

IN THE MATTER OF THE POLICE ACT, R.S.B.C. 1996, C.367

IN THE MATTER OF POLICE CONSTABLE

NOTICE OF ADJUDICATOR'S DECISION

TO: Constable

AND TO: Acting Sergeant
Police Department

AND TO: Chief Constable

AND TO: Mr. Stan T. Lowe, Q.C., Police Complaint Commissioner

INTRODUCTION

On October 12, 2012, Police Constables and of the Police Department arrested and detained and . It is alleged that in so doing Constable used excessive force against the person of Ms. and in so doing committed misconduct by an abuse of authority contrary to section 77(3)(a)(ii)(A) of the Police Act. It is also alleged that Constable committed misconduct by an abuse of authority by using inappropriate and abusive language towards Mr.

The incident was investigated by Acting Sergeant who concluded that the evidence failed to support the allegations of abuse of authority.

That decision along with Acting Sergeant s report were provided to Police Commissioner Stan Lowe who has concluded that there was a reasonable basis to believe the decision was incorrect. Accordingly I have been appointed Adjudicator pursuant to section 117(4) of the Police Act.

CIRCUMSTANCES

On October 12, 2012 Constables and were in an unmarked police vehicle which was being operated on the in . The officers noted a 1994 Ford Mustang that appeared to have fresh damage to its rear bumper. The police brought the Mustang to a stop. They did so on the basis of the fresh damage. As the officers approached the vehicle they learned that Mr. was the driver while Ms. was a passenger. After conducting a search on CPIC both officers became aware of

the fact that Mr. [REDACTED] was facing a number of criminal charges for assault, uttering threats and extortion. Most noteworthy of the information they received was the fact there was a condition of release that Mr. [REDACTED] not have any contact with Ms. [REDACTED]. As well their investigation revealed that Mr. [REDACTED] possessed a learners licence which required that he be accompanied by a qualified supervising driver over 25 years of age. Constable [REDACTED] then approached the passenger in order to determine whether she qualified as a supervising driver. He asked her to identify herself. She said her name was [REDACTED]. The answer was obviously false. Constable [REDACTED] concluded that that was not her real name. She then said that she did not have a valid driver's licence. He then asked her to get out of the vehicle and again asked for her real name. He then asked her if she was the [REDACTED] the person named in the no contact order. She again denied that she was that person and insisted that her name was [REDACTED]. Constable [REDACTED] then told her that she would be arrested for obstruction.

The real difficulties began with Constable [REDACTED]'s attempt to arrest Ms. [REDACTED]. He said that she resisted as he was attempting to put handcuffs on her and an altercation took place. He said that she was actively resisting and that he needed to arrest her and have some control over her so as to prevent her from running into the traffic. It is not in dispute that she was yelling at the officer, at the same time Mr. [REDACTED] who was being investigated by Constable [REDACTED] was yelling at the police because he said they were using excessive force on her. According to police statements Constable [REDACTED] then attempted to arrest [REDACTED] but she resisted by spinning around. Constable [REDACTED] stated that he then advised Ms. [REDACTED] of her right to retain and instruct counsel under section 10(b) of the Charter. After a struggle he managed to arrest Ms. [REDACTED] and placed handcuffs on her. After she was placed in the rear of the police vehicle she confirmed that her name was [REDACTED] and that she knew [REDACTED] had no contact conditions and did want to get him into trouble since he was her boyfriend.

There is an obvious conflict in the evidence. Ms. [REDACTED] in a statement she gave on November 7th 2012 stated that Constable [REDACTED] twisted her arm and punched her in the back. She said that she suffered bruising and swelling from the incident. It should be noted that later in her statement that she was not really punched. Not surprisingly Mr. [REDACTED]'s evidence contradicts the evidence of the officers. His statement generally corroborates the statements of Ms. [REDACTED] in that he said that the police were unduly harsh and aggressive with Ms. [REDACTED] he also said that when he told Constable [REDACTED] not to rough up Ms. [REDACTED] because she was not resisting he was told by Constable [REDACTED] to "shut the fuck up" he said that Constable [REDACTED] then shoved him in the back and called him a "little piece of shit" and a "faggot". It was clearly his view that the police were the aggressors in the incident.

In a lengthy statement Constable [redacted] has denied using any inappropriate force and inappropriate language. In a careful statement he stated how Ms. [redacted] was aggressive and abusive. He told of the difficulties that he experienced in attempting to arrest her. His position is that he used no more force than was necessary to effect the arrest.

