

# In the Provincial Court of Alberta

**Citation:** R v O'Mara, 2019 ABPC 257

**Date:** 20191118  
**Docket:** 190292672P1  
**Registry:** Edmonton

Between:

**Her Majesty the Queen**

Crown

- and -

**Matthew O'Mara**

Accused

**Corrected judgment:** A corrigendum was issued on November 27, 2019; the corrections have been made to the text and the corrigendum is appended to this judgment.

## Reasons for Decision of the Honourable Judge T.D. DePoe

[1] The Accused, Matthew O'Mara (Constable O'Mara) stands charged that on or about the 11<sup>th</sup> day of December, 2017, at or near Edmonton, Alberta, did unlawfully assault Craig Jephtas-Crail (Complainant), contrary to section 266 of the *Criminal Code of Canada*, RSC, 1985, c C-46 (*Criminal Code*).

[2] The Crown called five witnesses at trial, and the Accused testified in his own defence. I find the Accused guilty as charged. These are my reasons.

### The Facts

[3] A five-page Agreed Statement of Facts (ASF) was prepared by the Crown and Defence and filed as Exhibit #1 pursuant to section 655 of the *Criminal Code*.

## STATEMENT OF ADMISSIONS PURSUANT TO S. 655 OF THE CRIMINAL CODE OF CANADA

Pursuant to the provisions of Section 655 of the *Criminal Code of Canada*, the following numbered paragraphs contain facts, which are alleged by the Crown and admitted by the Accused, Constable Matthew O'Mara [Constable O'Mara]]. It is agreed that the within facts are admitted for the purpose of dispensing with the proof thereof:

**Information 190292672 P1:**

Count 1: On or about the 11th day of December 2017, at or near Edmonton, Alberta, did unlawfully assault Craig Jephtas- Crail, contrary to section 266 of the *Criminal Code of Canada*.

***Jurisdiction:***

1. The offence for which Constable O'Mara stands charged occurred in the City of Edmonton, in the Province of Alberta.

***Identity of The Accused***

2. It is admitted that the individual named in the Information is Constable O'Mara, the Accused, before this Honourable Court.
3. It is admitted that on December 11, 2017 Constable O'Mara was a sworn member of the Edmonton Police Service ["EPS"]. He was assigned the rank of Constable. His regimental number was #3835.

***Assignment as an EPS Constable on December 11, 2017***

4. On December 11, 2017 between 5:15 p.m. and 11:45 P.M., Constable O'Mara was assigned to work in the capacity of a Police Constable with the EPS. He was in full police uniform during the entirety of his work assignment on that date.
5. Constable O'Mara was trained on EPS policy and procedure as an experienced officer. During his training, and prior to December 11, 2017, Constable O'Mara admits that the training included training on the following EPS policies and procedures:
  - a. Use of Force Policy: OP7P0
  - b. Reasonable Officer Response Procedure: OP7-1PR
  - c. Transporting Detainees Procedure: OP11-2PR
  - d. Detainee Management Policy: OP11P0; and
  - e. Occurrence Reports Procedure: OP10-10PR
6. Constable O'Mara was working with a partner, Constable Holly Beutler ["Constable Beutler"]. Constable Beutler was a duly qualified Constable with the EPS. Constable Beutler was in full police uniform on December 11, 2017.
7. Constable O'Mara signed out a marked EPS police vehicle, namely "Car 685" on December 11, 2017 at 5:24 p.m. Car 685 had a Unit ID assigned to it of 3D746.
8. Car 685 was equipped with GPS capability

***Interaction between Constable O'Mara and Craig Jephtas-Crail***

9. At approximately 21:52 on December 11, 2017 Constable O'Mara attended a location at 10357 – Jasper Avenue NW, Edmonton. He arrived at that location in EPS Car 685.

10. Ultimately Constable O'Mara was involved in a physical interaction in the vicinity of 10320 Jasper Avenue at or around that specific period of time. The physical altercation was between himself and Mr. Craig Jephtas -Crail. ["Mr. Jephtas -Crail"]

***Tickets written***

11. Constable O'Mara issued two Provincial Offense tickets to Mr. Jephtas- Crail :
  - i. **Ticket A 52929122 R** – Offence date December 11, 2017.  
Offence – Sec 115 (1) Intoxicated in Public Place; and
  - ii. **Ticket A 53872571 R** - Offence date December 11, 2017.  
Offence – Sec 3 TPA (Trespass to Premise Act)
12. After the physical interaction between Constable O'Mara and Mr. Jephtas-Crail on December 11, 2017 outside the 7-11 Store, Constable O'Mara assisted Mr. Jephtas-Crail to the back of Car 685.
13. After the physical interaction between Constable O'Mara and Mr. Jephtas-Crail Constable O'Mara authored a "Street Check" occurrence report.
14. He did not notify his supervising sergeant, Sergeant Walter Kubrak, or any other superior officer with respect to any use of force event between himself and Mr. Jephtas-Crail on December 11, 2017.
15. After the physical interaction between Constable O'Mara and Jephtas-Crail O'Mara did not notify his supervising sergeant, Sergeant Walter Kubrak, or any other superior officer with respect to transporting Jephtas-Crail anywhere in Car 685 on December 11, 2017.

***GPS Capability of Car 685:***

16. Car 685 was equipped with a computer workstation. The workstation had Mobile for Public Safety ["MPS"] software installed.
17. MPS software is supplied to EPS vehicles as an integrated part of the suite of applications that EPS uses to meet some of its dispatch needs.
18. MPS serves as a dispatch information-sharing tool on the vehicle workstation. For the information and safety of EPS members, MPS gathers Global Positioning System ["GPS"] information from GPS satellites and sends that information back to the server at EPS in real time.
19. The dispatch suite of applications, including MPS, can view the real-time data from MPS on a map effectively allowing vehicles to be tracked in real time, if MPS is activated and a connection is maintained.

