

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

AND

IN THE MATTER OF A DISCIPLINE PROCEEDING UNDER SECTION 124

AND

IN THE MATTER OF AN ALLEGATION OF MISCONDUCT AGAINST CONSTABLE
[REDACTED] AND CONSTABLE [REDACTED]
OF THE VANCOUVER POLICE DEPARTMENT

DISCIPLINE AUTHORITY’S DECISION ON DISCIPLINE OR CORRECTIVE
MEASURES

(Supplement to Form 4)

TO: Constable [REDACTED]
Constable [REDACTED]

AND TO: [REDACTED]
Counsel for [REDACTED]

AND TO: [REDACTED]
Counsel for [REDACTED]

AND TO: Clayton Pecknold
Police Complaint Commissioner

I. Introduction

1. On September 25, 2019, I delivered my Findings and Reasons under Section 125(1)(b) of the Police Act. I found that Constable [REDACTED] and Constable [REDACTED] had committed the misconduct of deceit. I must now propose appropriate disciplinary or corrective measures.

II. The Misconduct

2. The misconduct alleged was that each member intentionally made a false or misleading duty statement on [REDACTED] and a false or misleading oral statement during an interview on [REDACTED].
3. In my reasons I found the evidence proved on a balance of probabilities that Constable [REDACTED] and Constable [REDACTED] intentionally falsified their statements in a misguided effort to assist two fellow officers who were being investigated for alleged misconduct.
4. At paragraphs 33-42 of the decision I said:

There can be no doubt that the members' statements in their duty reports and interviews stating that they drove to the locations described by [REDACTED] to look for break and enters are false. In my earlier section 117 decision, I commented that false, inaccurate or misleading information could find its way into a police officer's notes, statements, and reports for a variety of reasons. The officer may be mistaken or confused, be unable to accurately recall a situation, be misled by others, or he or she may be negligent, reckless or deceitful.

In the Final Investigation Report Staff Sergeant [REDACTED] concluded on page 49:

“With respect to the allegation of Deceit for Cst [REDACTED] and Cst [REDACTED] S/Sgt [REDACTED] has concluded that based on the recollection of events subsequent to the passage of time which plausibly is cross contaminated with the attendance to an unrelated file over the preceding three years mixed with the misinterpretation of GPS data created a situation where Cst [REDACTED] and Cst [REDACTED] validated themselves as having attended the areas to check for a BNE as reported by [REDACTED] when in fact they had not. For these reasons Cst [REDACTED] and Cst [REDACTED] respective and collective recall accuracy to this incident is very plausible honest mistake or at most reckless attention to detail but not an intentional act to deceive.”

The issue in this Discipline Proceeding is whether there is clear, cogent and convincing evidence that proves on a balance of probabilities that the false statements of Constables [REDACTED] and [REDACTED] were made with the intent to mislead the investigation. Counsel argue that had the members had access to the communication logs, text messages and correct GPS data, their recollection of the incident would have been much better. Counsel submit that Constable [REDACTED] and Constable [REDACTED] statements were made as a result of an honest or innocent mistake in recalling some other unrelated incident. A resolution of the matter comes down to an assessment of the credibility of Constable [REDACTED] and Constable [REDACTED]

The evidence does not prove they were directly ordered by Sergeant [REDACTED] to drive to the location to look for break and enters. While there may have been some discussions between Sergeant [REDACTED] and

Constables [REDACTED] and [REDACTED] likely by cellular telephone, about them going to look, Sergeant [REDACTED] had only a vague recollection of making the request and he was unable to recall any specific details. There is no clear or convincing evidence they were ordered to go and I accept their evidence they would not have disobeyed such an order. As well, the radio and computer text communications between the four officers proves that before Constables [REDACTED] and [REDACTED] arrived at the [REDACTED] they were told they were clear. Sergeant [REDACTED] released [REDACTED] and Constable [REDACTED] and Constable [REDACTED] returned to their patrol duties. They never drove anywhere looking for break and enters.

Why then did they say they did? Both officers testified they had very little recollection of the incident when they prepared their duty statements. They had no notes or documents other than Constable [REDACTED] report to refresh their memories. Constable [REDACTED] and Constable [REDACTED] discussed the incident and they recalled being requested to attend the [REDACTED] and [REDACTED] area to check whether a break and enter had been committed to a [REDACTED] store. They told Staff Sergeant [REDACTED] and testified at this proceeding that they must have been confused and were recalling another investigation where they drove around the [REDACTED] and [REDACTED] area looking for a break in at a [REDACTED] store.

When they wrote their duty statements on [REDACTED] and were interviewed on [REDACTED] both officers knew the OPCC was investigating their colleagues Constable [REDACTED] and Sergeant [REDACTED] for allegedly neglecting their duty. This was an investigation they described as shocking and ludicrous. I am satisfied the four officers had discussed the investigation and their involvement with

██████████ Individuals involved in the criminal justice system, whether they are police officers, lawyers or judges, remember cases, investigations, accused and crimes that are unique and sensational. These cases may be difficult and challenging or involve horrible crimes. They stand out from the mundane cases and they are the ones that are never forgotten. Counsel submitted that the underlying incident was, from these officers' perspective, very ordinary and entirely unmemorable. With respect, I disagree. I am satisfied that the investigation of ██████████ was one of those cases that Constable ██████████ and Constable ██████████ would not forget.

I do not believe Constable ██████████ and Constable ██████████ when they say their recollection of what happened on ██████████ was vague and uncertain. I am satisfied they would remember being dispatched to the scene, making enquiries and being told before they arrived they were not needed. The incident with ██████████ was unforgettable and Constable ██████████ and Constable ██████████ would remember they did not drive around looking for break ins.

Staff Sergeant ██████████ suggested in the Final Investigation Report that Constable ██████████ and Constable ██████████ may have been reckless. In my opinion recklessness plays no part in the matter. The logical inference to be drawn from the evidence is that the members were intentionally misleading the investigation.

██████████, counsel for Constable ██████████ submits that there was no benefit to the members to make the misleading statements because there is no clear and convincing proof they neglected their duty. However, the communication logs and text messages which now prove they were not directly ordered to go and were not neglecting

their duty, were not available to Constable [REDACTED] and Constable [REDACTED] when they made their statements. What they would have recalled in [REDACTED] was the suggestion of them going to the areas. The submission that Constable [REDACTED] and Constable [REDACTED] would not intentionally make a false statement because there would be no benefit to themselves overlooks the benefit and support those statements provide to Constable [REDACTED] and Sergeant [REDACTED] who were being criticized for failing to properly investigate [REDACTED]. I am satisfied the members provided the false statements in an effort to protect Constable [REDACTED] and Sergeant [REDACTED] from criticism or complaints regarding those officers alleged neglect of duty. The allegations against Constable [REDACTED] and Sergeant [REDACTED] involved their failure to properly investigate [REDACTED] which would include failing to send officers to the locations to check for evidence of any crimes and for not waiting for those officers to report back before releasing [REDACTED]. By saying they drove to the area and searched for a break in, Constable [REDACTED] and Constable [REDACTED] were trying to assist and support their fellow officers who were defending themselves from an allegation of neglect of duty. It is apparent that Constable [REDACTED] and Constable [REDACTED] did not consider or chose to ignore that GPS data would not corroborate their story when they made their statements.

On [REDACTED] Sergeant [REDACTED] interviewed Constable [REDACTED] and Constable [REDACTED]. I am satisfied the members knew they had not driven anywhere yet they continued to say they had. Constable [REDACTED] and Constable [REDACTED] did not tell Sergeant [REDACTED] that the GPS data, data he had wrongly interpreted, was incorrect. Instead they carried on intentionally misleading the investigation.

5. The evidence referred to above satisfied me that Constables [REDACTED] and [REDACTED] had been deceitful. The discipline proceeding was adjourned to November 15, 2019 to hear submissions from counsel as to the appropriate discipline or corrective measures.

III. Discipline Hearing November 15, 2019

6. Counsel provided written submissions, which were entered as Exhibit 3 (Constable [REDACTED] and Exhibit 4 (Constable [REDACTED]. The material filed on behalf of Constable [REDACTED] included performance appraisals, commendations and letters of congratulations. The material filed on behalf of Constable [REDACTED] included similar appraisals, commendations and letters of congratulations. [REDACTED]
[REDACTED] There is also a letter from [REDACTED] attesting to the good character of Constable [REDACTED]

IV. Position of Counsel

7. [REDACTED], counsel for Constable [REDACTED] submits that a suspension without pay for 15 to 20 days for the misconduct of deceit is appropriate. He submits that it would be wrong to dismiss Constable [REDACTED] given the facts in this case and the absence of any prior record of misconduct. Counsel characterized the conduct as a lapse of judgment and very out of character for Constable [REDACTED]. [REDACTED] described his client as an exemplary police officer and one who presents as a very low risk to commit future misconduct.
8. [REDACTED], counsel for Constable [REDACTED] submits that a suspension without pay of 15 to 20 days is appropriate. She submits that a suspension of less than 15 days could be imposed having regard to Constable

██████████ exemplary service to the community. She submits there is no reason to expect any future misconduct on Constable ██████████ part. ██████████ says the evidence proves her client's good character and she submits the finding of misconduct should be considered an isolated and anomalous event.

V. Section 126

9. Section 126 of the Police Act governs discipline and corrective measures that the discipline authority must propose for an allegation of misconduct found to be proven. It states:

(1) After finding that the conduct of a member is misconduct and hearing submissions, if any, from the member or her or his agent or legal counsel, or from the complainant under section 113[complainant's right to make submissions], the discipline authority must, subject to this section and sections 141 (10) [review on the record] and 143 (9) [public hearing], propose to take one or more of the following disciplinary or corrective measures in relation to the member:

- (a) dismiss the member;
- (b) reduce the member's rank;
- (c) suspend the member without pay for not more than 30 scheduled working days;
- (d) transfer or reassign the member within the municipal police department;
- (e) require the member to work under close supervision;
- (f) require the member to undertake specified training or retraining;
- (g) require the member to undertake specified counselling or treatment;
- (h) require the member to participate in a specified program or

activity;

- (i) reprimand the member in writing;
- (j) reprimand the member verbally;
- (k) give the member advice as to her or his conduct.

(2) Aggravating and mitigating circumstances must be considered in determining just and appropriate disciplinary or corrective measures in relation to the misconduct of a member of a municipal police department, including, without limitation,

- (a) the seriousness of the misconduct,
- (b) the member's record of employment as a member, including, without limitation, her or his service record of discipline, if any, and any other current record concerning past misconduct,
- (c) the impact of proposed disciplinary or corrective measures on the member and on her or his family and career,
- (d) the likelihood of future misconduct by the member,
- (e) whether the member accepts responsibility for the misconduct and is willing to take steps to prevent its recurrence,
- (f) the degree to which the municipal police department's policies, standing orders or internal procedures, or the actions of the member's supervisor, contributed to the misconduct,
- (g) the range of disciplinary or corrective measures taken in similar circumstances, and
- (h) other aggravating or mitigating factors.

(3) If the discipline authority considers that one or more disciplinary or corrective measures are necessary, an approach that seeks to correct and educate the member concerned takes precedence, unless it is unworkable or would bring the administration of police discipline into disrepute.

VI. Section 126(3) Considerations

10. The misconduct of deceit that has been proven in this matter is serious. Constables ██████ and ██████ made false statements in their duty reports and during interviews with the intent to mislead a police investigation.
11. Adjudicator Pitfield in his April 2013 decision into a complaint against Constable ██████ discussed the seriousness of a police officer committing deceit. He said:

In my opinion, deceit is the most serious disciplinary default that can be committed by a police officer. The fact an officer knowingly makes a false or misleading statement in a duty report or in the course of reporting to, or being interviewed by, a senior officer must adversely affect one's assessment of the officer's integrity and honesty, and one's assessment of his or her suitability to be or remain a member of a police department. Integrity is a core value the public has a right to expect and demand of police officers in order that the public will have confidence in the fair, lawful, and trustworthy administration of justice. Lying or the making of misleading statements in relation to an officer's dealings with a member of the public cannot be condoned. In my opinion, the public has a right to expect that dismissal will always be a sanction for consideration where deceit is at the core of a disciplinary default.

12. While any deceit is a serious disciplinary default, I agree with counsel that some acts are more serious than others. