.

[36] Counsel for Mrs. Rogers argued that the officers should have inquired as to whether there was somebody he could stay with or have driven him home. The officers were advised he had no money to get home as well. One of the officers did say that on rare occasions they would drive an intoxicated person home with the approval of a supervisor. However, it must be recalled in this case that not only had they formed the impression he was intoxicated but his girlfriend asked them to take him to the drunk tank for him to stay there until the next morning so he would be able to come back to the hospital and visit his child.

[37] The Board has concluded based on all the evidence that the arrest for intoxication of Mr. Rogers was lawful.

Section 24(3)(a) – Neglecting Duties

[38] Constable Morris was a fairly new officer and had little experience working in the downtown core of Halifax and dealing with intoxicated individuals. Counsel for the complainant urged the Board to accept that the officers should have asked Mr. Rogers questions about any other substance or alcohol he consumed prior to their apprehension of him and taking him to the PCF.

[39] Section 5.2 of the Halifax Regional Municipality Booking Policy does not say all extremely intoxicated persons in the PCF must receive medical evaluation. It says the QEII “suggests” a

person “should” receive medical attention if a) not alert and oriented and cannot be easily roused to such; b) intoxicated and has received head injuries or potential head injuries and complains of a headache, has a decreased level of consciousness, is vomiting – or any combination of these.

[40] Section 5.2(3) says an intoxicated person “requires” medical attention if “unable to carry on a conversation, is not alert or is disoriented”.

[41] Mr. Rogers was extremely intoxicated at the PCF, so medical attention was “suggested” by the QEII. However, he was able to carry on a garbled conversation, was somewhere alert and had some awareness of where he was and what was happening. In those circumstances, the booking policy did not “require” a medical examination.

[42] When taken into the PCF Mr. Rogers was very drunk, but somewhat aware of where he was and what was taking place. There was no indication of a head injury, just superficial abrasions. He did not complain of a head injury and was not vomiting. His speech was garbled but most of it could be made out with effort. He carried on a limited conversation with Constable Morris. He was unhappy about being there and seemed determined not to help with the process.

[43] When at the booking counter area, the officers placed Mr. Rogers on the floor on his side with his legs spread in what they called the recovery position. They did not drop him or strike his head against the floor. He was placed on the floor in a careful manner. Constable Morris asked Mr. Rogers if he would walk into the cell area and he said “no”. Constable Murphy lifted Mr. Rogers to his feet but his leg folded under him and he went back down. Then Constable Morris and Constable Murphy began to pull him backwards on his bottom through the hallways and into cell number five.

[44] On the totality of the evidence the Board finds there was no disciplinary default under Section 24(3)(a) of the Regulations by either Constable Murphy, Constable Morris nor Constable Paris.

Section 24(3)(f) – Neglecting or lacking concern

[45] When Constable Morris transported Mr. Rogers to the PCF area in his police vehicle, he ran a check on Mr. Rogers, and found that he had a lengthy record with regard to drinking and other offences. At that time Mr. Rogers was spitting and uttering threats towards him. When they arrived at the PCF area Mr. Rogers continued with the spitting and there were signs of fluid around the plexiglass divider and the backseat area of the police vehicle. The officers then decided to place a spit hood on Mr. Rogers before they would take him into the PCF area and thus be able to prevent him from spitting on them. Constable Murphy went inside the PCF and he obtained an unpackaged spit hood from the booking area. It was Constable Paris who placed it on Mr. Rogers' head. Constables Murphy and Paris, because of working in the downtown Halifax Central zone, had come across numerous people under the influence of alcohol. They said they had used spit hoods many times. In fact, Constable Murphy said he usually kept a packaged spit hood in his pocket during work shifts. On the other hand, Constable Morris had seen spit hoods being used but he was less familiar with them than the other officers. The evidence revealed that none of the officers received training in the use of the spit hood. Because of his inexperience the Board is prepared to find no disciplinary default against Constable Morris under section 24(3)(f) of the Regulations.

[46] The spit hood became a large subject of the evidence heard during the hearing and it was examined in detail by all counsel. None of the officers was aware of the HRP policy that the use of spit hoods was an application of force. All the officers considered the spit hoods to be safety devices for the protection of the officers. Whether one views the use of the spit hoods as an application of force or safety device for the protection of officers, it has no real bearing on whether the use of the spit hood in this instance was in breach of the Code of Conduct. An observation might be that even though there is force being used putting the spit hood on, it is a reasonable force. In this case such was the method used by Constable Paris, in that it was put on to protect the police officers from receiving spit from an intoxicated or accused individual who was being apprehended. Constable Paris even testified in her evidence that she had been spat on and she described what happened to her. She said she would not want any police officer or person to go through what she suffered or worries about as a result of being spat upon. The spitting of a person on another, such as the officers described would be a concern to any person.

