

IN THE MATTER OF THE POLICE ACT RSBC 1996 c.367

AND

IN THE MATTER OF

Constable "X" and Constable "Y"

NOTICE OF DECISION ON REVIEW OF FINAL INVESTIGATORS' REPORT

TO: Csts. "X" and "Y"

Members

TO: Sgts. "W" and "V"

Investigators

AND TO: Stan T. Lowe

Police Complaint
Commissioner

NOTIFICATION Section 117(7)

[a] and [b] Description of complaint

There is no complainant as this is a review under s.117(1).

[c] A description of each allegation of misconduct.

Count 1- That Csts. "X" and "Y" intentionally or recklessly made an arrest of "V" without good and sufficient cause contrary to section 77(3)(a)(i) of the Police Act.

Count 2- That Csts. "X" and "Y" used unnecessary force on the person of "V" contrary to section 77(3)(a)(ii)(A) of the Police Act.

Count 3- That Csts. "X" and "Y" detained or searched "V" without good and sufficient cause contrary to section 77(3)(a)(ii)(B) of the Police Act.

[d] Retired Judge's determination.

(i) Background.

On November 16, 2012 Cst. "X" and Cst. "Y" were on patrol in the 800 block of East Hastings Street, Vancouver. The time was 21:40 hours. They saw a male, later on identified as "V", who, on observing their police vehicle, quickly turned and walked away. The officers regarded his actions as suspicious and asked him to come to their vehicle so they could speak to him. He spoke to the officers and provided a name, "U", which at the outset, based on additional information provided by "V" appeared to be correct. However on further questioning by the police and a comparison of a PRIME photo corresponding to the name given with the male being spoken to, Cst. "X" suspected that the man was not being truthful. "V" indicated he had a tattoo but would not show it to Cst. "X" when asked. Suspecting that "V" was not being truthful about his identity Cst. "X" was of the opinion that there may have been an outstanding warrant or other incriminating matter and that "V" was obstructing the officers in the execution of their duties.

With the intent of speaking further to "V" Cst. "X" opened the door of his vehicle. "V" immediately began moving swiftly away, initially on Hastings Street and eventually on Campbell Avenue where he was chased to an area between two buildings in the 400 block. During the chase Cst. "X" yelled "Police, stop" as "V" was running up a small set of stairs where he lost his footing and fell hard on his chest. "X" again yelled "Police, stop" as "V" attempted to get up. He was tackled to the ground and the officer, concerned for his safety, struck "V" in the ribs with his knee. A struggle ensued with Cst. "X" punching, continuing to use his knee and

eventually pepper spraying the suspect as "V" was now referred to in Cst. "X" 's occurrence report. About this time Cst. "Y" arrived and assisted in gaining control of "V" who continued to resist, using both kicks and punches. The officers were finally able to secure "V" with handcuffs. At this time "V" was asked for and provided his real name. Cst. "Y" ran the name and found that "V" was in an area on Campbell Avenue where he was prohibited from being by Court Order. Cst. "Y" then arrested and chartered "V" for breaching a condition of the Order. A search of his person by a third police officer located what was believed to be illicit drugs.

During the chase, takedown and arrest "V" received some minor injuries, including a sore shoulder, pepper sprayed face and abrasion to his left cheek. He was examined by the jail nurse and subsequently transported to St. Paul's hospital where he was found to have a fracture of a finger on his left hand about which he had not complained to the police at the time of his arrest. There were no fractures in his chest or shoulder area.

(ii) Determination

Based on the above I am satisfied that each of the counts against both officers should be substantiated as the evidence in the report appears sufficient to substantiate the allegations and requires the taking of disciplinary or corrective measures. The officers acted on the basis of suspicion only. In order to effect an arrest they needed reasonable and probable grounds that an offence had been committed. None were present. They even lacked the grounds for an investigative detention as they did not hold a suspicion which would associate "V" with any particular offence.

(iii) I am offering Cst. "X" and Cst. "Y" confidential, without prejudice prehearing conferences with a prehearing conference authority to determine whether each member is prepared to admit misconduct, and if so, what disciplinary or corrective measures each member is prepared to accept.

(iv) The range of disciplinary or corrective measures that I am considering under section 126 of the Police Act are:

-Suspending the members without pay for not more than 30 scheduled working days,

- require the members to undertake specified training or retraining,
- reprimand the members in writing,
- reprimand the members verbally,
- give the members advice as to their conduct.

The members pursuant to section 119 of the Police Act may file with the Discipline Authority a request to call and examine or cross examine at the discipline proceeding, witnesses listed in the final investigation report provided such request is submitted in writing within 10 business days following receipt of this decision.

Dated at Vernon, B.C this 25th day of June, 2013

“D.B.Overend”

Dennis B. Overend

Retired Judge and Discipline Authority