

Discipline Authority File Number: VIC-2009-060
Police Complaint Commissioner File Number: 2009-4724

REVIEW ON THE RECORD

(Pursuant to Section 141(2) of the Police Act, R.S.B.C.1996, and c.267)

In the matter of

Constable Jana Hardy and Constable Jason Ince
of the Victoria Police Department

Disciplinary Disposition for Constable Ince

Mr. Mulroney, on behalf of Constable Ince, has asked that the discipline imposed on Constable Ince be reviewed under s.141(10)(b). His submission is that the discipline imposed on Constable Ince should be the same as, or close to equal, to that imposed on Constable Hardy - to wit: 3 days suspension from duty, without pay.

To determine the issue, I have examined the conduct of both officers to see if the same discipline is appropriate. It should be noted that the argument presented on behalf of Constable Ince accepts that some suspension is necessary, but that it should not be 5 days.

At the outset of this matter, Constable Hardy searched the female prisoner while Constable Ince searched the male prisoners, Joseph and Vigar. In his search, Constable Ince missed a 26 oz. bottle of vodka, which proved instrumental in Mr. Vigar's death.

In the booking area, Constable Ince and a jail guard prepared Mr. Vigar to be placed in a cell, while Constable Hardy dealt with Mr. Joseph. Constable Ince, therefore, had a much greater opportunity to observe Mr. Vigar's deteriorating condition. Constable Hardy assisted only when she realized that Constable Ince and the jail guard were having problems with Mr. Vigar. She assisted in removing Vigar's shoes, and thus had an opportunity to observe his condition, but for a much shorter period of time.

While Constable Hardy was putting Joseph into a cell, Constable Ince and the jail guard found it necessary to drag Mr. Vigar to his cell. At this point, Vigar appeared to be comatose and had to be pulled bodily across the floor. Constable Hardy was unaware of this part of the incident.

Constable Ince and the jail guard placed Mr. Vigar in the cell in a “recovery” position on the floor, and left him there to sleep off his intoxication.

Constable Hardy briefly looked into Vigar’s cell and wondered whether PAS should be asked to attend and check Mr. Vigar’s medical condition. She decided it was not necessary.

After Mr. Vigar was discovered in the cell suffering cardiac arrest, Constable Hardy made her NCO aware of the fact that an empty 26 oz. bottle of vodka had been discovered earlier in the transport van by the officers, and that she had disposed of it in the garbage pail.

In considering all of these facts, I find there is a significant difference between the knowledge and the conduct of the two officers. It is, therefore, fair and correct that their levels of discipline differ. I believe that 5 days for Constable Ince and 3 days for Constable Hardy to be just and appropriate.

Mr. Mulroney raises three other areas where discipline was imposed, and I agree with the comments made in his submission to me.

- 1) Constable Ince should review all appropriate jail policies relative to the medical treatment of persons in custody. For the reasons advanced by Mr. Mulroney, I believe this condition was appropriate and has been fully complied with, and is therefore now not necessary.

- 2) The inadequate search by Constable Ince should result in a written reprimand, and I find again that this discipline is appropriate.
- 3) Constable Ince should receive additional training regarding search techniques of prisoners. I believe this condition was appropriate and has been fully met.

These are my findings regarding s.141(10)(b). In making my determinations, I have also considered s.126 (2) in its entirety relative to the appropriate discipline.

“Alan Filmer”

Alan E. Filmer, Q.C.

Adjudicator

Dated