[47] Thus the Board concludes that even though it might involve a small application of force, nonetheless the overriding consideration was the risk to the officer of illness as a result of being spat upon them which might cause serious repercussions. It is the Board's opinion that if an officer had a reasonable apprehension of being spat upon, placing of a spit hood on a person's head was justifiable. HRP had no policy at the time prohibiting patrol officers from using spit hoods.

[48] The Board concludes from the evidence that the officers had a reasonable apprehension Mr. Rogers would spit on them. The minimal use of force involved in placing a spit hood on Mr. Rogers the Board finds was lawful.

[49] It's been pointed out that the officers used a spit hood on June 15, 2016 by the name of TranZport Hood made by a company in the United States. The hoods were distributed in individual packages containing a warning in large print:

**WARNING: INPROPER USE OF THE TRANZPORT HOOD MAY CAUSE
INJURY OR DEATH**

[50] A few lines later the warning continues to read as follows: "Improper use may result in serious injury or death due to asphyxiation, suffocation or drowning in ones own fluids." Then in a list headed "CONDITIONS FOR USE", the following statement appears: "Wearer must be under constant supervision and should never be left unattended."

[51] In the Report Of Post Mortem Examination (Exhibit 1, Tab 6, Page 2 of 6) the following is stated:

At approximately 23:33 his abdomen contracts and chest lifts off the floor. This "heaving" motion is suggestive of vomiting. This motion, as well as slight lifting and settling of head and chest, occurs several times between 23:33 and 23:41 ... There is no appreciable movement of his body between 23:41 and 01:39.

[52] In regard to the cause of Mr. Rogers death the Medical Examiner said the following in Exhibit 1, Tab 6:

The liquid vomit inside the fluid resistant hood around the mouth and nose blocked air from entering. The resultant inability to breath was fatal. Video footage shows Rogers

in a lowered state of consciousness, which is attributed to ethanol intoxication. This lowered level of consciousness due to intoxication prevented him from removing the fatal blockage over his nose and mouth.

[53] In considering the above comments, the Board has looked at the argument advanced that Mr. Rogers, when he was in cell five, was in fact under constant visual supervision and never left unattended because he could be seen at all times by the Special Constables viewing the video link between the cell and the booking area. The Board disagrees with this argument. The argument is not consistent with a Directive to Booking Officers in HRP's Booking Policy that "Reliance on camera monitors is not adequate" to ensure the safety of persons in custody: Exhibit 1, Tab 1, Section 2.1(B)(1)(a)(i). It is obvious these small monitors do not provide life size views of the cell nor do they provide sound. Even if a Booking Officer were looking constantly at the monitor, which is unlikely, their ability to observe and perceive the condition of the person in custody will be much inferior to their ability to do so directly with their own eyes and ears from within the cell area.

[54] It concerns the Board that Constable Murphy testified that he had never read the warning on the TranZport Hood label. One finds that hard to believe because of its location and plain visibility. Even if true, failing to read the warning might not assist Constable Murphy. An officer using a device to control behaviour would have to use reasonable care when using it. It seems to the Board that reading a warning label would be an aspect of reasonable care. Thus, failing to read and heed the warning would be neglecting the health or safety of a person in custody and therefore a breach of the Code of Conduct.

[55] The Board also notes that when the officers left Mr. Rogers in cell number five they thought he would remove the spit hood himself but it was obvious he did not do so prior to them leaving the cell area. They did not inform the booking officers that the spit hood was still covering his face.

[56] The Board finds that Constable Murphy and Constable Paris committed a disciplinary default under Section 24(3)(f) of the Regulations.

Section 24(1)(a) – Discreditable Conduct

[57] All the actions of the police officers on the night in question dealing with their involvement with the late Mr. Rogers had to be taken into consideration in deciding whether or not there was a default committed by the officers contrary to Section 24(1)(a) of the NS *Police Act* Regulations. Besides that, the allegation of acting in a disorderly manner primarily arises from the actions of the officers in their conversations at the back of the PCF area after they had placed Mr. Rogers in the cell. As well it is the complainant's argument that the manner in which Constable Murphy tossed Mr. Rogers' sneakers into the cell after Mr. Rogers was placed there constituted a default in relation to the same section.

[58] Most of the conversation between the Constables is covered in the audio from 11:09:35 to 11:10:08. As Mr. Cooke suggested, the Board reviewed the video and Constable Morris can be heard to say at 11:09:48 "fucking dummy" which would appear to be a continuation of his previous comment where he said, "he earned that one". Mr. Cooke in his brief referred particularly to the comments of Constable Morris to Constable Murphy that Mr. Rogers "was gonna get the benefit of the doubt with his kid, but after acting like that" "he earned that one". Mr. Cooke further referred to Constable Morris' comment where he said "impressed, though how quickly Mr. Rogers [got that half pint down after I showed up. It was like one second, I was getting out, getting ready to take it, before I got out and around the side of the car, he killed it all.]

[59] The Board has come to the conclusion that Constables Morris and Murphy were annoyed with Mr. Rogers. As well, it should be noted that none of the comments were directed to a member of the public nor were they meant for the public but rather they were delivered to fellow Constables in conveying their observations of Mr. Rogers.

[60] The Board finds that the conversation was most unprofessional, but we do not conclude that it rose to the level of a disciplinary default. We conclude that when one considers the whole situation that the surrounding circumstances of that conversation a reasonable person informed of what transpired would find there was no breach of a disciplinary default as alleged. Therefore, this allegation of disciplinary default against Constables Murphy and Morris, the Board finds is not sustained.

[61] There was also an allegation of disciplinary default against Constable Paris arising out of her failure to intervene in the same conversation in the PCF. The Board concludes that she had no duty to correct or criticize the other officers because she had no authority over them. Thus, we conclude there was no disciplinary default under this section committed by her.

[62] Indicative of her conduct towards Mr. Rogers, one can recall from the evidence that Constable Paris even so much as took the second cigarette that Mr. Rogers asked for and told him she would leave it at the cell for him when he woke up in the morning. When she was at the PCF she remembered she said that and gave the cigarette to the Special Constables to hold and to give to Mr. Rogers when he was awake in the morning.

[63] Constable Murphy explained that it was his practice to toss a prisoner's sneakers or shoes in the cell up where they could easily see them when they awoke or became conscious. On the night in question Constable Murphy said that when he tossed the sneakers, they hit the back of the cell and they fell down in the area in which he had anticipated but there was no evidence that they struck or injured Mr. Rogers.

[64] The Board has reviewed the video on this matter and concludes that Constable Murphy ran the risk of hitting Mr. Rogers and that a reasonable person seeing this action would conclude that this would amount to a disciplinary default under section 24(1)(a) of the *Police Act* Regulations. In fact, as a learning lesson from this Constable Murphy has now changed his method of providing shows to the prisoner by simply placing them inside the cell door.

[65] The Board concludes on the totality of the evidence that Constable Murphy did commit a disciplinary default under Section 24(1)(a) of the Regulations and finds that Constable Paris did not.

Section 24(7)(b) - Unnecessary Force

[66] The Board repeats its earlier comments here on this topic and has concluded that Constable Murphy and Constable Paris did not use unnecessary force.

[67] Constable Paris did not use excessive force in putting the spit hood on. As already stated, the use of the spit hood in the Board's opinion, was necessary to protect the officers from the spitting and the vile being spewed by Mr. Rogers. Any force used was reasonable under the circumstances.

[68] From the video and other evidence presented it would appear the cell was too narrow for the officers to stand on both sides of Mr. Rogers. Constable Murphy finished pulling Mr. Rogers into the cell pivoting so as to bring his head to the back part of the cell, face down, all in one motion. Mr. Rogers' head did not appear to strike the floor. Constable Murphy carried out this manoeuvre with ease and without too much exertion as if Mr. Rogers were almost weightless. The manoeuvre was startling to watch but it appeared to be controlled and did not appear to cause or risk any harm to Mr. Rogers.

[69] Complainant's counsel raised an issue about the way in which Constable Paris handled Mr. Rogers' legs during the removal of the handcuffs in the cell. However, the Board accepts her answer as to why that was done, because that was the way she was taught and trained to do to prevent any possible reaction or action by the prisoner when handcuffs were being removed. We saw no unnecessary force here.