The incident was witnessed by [redacted] who in material ways corroborates the evidence of Mr. [redacted] and Ms. [redacted]. In fact he approached the officers while the incident was going on and asked for the officers' identification. Later during the incident Constable [redacted] did provide his identification to Mr. [redacted]. Mr. [redacted] was so concerned that he went to the [redacted] Police Station on October 5th and filed a complaint. He said that the officers slammed a very tiny skinny handcuffed female against the police vehicle four times. He said he was upset and disturbed by what he had seen. He said the slamming was very loud that he could hear in his vehicle which was close to the vehicle in question. It was his view that the female appeared to be struggling only to protect herself. He felt the officer needed anger management training. As well Mr. [redacted]'s wife [redacted] in a statement said that the officer was large and the woman petite and that the officer was slamming her "he slammed her quite viciously at least three or four times against the car". She said that the woman was struggling and was trying to deflect "that slamming". She said she had a good view of the incident.

CONCLUSIONS

The relevant sections of the Police Act read as follows:

117(9) If, on review of the investigating officer's reports and the evidence and records referenced in them, the retired judge appointed considers that the conduct of the member or former member appears to constitute misconduct, the retired judge becomes the discipline authority in respect of the matter and must convene a discipline proceeding, unless section 120 (16) [*prehearing conference*] applies

120 (3)(b) the discipline authority concludes that

(i) the evidence against the member is sufficiently serious to warrant dismissal or reduction in rank or, in the case of a former member, is sufficiently serious to have warranted dismissal or reduction in rank, or

(ii) a prehearing conference would be contrary to the public interest.

120(16) On approval by the police complaint commissioner, disciplinary or corrective measures accepted by a member or former member and approved by a prehearing conference authority at a prehearing conference constitute a resolution of the matter, which resolution is final and conclusive and not open to question or review by a court on any ground.

There are two specific allegations of misconduct against Constable [redacted]. It must be noted that police officers are entitled to use as much force as is necessary in the lawful execution of their duties. However the use of force must not be excessive having regard to the whole of the circumstances. After a careful examination of the whole of the evidence including all the relevant documents, and in particular the evidence of the independent witnesses Mr. and Mrs. [redacted], I am satisfied that the conduct of Constable [redacted] on the first allegation relating to the use of excessive force against the person of Ms. [redacted] appears to constitute misconduct within the meaning of the Act. However, in my view the evidence relating to the second allegation of misconduct by using inappropriate and abusive language towards Mr. [redacted], falls short of the statutory requirement.


I am also satisfied that Constable [redacted]'s conduct does not fall within the parameters of section 120(3)(b)(i). That is to say based on the whole of the circumstances it is not sufficiently serious to warrant dismissal or reduction in rank. Therefore pursuant to sections 117(8) and 120(16) this is an appropriate case for the holding of prehearing conference.

Therefore a prehearing conference will be offered to Constable [redacted]. He will have the right under the Act to request permission to call examine or cross examine witnesses at the proceeding provided such request is submitted in writing within 10 business days following the receipt of this Notice of Decision. The scope of disciplinary or corrective measures that would be appropriate include the following:

1. A verbal reprimand;
2. A written reprimand;
3. Giving appropriate advice as to Constable [redacted]'s conduct; and
4. Require Constable [redacted] to undertake further training in the appropriate use of force.

Pursuant to section 117(8) of the Police Act I hereby give notice to the complainant Ms. [redacted] of her right to make submissions at any discipline proceeding pursuant to the Police Act.

Dated at Vancouver, B.C. this 19th day of August, 2013


The Honourable Wally T. Oppal, Q.C.

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IN THE MATTER OF POLICE CONSTABLE [REDACTED]

AN AMENDED FINAL DECISION

In my Decision I stated that a prehearing conference will be offered to Constable [REDACTED]. It should be made clear that the right under the Act to request permission to call examine or cross examine witnesses does not arise at the prehearing conference stage. It only arises at a subsequent disciplinary hearing. As well, notice must be given to Mr. [REDACTED] and Ms. [REDACTED] since they filed complaints and thereby attained the status of complainants and not witnesses per se.

Dated at Vancouver, B.C. this 20th day of August, 2013



The Honourable Wally T. Oppal, Q.C.