***Available GPS Data from Car 685***

20. The following data was available to be collected from Car 685 on December 11, 2017 and passed to the EPS server:
  - i. CAR: A unique identifier for the vehicle
  - ii. UNIT ID: The unit currently logged on to MPS
  - iii. LAT: Latitude

- iv. LONG: Longitude
  - v. SPEED: Speed of travel
  - vi. Status: The status of the unit
  - vii. Event #: Event number that the unit is assigned to (if any)
21. For MPS software to report GPS information to the EPS server, all of the following criteria must be functioning:
- i. The in-car workstation must be turned on and fully booted;
  - ii. The workstation must be connected to the GPS satellite network;
  - iii. there must be network connection to the server; and
  - iv. The MPS must be running with the user logged on.
22. On December 11, 2017 the following GPS data was extracted from the MPS software associated to Car 685:
- i. From 2230 until 2232 Unit 685 travelled to 102 Avenue and 100 Street. The vehicle remained there until 2250;
  - ii. Beginning at 2250 Car 685 travelled west on Jasper Avenue until 124 Street; then turned north on to Stony Plain Road;
  - iii. Car 685 continued east on Stony Plain Road to 116 Street, turned south onto 116 Street until Jasper Avenue
  - iv. Car 685 then turned east on Jasper Avenue to 104 Street.
  - v. No GPS available was available after 23:13.
  - vi. The MPS workstation was logged out of at 23:39

**ALL OF WHICH IS ADMITTED AS FACT.**

[4] The Court sought clarification in writing from Counsel in respect to several aspects of the ASF following the hearing of the evidence. The Court's letter to Counsel and their joint response has been entered as Exhibit #12.

[5] The corrections and clarifications are as follows.

[6] First, as will be seen, the evidence is clear that the "interaction" took place immediately in front of Bar Bricco, located at 10347 Jasper Avenue, Edmonton, Alberta. The address indicated in paragraph 10 of the ASF can be said to be "in the vicinity", but it is in fact an address on the opposite (north) side of the Avenue, some distance east of Bar Bricco.

[7] Second, Counsel agree that the route described in paragraph 22 of the ASF that Edmonton Police Service (EPS) Unit 685 travelled cannot be correct. In paragraph 22 (ii) the police vehicle is said to have turned north on Stony Plain Road from Jasper Avenue. In fact, the police vehicle turned north on 124 Street, and then east on Stony Plain Road (104 Avenue), an east-west thoroughfare in the city. This is the only way the entire description makes sense.

[8] The third and most important question the Court had was with respect to the relevance of the GPS data admitted as evidence in paragraph 22 of the ASF, as it relates to the time of the physical altercation. I will repeat here Counsel's joint reply in its entirety:

Our joint position is that the GPS data admitted in the Statement of Admissions only establishes that Car 685 had detectable movement prior to the physical altercation between Constable O'Mara and Mr. Jephthas-Crail.

The evidence heard at trial through Constable O'Mara about what was his responsibilities were in the part of his shift right before the physical altercation would establish the incident happened after Car 685 returned to the 104 – Jasper Avenue route sometime after 2250 and before 2313 when no further GPS data is available.

Constable O'Mara's evidence [as we recall it] is consistent with the GPS data. He and his partner were patrolling in and around Jasper Avenue early in the shift [the car was stationary at 102 Ave and 100 Street between 2232 and 2250 *p. 9[i]*; the car moved beginning at 2250 and sometime before 2313 was at Jasper Avenue and 104 street *p. 9 [iii, iv, v]*

No GPS data that was admitted provides any further clarity on this issue in our submission. It was the Crown theory was the GPS was deactivated once Mr. Jephthas-Crail had been put in the back of Car 685.

Our joint position for Your Honour to consider is that the Court can draw the inference from the evidence of the civilians that the physical altercation between Constable O'Mara and Mr. Jephthas-Crail happened after the civilian's respective restaurant shifts had ended. On each of their evidence, that would have been after 2300.

Constable O'Mara wrote on the Violation tickets [Ticket A 52929122 R and Ticket A 53872571 R] that the offense time was 1130 PM on December 11, 2017. That piece of evidence, in our submission, allows further support of an inference that can be drawn that the physical altercation occurred after 2300 on December 11, 2017.

[9] The physical interaction described in the ASF involved the Accused's arrest of the Complainant, taking him to the ground, and delivering two hard punches to the Complainant's head in the course of the arrest.

[10] Counsel agree that the essential issue before the Court is whether the force used by the Accused, specifically the punches to the head of the Complainant, fits within section 25 of the *Criminal Code*.

### **The Evidence for the Crown**

[11] There were three Crown witnesses to this incident, inside Bar Bricco. They watched it unfold just outside the front window. They were bar staff whose employment duties had ended for the evening, and they had just sat down to have a drink at the end of their shift.

[12] The incident was described by them in different ways, and different details were emphasized. There were some limitations on their ability to observe and remember the incident, but it was clear to the Court that all three witnesses were doing their best to be truthful and fair.

*Lowell Scott*

[13] The first witness was Lowell Scott (Mr. Scott), a server at Bar Bricco. He testified that his attention was drawn to the sidewalk as he saw the police officers “processing a gentleman.” This was obviously the Complainant, who was standing near a police vehicle parked at the curb in front of the bar. He clearly recalled seeing the police officers search the Complainant’s bags, and his person by means of a pat down search. He indicated however that he was tracking these events, “not closely” until what he described as a scuffle started.

[14] This drew his attention more significantly, and he got up from his chair to watch at the front window. He observed both police officers take the Complainant to the sidewalk and clearly observed the Complainant hit his head there quite hard. As he put it “it registered through my feet.” He then saw the Accused punch the Complainant once, pause briefly and punch him a second time. On each occasion, the Complainant’s head bounced off the sidewalk.

[15] Mr. Scott initially stated at trial that he thought the Complainant was handcuffed before he was taken to the ground. He conceded in cross-examination that he was wrong on this. In his statement to the police he said that no handcuffs were placed on the Complainant until after he was taken down. I accept that as true.

[16] He stated that the Complainant’s response to being taken down was “subdued” and that he observed minimal physical response from that point onward.

[17] Mr. Scott also observed that the Complainant’s forehead was cut and bleeding. He described it as a substantial cut and that there was blood on the sidewalk, a “sizable” amount although this was not further quantified. He was shocked and distressed by these observations. He sought advice from a lawyer friend as to whether he should report it. He decided to do so the next day.

[18] Mr. Scott testified that he had seen numerous interactions between the police and people on the street in that area of Edmonton, but he felt that this physical action seemed very out of the ordinary and excessive. He denied that his initial belief that the Complainant was handcuffed before being taken down had any effect on his recollection of events after that point. He recalled that the Complainant’s hands were not present to break his fall and this may well have influenced his belief stated at trial that he was handcuffed.

*Stephen Babish*

[19] The second witness from Bar Bricco was Stephen Babish (Mr. Babish), a cook at the premises. He observed the police vehicle outside Bar Bricco and observed the two police officers having a discussion with a male individual. Mr. Babish believed the male individual to be homeless. A discussion which was calm and collected developed into an argument or a dispute. Mr. Babish stated that the individual was “not being nice” to the police officers, the tone of the conversation escalated and voices got more aggressive.

[20] Mr. Babish looked away, and by the time he looked back the police officers had taken him to the ground. From this point he kept his eye on the activities, although he could not hear much of what was being said.

[21] Mr. Babish described the male police officer as larger than the gentleman, and “quite buff” (fit).

[22] The Complainant was face down on the sidewalk. He stated the female police officer was handcuffing the Complainant while the Accused had his knee on top of him between his shoulder blades. He saw the handcuffs go on. He stated that the Complainant was not physically resisting, but was yelling at the police officers at which point he was struck two times in the face with a closed fist. The punches landed on the right cheek of the Complainant.

[23] Mr. Babish described the first punch as quite a substantial hit. He could hear the thud, it was quite audible. He observed the Complainant to be shocked and distressed. He stated that the second punch occurred after the Complainant was handcuffed and while the Accused still had his knee on the back of the Complainant between his shoulder blades.

[24] He was clear that the Complainant was not struggling, but was very verbal with the police officers. He was yelling, but Mr. Babish could not hear what was being said. He was unaware of the content of any of the discussion that went on outside.

[25] Mr. Babish stated that he observed the Complainant's hands behind his back when the punches occurred, and that the handcuffs were on prior to the second punch.

[26] He did not see injuries on the Complainant, but he saw blood on the sidewalk afterwards.

[27] At that point the Complainant was brought up off the ground, was placed in the back of the police vehicle, and they drove off. He did not see what happened to the Complainant's bag, but he assumed the police took it with them.

*Kaitlyn McWilliams*

[28] The third witness from Bar Bricco was Kaitlyn McWilliams (Ms. McWilliams), who was a server at the time of the incident, but is now the manager of the establishment. Her evidence was perhaps the least helpful, but she was clear on some points.

[29] Ms. McWilliams observed the two police officers, a male and a female, and a gentleman who appeared to her to be restrained in handcuffs, standing by a police vehicle parked at the curb. She stated that the gentleman seemed to be yelling with the police officers, and then she saw scuffling. She did not recall seeing the man hit the ground, but saw him on the ground.

[30] The male police officer was larger in stature and height than the male on the ground, who Ms. McWilliams described as middle-aged and possibly aboriginal. He seemed intoxicated. She described the gentleman as face down on the ground, "his face into the sidewalk." The large male police officer had his knee in the back of his neck and the female officer was standing behind the male at his feet. She then observed the male police officer strike the man on the ground in the side of the head. This startled her – she was stunned because it seemed excessive.

[31] Ms. McWilliams conceded that handcuffs or restraints may have been put on him when he was on the ground, and she agreed that he was not acting rationally in that he was yelling at the police.

[32] The police officer then delivered a second punch "really quite hard," his arm came back far with lots of force. This happened quickly. She saw blood on the front of the gentleman's face.

[33] After the second blow, the gentleman was pulled to his feet and shoved into the back of the police vehicle and they then drove away.

*Craig Jephtas-Crail*

[34] The final witness to testify for the Crown was Craig Jephtas-Crail, the Complainant.

[35] At the time of the incident, Mr. Jephtas-Crail was a homeless man with serious addiction problems. He remembers being asked to leave the 7-11 Store by a police officer. He left, and 20 minutes later he went back in 7-11. He says the same police officer came back and was quite aggressive in removing him from the 7-11 Store. He claimed the police officer used excessive force at that time, in his words he “roughed me” out of the store and then “smashed me to the ground.”

[36] Mr. Jephtas-Crail claimed he did not say anything, and at no time did he object or yell at the police or do anything untoward. His memory of what occurred on the sidewalk is minimal.

[37] He remembers being picked up off the ground, and placed in the back of the police vehicle. He has no memory of any conversation in that vehicle, but does say he was taken and dropped off on the south side of the river, somewhere in the river valley. He remembers the police tossing his bag or one of his bags at him.

[38] Mr. Jephtas-Crail described that from where he was dropped off by police, there were houses “on top” and that he had to walk up to Whyte Avenue. His neck was sore and he had a scrape the size of a loonie on his forehead. He had blood on his forehead, which he later had to clean up.

[39] He further testified that he was in the river valley for a considerable period of time. He remembered climbing up a hill, before he found his way up to Whyte Avenue, where he sought shelter at a 7-11 Store there. He then walked to his friend’s mother’s residence where he could stay the night, taking a different route than normal to get there.

*Staff Sergeant Corey Dundass*

[40] The Crown also called as a witness Staff Sergeant Corey Dundass (S. Sgt. Dundass), an Edmonton police officer of 24 years experience; and since October 2017 with the Professional Standards Branch of EPS, responsible for investigating public complaints. He was assigned to this matter February 6, 2018 and gave an account of his investigation. Through S. Sgt. Dundass, numerous Exhibits were entered by consent.

- |            |  |
|------------|--|
| Exhibit #1 | Statement of Admissions Pursuant to S. 655 of the <i>Criminal Code of Canada</i> |
| Exhibit #2 | Car 685: Log Entries – December 2017   |
| Exhibit #3 | Street Check Report – SCR SR17015310   |
| Exhibit #4 | Edmonton Police Service – Reasonable Officer Response Procedure                  |
| Exhibit #5 | Edmonton Police Service – Use of Force Policy                                    |
| Exhibit #6 | Edmonton Police Service – Transporting Detainees Procedure                       |
| Exhibit #7 | Edmonton Police Service – Detainee Management Policy                             |
| Exhibit #8 | Violation Ticket Number 52929122   |
| Exhibit #9 | Violation Ticket Number 53872571   |



Exhibit #10 JOIN Printout: Violation Tickets Withdrawn

Exhibit #11 Photograph: Area of Injury

### **The Evidence of the Accused**

[41] The Accused Matthew O'Mara testified. He has been with the Edmonton Police Service for four years, in different capacities in downtown patrol. Prior to that, he was with the Canadian Forces Military Police for seven years. At EPS he received training, albeit in abbreviated form under what is called the Experienced Officer program. This training was for eight weeks.

[42] He indicated that he was familiar with the Policies and Procedures contained in Exhibits #2 through #6, and that they set out his obligations as a police officer in 2017.