[70] After Constables Morris and Paris entered the cell, Constables Murphy and Morris each took one of Mr. Rogers' arms in order to remove the handcuffs from him. Constable Paris was the last to come into the cell. While the other two officers prepared to remove the handcuffs, she used her foot to move Mr. Rogers' lower legs apart and then bent to apply some of her weight to Mr. Rogers' knees. This was a technique taught to Constable Paris for the purpose of preventing a person in custody from using his legs to resist or assault a police officer. It should be noted that Mr. Rogers had been uncooperative up to that point and he had made threats. The officers did not seem to be at great risk from him, but Constable Paris used only minimum and proportionate force as she carried out the technique.

[71] The three officers exited the cell and Constable Murphy was the last one out. Before leaving the area, Constable Murphy picked up the shoes. Before returning to the booking counter Constable Morris spent a few seconds looking around the cell area. He spoke to Mr. Rogers briefly and was told to “fuck off”. It would appear from the evidence that Constables Paris, Murphy and Morris returned to the booking counter area at approximately 11:08 to 11:09.

[72] The method Constable Murphy used in putting Mr. Rogers’ head down and pivoting Mr. Rogers to get the handcuffs off was not excessive. He simply got him into a position to remove the handcuffs and did so without excessive force, the Board concludes.

[73] In coming to the conclusions which it has, the Board has reviewed the totality of the evidence including the exhibits, arguments of counsel, the video and oral arguments of counsel. It has not come to its decision lightly, but it was dealing with alleged defaults under the *Police Act* and therefore has arrived at the conclusions which it feels are appropriate for the allegations.

[74] Given the ramifications of the use of the spit hood as became evident during this particular night, it is very concerning as to why HRP, the Chief of Police or the training division did not provide officers with training in the placing on and removal of spit hoods by police officers. The evidence of the training officer in this regard did not impress the Board and it is very interesting to note that nothing was done until much later after the death of Mr. Rogers insofar as spit hoods are concerned. From the evidence it has become clear that not all officers are provided with the use of spit hood training as of the date of this hearing.

[75] It is hoped for officers who are on duty and not able to use spit hoods that the HRP is providing other safety precautions such as face shields to protect them from spit that might be spewed upon them when they apprehend certain individuals.

[76] The Board felt it ought to address another issue which developed during the hearing. That is the officer’s testimony which raised concern to the Board about the emails which these officers receive on a daily basis. The officers testified that they become inundated with emails when they report to work. Policy requires them to read all the emails and to follow same. However, given

the number of emails the officers seem to receive, according to the evidence, one wonders how one could ever get a chance to read all these emails and yet get out right away and do their duties as directed at the start of their shift.

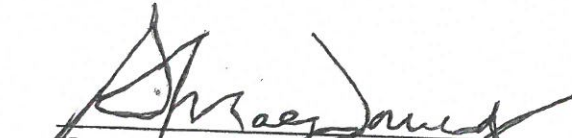
[77] An example of this problem was described by Constable Murphy in his evidence when he said:


With emails and this is not an exaggeration so on patrol if you take 4 days off you end up with 12 days off. If you take 2 cycles you're off for 20 days and it's not unheard of to return to work and have in excess of 1300 emails sometimes depending on the length of time that you are off and depending on the days that you had off. If you have 4 days off and it falls on the weekend you may have a little bit less. If it's during the weekdays you might come back with two or three hundred just on the four days off. It also says in policy you will check your email every single day but I'm hear to tell you that that doesn't unfortunately that doesn't always happen because you arrive to work, you have fall in and then you are expected to immediately get out to you vehicle and start responding to calls.


[78] One cannot conceive where they could possibly find the time to read these emails. It could be argued that they should be doing it at home or after hours but in the Board's opinion this is a work-related matter and should be dealt with at work. A resolution might be that their superior officer advises them of important emails at the opening of their shift when he/she addresses them. To simply say they receive these emails and therefore should be aware of them is not a very valid answer when one considers the huge number of emails that the officers testified in receiving especially when they come back after days off. Failure by the officers to read these excessive number of emails and not have sufficient time to do so is not very conducive to the training and education of police officers.

[79] The Board wishes to advise that it will hear arguments relative to penalties at a time to be agreed amongst between the Board and counsel.

Dated at Halifax, Nova Scotia this 29th day of November, 2021.


Hon. Simon J. MacDonald, Vice-Chair


Patrick H. Curran, Board Member


John Withrow, Board Member

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