[43] The basic narrative that he gave is as follows.

[44] One of his important obligations is to engage in what is called proactive policing, which is essentially patrolling the downtown area and being on the lookout for the myriad of things that ought to draw the attention of the police. The intention is to prevent calls for service. In this context, Cst. O'Mara was very familiar with the 7-11 Store on Jasper Avenue as he was frequently called upon to deal with persons intoxicated and/or mentally ill at that location.

[45] On December 11, 2017, late in the evening he dealt with such a person, on this occasion the Complainant. He testified that he saw him sleeping at a table in the window of the 7-11 Store, a somewhat regular occurrence at this location. He attended at the 7-11 Store with the goal in mind that he would wake the person up and then have him leave the premises. When he went into the 7-11 Store, he first spoke to the female clerk who advised him that other police had already been there shortly before and had removed him. The Accused took this as a request to deal with this gentleman again.

[46] Cst. O'Mara testified that he woke up the Complainant by shaking his arm. The Complainant's reaction was that he was startled, a fairly common reaction. He indicated that he had a chat with the Complainant advising him that he had to leave. The Complainant slowly responded, collecting his belongings, which appeared to include at least two large bags, and left. He had never met the Complainant before and knew nothing about him.

[47] There was a second individual in the 7-11 Store, who drew police attention. Cst. O'Mara spoke with him; at which time the Complainant re-entered the store. He walked to the front counter, and apparently was attempting to purchase cigarettes. Cst. O'Mara again advised him that he had to leave the store, which he did.

[48] Cst. O'Mara followed him out onto the sidewalk, and observed the Complainant walking east along Jasper Avenue some distance down the sidewalk. He said the Complainant turned, began to proceed west and began yelling at the police officers. The two police officers proceeded down the sidewalk and they met up with the Complainant in front of an establishment called Bar Bricco, which was three doors east of the 7-11 Store.

[49] He concluded that Mr. Jephtas-Crail was going back into the 7-11 Store, although the Constable indicated that he had no memory of anything he was saying.

[50] The Complainant was emotionally upset, and Cst. O'Mara did not think he was going to leave. At that point, Cst. O'Mara decided he was going to write tickets for trespassing and for

being intoxicated in a public place. There was no explanation offered in direct examination as to why he was writing the tickets, or how the writing of tickets was going to stop the Complainant from returning to this 7-11 Store. Later in cross-examination, he stated that his purpose was to hold the Complainant accountable for his behaviour.

[51] In any event, Cst. O'Mara testified that the Complainant started to get more upset, at which point he was asked to identify himself. The Complainant remained upset and was swearing at the police officer. He testified that this was not unusual.

[52] Cst. O'Mara indicated that he attempted to de-escalate the situation by talking him down, but was unsuccessful. He provided no detail in this regard. He did say that he told the Complainant if he did not identify himself, he would be arrested for obstruction. He was told to turn around and put his hands behind his back.

[53] The Complainant complied with this initial direction and then was told to give his hands, that is to put his hands behind his back. He initially did so, and turned, but then pulled his left arm forward. At this point Cst. O'Mara grabbed the Complainant, spun him and took him down onto the sidewalk. He accomplished this by grabbing him by the head with his right hand.

[54] Once on the ground, Cst. O'Mara directed the Complainant to give him his hand, and when he did not immediately comply he struck the Complainant in the face. When he failed to produce his hand again he struck the Complainant a second time in the face, at which time he "managed to get his right arm."

[55] In cross-examination, Cst. O'Mara was asked whether he had his knee on the Complainant's back while this was occurring, and his answer was "possibly – I don't remember."

[56] Cst. O'Mara testified that his initial emotional reaction to the Complainant pulling away his arm was fear, and that this was based in part on a similar scenario which occurred approximately one year earlier where a detainee attempted to strike him with his elbow. He determined that any kind of hesitation in dealing with an individual can result in injury and that it is important to contain any such situation and avoid getting hurt.

[57] He also said that when he can not see someone's hands it is "scary" and that the possibility of him having something, for example a weapon, increases.

[58] He described his purpose in striking as "a distraction," in that he was hoping the Complainant would use his right hand to protect his face from being punched, and he could then grab it.

[59] Cst. O'Mara stated that he did not know if Mr. Jephtas-Crail's head hit the pavement. In cross-examination he further said that after the incident he did not see any injury on the Complainant's face, stating that "the part of the face I saw looked fine."

[60] After being handcuffed, Cst. O'Mara testified that the Complainant was brought to his feet and placed in the back of the police vehicle. He stated that his plan at that point was to ask the Complainant where he wanted to go. He says the Complainant responded that he had a place to go on the south side, but he did not know the address. His only memory of transporting Mr. Jephtas-Crail was that they drove to the south side across the Low Level bridge, and the Complainant directed him to "pull over here, it's around here," in a residential area containing condominium or apartment type buildings. He had no specific recall as to where he let him off.

[61] Finally, in reference to the paragraph in the Agreed Statement of Facts detailing how the workstation in the vehicle was turned off, thereby rendering the GPS data of where the vehicle travelled unavailable, he claimed a lack of knowledge that the GPS was in any way related to the in-vehicle computer, and that he had nothing to do with that. He stated it is standard practice that the passenger, that is the driver's partner (in this case Cst. Beutler) seated in the passenger seat, operates the onboard computer.

## The Law

[62] This case calls for the application of the well-known principles in *R v W(D)*, [1991] 1 SCR 742, as further elucidated by the Alberta Court of Appeal in *R v Ryon*, 2019 ABCA 36 (*Ryon*), and *R v Achuil*, 2019 ABCA 299 (*Achuil*). The latter two cases establish that the principles to be applied in a credibility analysis of exculpatory evidence are as follows:

- (i) The burden of proof is on the Crown to establish the accused's guilt beyond a reasonable doubt and that burden remains on the Crown so that the accused person is never required to prove his innocence, or disprove any of the evidence led by the Crown. (Subject to the caveat that this does not apply to defences, such as that found in s 16 of the Criminal Code, where the onus rests with the proponent of the defence.)
- (ii) In that context, if the accused's evidence denying complicity or guilt (or any other exculpatory evidence to that effect) is believed, or even if not believed still leaves the jury with a reasonable doubt that it may be true, then the jury is required to acquit. (Again subject to defences with additional elements such as an objective component)
- (iii) While the jury should attempt to resolve conflicting evidence bearing on the guilt or innocence of the accused, a trial is not a credibility contest requiring them to decide that one of the conflicting versions is true. If, after careful consideration of all the evidence, the jury is unable to decide whom to believe, they must acquit.
- (iv) Even if the jury completely rejects the accused's evidence (or where applicable, other exculpatory evidence), they may not simply assume the Crown's version of events must be true. Rather, they must carefully assess the evidence they do believe and decide whether that evidence persuades them beyond a reasonable doubt that the accused is guilty. Mere rejection of the accused's evidence (or where applicable, other exculpatory evidence) cannot be taken as proof of the accused's guilt.

## Credibility Assessment

[63] I cannot accept the evidence of Cst. O'Mara. His memory of some events is poor, his evidence in multiple ways I find to be internally inconsistent, inconsistent with other evidence which I accept as proven beyond a reasonable doubt, improbable and in other ways is unreliable. He was not a credible witness. His evidence does not raise a reasonable doubt.

[64] There are at least six areas of concern which combined lead the Court to reject his evidence. In coming to my conclusion I have considered them collectively, as they are inter-related. I will set out my findings.

**(a) The Gaps in Constable O'Mara's Memory**

[65] There are important elements missing from his narrative of events, which brings into focus the unreliability of the Accused's evidence.

[66] For example, the civilian witness Mr. Scott observed the Accused perform a pat down search on the Complainant. Mr. Scott also saw him look through his bags. Cst. O'Mara did not advert to any sort of search in his evidence.

[67] This is the usual practice of the police when placing a person under arrest and into a vehicle, and indeed the Detainee Management Policy, entered as Exhibit #7, requires that a pat down search take place before any detainee is placed in the back of a police vehicle for transport. I accept that this happened.

[68] To take another example, Cst. O'Mara also had no memory of how he identified the Complainant. However, there is reference to the Complainant's driver's licence on the two tickets. The Accused was unable to explain when or how he obtained the driver's licence. On the evidence, it could be that the driver's licence was obtained prior to the Complainant being handcuffed, perhaps during the pat down search. The Complainant says it was in his back pocket. It would be unlikely that he would be able to produce it while handcuffed in the back seat of the police vehicle. However, this important part of the arrest process is simply a blank in the Accused's memory.

[69] As will be discussed below, the Accused's evidence of dropping the Complainant on the south side was to say the least spare and incomplete.

[70] In this context, the Accused made no notes of the incident, and did not author a report as required. He has been forced to reconstruct the evidence of this incident many months after it occurred.

**(b) The Reasons for Punching the Complainant**

[71] The reasons Cst. O'Mara gave for striking the blows are not credible. He started by saying that he had an emotional reaction of fear as soon as the Complainant initially pulled his arm away. He chose to immediately grab him and take him to the ground. He did so by means of grabbing his head. He rather benignly described this takedown by stating "we both ended up on the ground."

[72] After the take-down he did not say that the Complainant was struggling, or engaging in any significant physical resistance, although he said the Complainant was yelling. This is consistent with the civilian witness evidence which indicated that the Complainant was not physically resisting and was described by one witness as "subdued."

[73] This is not surprising, since I find that Cst. O'Mara, a much larger, younger and more physically able man than the Complainant, had in fact placed his right knee between the shoulder blades of the Complainant and pinned him to the ground.

[74] Cst. O'Mara claimed not to remember having his knee so placed, though he conceded it was possible.

[75] He said he was trying to handcuff the Complainant, and he struck the Complainant twice in the face hoping he would use his right hand to defend against his blows, and he could then

grab it, an expectation that in the circumstances seems entirely speculative and unreasonable, if not absurd.

[76] Cst. O'Mara then said that he then managed to get the Complainant's right arm, although no detail was provided, and did handcuff him; he later said that his partner helped him put on the handcuffs.

[77] After listening carefully to the entirety of the evidence, it is clear to me the Complainant was not physically resisting when he was on the ground. He had struck his head hard, and was pinned to the sidewalk by the full weight of Cst. O'Mara. He was completely under the Accused's control. The civilian witnesses did not describe any difficulty the two officers had handcuffing the Complainant. I am satisfied that there was no credible reason offered by the Accused to punch the Complainant.

**(c) The Evidence that Constable O'Mara was Unaware of the Complainant's Injury**

[78] Cst. O'Mara's evidence was also that he was unaware of the fact that the Complainant had struck his head on the pavement and was injured, although two of the three civilian witnesses inside the bar saw, and importantly even heard it through the glass window. I do not believe his evidence on this point, for the following reasons.

[79] The Complainant was cut or seriously scraped, and bleeding on the sidewalk. Cst. O'Mara claimed that he did not see any injury on the Complainant's face, at any time. He made the unusual statement that "the part of the face I saw was fine."

[80] The plain facts are and I accept that the Complainant had a large cut or scrape just to the right of the middle of his forehead, caused by him striking his head when first taken to the ground. It was actively bleeding. When Cst. O'Mara was punching him the Complainant was injured and pinned to the sidewalk. The Accused was striking the right side of the Complainant's face, which means that the left side of his face was against the sidewalk. One would expect him to have been looking directly where the punches were landing. A bleeding injury to the right middle of the Complainant's forehead would be obvious.

[81] Cst. O'Mara also brought Mr. Jephtas-Crail to his feet and placed him in the backseat of the police vehicle. He then states that he proceeded to write two tickets, serve them on him, then drove him to the south side and dropped him off.

[82] Cst. O'Mara's claim that he did not see an injury is further weakened when one considers the time the Complainant was in his police vehicle. He had ample opportunity to observe the Complainant's injury.

[83] Further, it beggars belief that at no time in the process Cst. O'Mara saw more than "part of the face," and therefore did not or could not see this bleeding injury, which was almost in the middle of his forehead. It should have been obvious to him from the moment it happened; in any event it would have come to his attention at least at some point during the rest of his dealings with him.

[84] His claim that he did not see an injury is nothing more than an after the fact justification for not taking all the steps required of him by EPS Policy, which is discussed in detail below.

[85] This reflects badly on Cst. O'Mara's credibility.

**(d) The Street Check Report**

[86] Cst. O'Mara did complete a "Street Check" Report in relation to his dealings with Mr. Jephtas-Crail sometime after the incident. It was entered as Exhibit #3.

[87] The narrative portion of the Street Check Report reads as follows:

Crime and Disorder

Reason for stop: Trespassing inside the 7-11 at 10357 Jasper Ave

Subject activity / observations: Heavily Intoxicated

Identifying and/or significant descriptors: big blue jacket, black baseball hat, two duffel bags, one blue, one red.

Subject history: JEPHTAS-CRAIL has a history of being intoxicated in public and being aggressive and/or violent with EMS. He was intoxicated to the point of not understanding direction given to him by police. When my partner and I arrived to walkthrough the store, staff alerted us to the fact that JEPHTAS-CRAIL had just been removed by other members less than 5 min prior. He was removed again and went on his way. My partner and I went back inside the store to deal with another issue when JEPHTAS-CRAIL re-entered the store, this time looking to by cigarettes. He was removed again, issued a J444 for Trespassing and transported out of the area at his request.

[88] This narrative is obviously a false and misleading account of what occurred. The evidence disclosed that Mr. Jephtas-Crail largely did understand the direction given to him by police, though he was intoxicated, even if during some portions of these events he did not necessarily follow it.

[89] Worse, there was also absolutely no reference in the report to an arrest, or any physical altercation involving police use of force. There is also no reference that the Complainant was transported to the south side of Edmonton, as opposed to "out of the area."

[90] This also reflects badly on the Accused's credibility.

**(e) Failure to Follow Police Procedure and Policy**

[91] Cst. O'Mara also failed to comply with several important aspects of EPS Policy and Procedure. The Court received no satisfactory explanation for this.

[92] I will refer to the most relevant portions of the various policies.

**Reasonable Officer Response Procedure – Exhibit #4**

[93] This EPS Policy clearly indicates, and Counsel agree, that the application of two punches to the head of a detainee by a police officer is a "Category II Use of Force Event." One type of this Use of Force is described as:

**Empty Hand Hard** – Techniques which result in contact with the subject and are dynamic or aggressive (e.g.: distraction techniques, takedowns, punches, kicks, knees, elbows).

[94] Under Procedure, the Policy states that officers when using force must:

**B. Act on Reasonable Grounds:**

1. Consider environmental, subject and officer factors:

Officers must consider the environmental, subject and officer factors in determining what level of response would be reasonable in the totality of the circumstances. They must be able to articulate their subjective reasonableness in applying force.

2. Provide a verbal warning:

When practicable, officers must provide a verbal warning to the subject that physical force may be used to gain control and the type of force to be used. If a verbal warning is not practicable, officers must record their reasons in their notebook and report.

3. Consider use of following strategies:

Officers should consider applying the following strategies to take control of the situation when practicable:

a. Lawful and Professional Presence:

- i. Use of visual images of authority (e.g. badge and uniform).
- ii. Professional manner including remaining calm, cool and collected.

b. Tactical Communication Skills:

Use of verbal interaction with the subject including conflict resolution, persuasion, advice and lawful commands.

c. Tactical Considerations:

Use of tactical considerations including distance/time relationship, cover/concealment and disengagement principles.

**C. Only Use as Much Force as Necessary:**

1. Officers must be able to articulate the reasons for any initial application of force, as well as any subsequent application of force.

....

**D. Attend to Medical Needs:**

Once the situation is under control officers must:

- 1. If there are any injuries, or force was applied that has known risks for the subject, request the attendance of Emergency Medical Services (EMS) and attend to preservation of life as appropriate.
- 2. Otherwise monitor the subject for any changes in their condition.

**E. Notifications and Review:**

1. Category I events:

Notification is not required for Category I events unless exigent circumstances exist, or an off-duty sworn member is involved. If notification is required, officers must declare over the radio, or phone their

Staff Sergeant, that a use of force event has occurred and request the attendance of a Supervisor.

2. Category II events:

Notification is required for all Category II events as follows:

a. Involved Officers:

The involved officers must declare over the radio, or phone their Staff Sergeant, that a Category 2 use of force event has occurred. The involved officer must then request the attendance of a Supervisor.

b. Police Communications:

Police Communications must ensure the officer's Staff Sergeant is notified.

c. Reviewing Supervisor:

A Supervisor not involved in the use of force event may conduct the review. A Supervisor is considered involved if they provided guidance or direction, participated in on-scene preplanning or direction, or participated in or witnessed the use of force event. An involved Supervisor may only conduct the review if directed by the Staff Sergeant or Duty Officer.

The Reviewing Supervisor must:

i. Attend the use of force event and:

- 1) Ensure injured parties receive the necessary medical attention.
- 2) Gather the facts and circumstances surrounding the use of force as per Reasonable Officer Response Reporting Procedure.
- 3) Ensure that the on duty Staff Sergeant has been informed of the event.

ii. If unable to attend the use of force event:

- 1) Notify the Staff Sergeant as soon as possible.
- 2) Conduct the review without attending the location as per Reasonable Officer Response Reporting Procedure.

d. Staff Sergeant:

The Staff Sergeant:

- i. May direct a Supervisor to conduct the review, which may include an involved Supervisor if no one else is available.
- ii. Must notify the Duty Officer if the use of force was of a serious or sensitive nature.

3. Serious Incidents:



For Serious Incidents, officers must follow the Serious Incident Response Procedure.

**F. Complete the Appropriate Reporting for the Event:**

Refer to Reasonable Officer Response Reporting Procedure.

**Transporting Detainees Procedure – Exhibit #6**

[95] This EPS Policy defines “Detainee” as follows:

Detainee – A person in EPS custody, such as individuals under arrest or detention. This includes persons when there is a lawful power of arrest but due to incapacitation, the police have not carried out the actual arrest. In these circumstances, the EPS owes the same duty of care to safely and professionally manage these incapacitated detainees as if they were under actual arrest.

[96] Section G of this Policy is titled “Take Additional Steps for Special Transport Situations”

[97] Paragraph 3 of Section G reads:

Sick or Injured Detainees:

A sick or injured detainee requiring medical attention may be transported to hospital by EMS or police vehicle depending on the circumstances:

- a. if transported by EMS, the transporting member must accompany the detainee, or
- b. if transported by police vehicle, the transporting member must make reasonable accommodations to ensure the detainee’s safety and comfort.

[98] Cst. O’Mara admits that he failed to comply with many of these requirements. He failed to declare over the radio or call his Staff Sergeant that a Category II Use of Force Event occurred. Nor did he request the attendance of a supervisor. The importance of doing this is clear from a review of subsection E.2.c., which details the obligations of the reviewing supervisor.

[99] Cst. O’Mara also admits that he did not assess the Complainant for injuries following the incident. Given the use of force, he conceded that “I should have.”

[100] In my view it is clear, as discussed above, the Accused was aware that the Complainant was injured as a result of the force he had used on him. At a minimum, he had applied force that, as described in the policy, “had known risks for the subject.”

[101] Cst. O’Mara’s clear duty was to transport him to a hospital, or request Emergency Medical Services (EMS) to attend. He failed to properly look after the Complainant’s medical needs as required.

[102] Cst. O’Mara also failed to complete any sort of written report as required. It is of note that no report was completed by his partner, Constable Holly Beutler (Cst. Beutler), either. Cst. Beutler was also an “involved officer.” She assisted in the arrest. She appears to have failed in her duty as well.

[103] There were no questions asked of the Accused about this, but I simply cannot believe that this event was not discussed between the partners, and that the two police officers independently

of each other concluded that despite a Category II level of force being employed, no reporting would occur, none of the extensive EPS Policies dealing with Use of Force described above would be followed, the Transport of Detainees Policy would not be followed, and that Mr. Jephtas-Crail would be dropped off in the river valley and left to his own devices to deal with his injuries.

[104] Cst. Beutler was not called as a witness by either party. I cannot draw an adverse inference against either the Crown or the Defence for this, and I refrain from doing so.

[105] The circumstances seem to me, however, to at minimum indicate a desire, at the time, to not have this incident reviewed according to policy.

[106] The Defence suggested in argument that the fact the Complainant was identified on the tickets that were issued, and in the Street Check Report, would indicate that the Accused was not trying to hide or obscure what occurred.

[107] The tickets were withdrawn on first appearance. This was not explained in any way. In any event, S. Sgt. Dundass was only able to recover the tickets by getting scanned printouts from the Court Clerk's Office several months later.

[108] The Street Check Report was highly misleading as discussed above. On the whole of the evidence, neither of the matters raised by the Defence can be taken as an indication of a lack of an intention to obscure what occurred.

[109] Obviously, the opportunity to have the matter properly reviewed was lost on the night it happened. In my view this was intentional. The only reason the matter ever came to light was that it was reported by Mr. Scott.

[110] Parenthetically, I feel compelled to add that the Court is very disappointed and concerned that it took until February 6, 2018, for the Professional Standards Branch of the EPS to even begin investigating this complaint. Based on my very long experience in the justice system, any investigation of a civilian committing a similar assault, in similar circumstances, and reported by an eyewitness, with other witnesses available, and the ready means to identify the perpetrator, would be commenced much more promptly—within hours very likely.

[111] To conclude my consideration of this aspect of the evidence, aside from an abdication of duty and responsibility, there is a significant element of dishonesty in failing to comply with EPS Policy, and then authoring a misleading Street Check Report about the incident.

[112] More than this however, I reject the Accused's explanations for his failures. He stated he did not comply with Policy in respect to the interaction because "at the time I considered it concluded" and that this was the "busiest Division in the city." He added that he did not want to do the paperwork.

[113] Constable O'Mara knew full well that the matter was not "concluded." He knew he was bound to comply with the reporting requirements of the Use of Force Policy, including writing a report, as well as the other Policies indicated above, and that outside of any exigent circumstances this was the duty that he was required to busy himself with, in order to in fact conclude the matter.

[114] There was no evidence that there were other calls for service waiting, or that anything else superseded this duty. He was certainly able to take the time to write up two tickets, and then transport the Complainant to the south side of Edmonton. This goes to belie any suggestion

there was any real reason not to comply with the Use of Force Policy from the perspective of available time or being too busy. In the end there is simply no credible explanation offered for not following EPS Policy.

**(f) The Transport of the Complainant to the South Side of Edmonton**

[115] The 7-11 Store, where this entire incident started, is on the southeast corner of Jasper Avenue and 104 Street in Edmonton. The GPS data reveals that Car 685 returned to this location at around 11:00 p.m. This is the time the Bar Bricco employees shift ended.

[116] Two of the witnesses from Bar Bricco indicated that the Complainant was placed in the back of the police vehicle immediately after the incident concluded, and the police vehicle drove off. This accords with the testimony of the Accused. Where and when the tickets were written is not accounted for in the Accused's evidence.

[117] I have no explanation as to why there was no GPS information available after 2313 hours. Somehow the GPS function, which is in the onboard computer, was switched off, or coincidentally somehow lost. Cst. O'Mara claimed a lack of knowledge about the operation of the GPS. Inferentially he wanted the Court to conclude that it was perhaps his partner who did something to disengage the GPS operation.

[118] No reason to disengage the GPS was offered in evidence or in argument. In the whole of the circumstances it is entirely too coincidental.

[119] The Accused's evidence about transporting the Complainant to the south side was vague and uncertain. He claimed Mr. Jephtas-Crail was dropped off in a residential area containing condominium or apartment type buildings. He had few specifics as to a street or even an area of the south side of Edmonton where this happened.

[120] His entire evidence in respect to his dealings with the Complainant after he was placed in the back of police Unit 685 was unimpressive and very incomplete.

[121] For all of the above reasons, I find Cst. O'Mara did not give a credible explanation of what occurred. He was not a believable witness and I reject his evidence, particularly that which relates directly to his use of force and the reasons for it. His evidence does not raise a reasonable doubt in my mind.

[122] Having rejected the Accused's evidence, and applying the principles in *Ryon* and *Achuil*, I must still decide based on the evidence that I do accept that the Crown has proved beyond a reasonable doubt that an assault occurred, and that section 25 has no application here.

[123] I would start out by saying that I can only accept parts of the evidence of the Complainant, Craig Jephtas-Crail. In particular, his account of what occurred with the police at the 7-11 Store and later on the sidewalk is incomplete and not reliable.

[124] Mr. Jephtas-Crail was wrong about the same police officer removing him from the 7-11 Store on both the first two occasions, nor do I accept that Cst. O'Mara was aggressive in removing him from the store. His claim of excessive force at that point, in his words "he roughed me out of the store" do not stand up to scrutiny.

[125] Mr. Jephtas-Crail's memory of what occurred on the sidewalk is minimal, which is perhaps unsurprising, as I do find that his head hit the sidewalk three times as a result of being

taken down and then punched while he was on the ground, and of course he absorbed the punches themselves. He was also intoxicated.

[126] He essentially claimed that he did not say anything and at no time did he object or yell at the police, or do anything untoward. His evidence as to his own behaviour while encountering the police on the sidewalk does not accord with the descriptions of the other civilian witnesses and I do not accept it. It was not, however, inaccurate for him to say he was “smashed” to the ground.

[127] Mr. Jephtas-Crail went on to describe how he was dropped off in the river valley. He has a memory of this. He remembers the police tossing his bags at him. More important, he described that from where he was dropped off there were houses “on top” and that he had to walk up a hill before he found his way to a 7-11 Store on Whyte Avenue. He eventually walked to his friend’s mother’s residence by a different route than normal.

[128] The Complainant did not present as a particularly guileful or sophisticated person. This part of his evidence seemed to me in no way concocted, had a ring of truth to it, and I accept that the drop off occurred as he described it.

[129] I also accept the description of the civilian witnesses from Bar Bricco as to what happened on the sidewalk. They were sufficiently detailed that I can come to the following conclusions.

[130] Cst. O’Mara took the Complainant to the ground violently. The Complainant struck his head on the sidewalk, hard, and suffered an injury which visibly drew blood. Cst. O’Mara punched the Complainant twice. Each punch was hard, and caused the Complainant’s head to bounce off the sidewalk. There was a pause between the two punches. I find that from the point the Complainant hit the ground he offered little to no physical resistance. He was, however, verbal.

[131] Cst. O’Mara is a younger and much larger man and had his weight on his knee which was placed on the Complainant’s back between his shoulder blades.

[132] The witness Mr. Scott described the Complainant’s forehead as cut and bleeding. The witness Ms. McWilliams also saw the injury. The witness Mr. Babish testified that on the ground the Complainant appeared shocked and distressed. He observed the handcuffs go on behind his back. The second officer assisted in the handcuffing. He was sure that at least the second punch occurred after the Complainant was handcuffed. I accept his evidence on this point.

[133] All three of the civilian witnesses were emotionally upset by what they witnessed and felt that the use of force was excessive. Mr. Scott in particular had some experience observing police interactions with street people in this area of the city, and he felt this to be very out of the ordinary.

[134] While it is for the Court to determine on the evidence whether the force was reasonable, the reactions of these witnesses is a factor I can consider.

### **Is the Section 25 Defence Available to the Accused?**

[135] Section 25 of the *Criminal Code* reads, in part:

### **Protection of persons acting under authority**

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

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

is, if he acts on reasonable grounds, justified in doing what he is required or authorized to do and in using as much force as is necessary for that purpose.

[136] Section 26 of the *Criminal Code* reads:

### **Excessive force**

26 Every one who is authorized by law to use force is criminally responsible for any excess thereof according to the nature and quality of the act that constitutes the excess.

[137] In *R v Nasogaluak*, [2010] 1 SCR 206 (*Nasogaluak*), the Supreme Court of Canada ruled that section 25(1) essentially provides that a police officer is justified in using force to effect a lawful arrest, provided that he or she acted on reasonable and probable grounds and used only as much force as was necessary in the circumstances. The officer's belief that force was required must be objectively reasonable.

[138] Further, police actions should not be judged against a standard of perfection. The Supreme Court of Canada was careful to point out that it must be remembered that the police have a difficult job. They engage in dangerous and demanding work, and often have to react quickly to emergencies. Their actions should be judged in light of these exigent circumstances.

[139] Section 25 does not confer extra powers on the police; it serves as a shield from criminal or civil liability. The burden of an accused is merely an evidential one – to point to evidence which puts the defence in issue. Where the defence is in issue; where it has an “air of reality” the burden is on the Crown to negative the defence to the criminal standard of proof beyond a reasonable doubt.

[140] The section 25 *Criminal Code* justification for the use of force requires a weighing of three factors, as set out in *Crampton v Walton*, 2005 ABCA 81 at paragraph 6:

### **1. Was the police officer required or authorized by law to perform the action in question?**

Based on all the evidence, I have a reasonable doubt that Cst. O'Mara was acting within the scope of his law enforcement duties, in removing the Complainant from the 7-11 Store, issuing him with tickets, and placing him under arrest for obstruction. Further, in the ordinary course of a lawful arrest, and transporting a detainee in the back of a police vehicle, it would be lawful to search him and place him in handcuffs.

### **2. Did he act on reasonable grounds in performing that action?**

He may have had reasonable grounds to arrest and handcuff the Complainant. I have a reasonable doubt on that aspect of the matter.

We are dealing here however, with the specific use of force employed by Cst. O'Mara once he had the Complainant on the ground and handcuffed him. He was kneeling on his back and delivered two hard punches to the right side of the face of the Complainant. He had the assistance of his partner. I find in the circumstances, that there was no reasonable basis established on the evidence that I accept, for the Accused to punch the Complainant. In particular the second punch, which the evidence establishes was done after the Complainant was handcuffed, was entirely gratuitous. The situation from the Accused's perspective was under control.

**3. Did he use unnecessary force?**

I find that the force used here was not necessary for the Accused to effect his purpose of arresting and handcuffing Mr. Jephtas-Crail. It was not necessary in these circumstances for Cst. O'Mara to punch the Complainant, much less punch him with the force that he used.

[141] The Supreme Court of Canada in *Nasogaluak* at paragraph 32 made it clear that the police authority to use force is limited.

While at times the police may have to resort to force in order to complete an arrest or prevent an offender from escaping police custody, the allowable degree of force to be used remains constrained by the principles of proportionality, necessity and reasonableness. Courts must guard against the illegitimate use of power by the police against members of our society, given its grave consequences.

[142] The force used here on a prone, injured, physically subdued, intoxicated homeless man was not proportionate, necessary or reasonable.

[143] I find Matthew O'Mara guilty of assault.

Heard on the 8<sup>th</sup> and 9<sup>th</sup> day of October, 2019.

Dated at the City of Edmonton, Alberta this 18<sup>th</sup> day of November, 2019.

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T.D. DePoe  
A Judge of the Provincial Court of Alberta

**Appearances:**

D. Spaner  
for the Crown

K. Teskey, Q.C.  
for the Accused

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**Corrigendum of the Reasons for Decision  
of  
The Honourable Judge T.D. DePoe**

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In paragraph 110, line 2, the word “investigated” has been corrected to read “commenced.”

In paragraph 137, line 1, the word “affect” has been corrected to read “effect.”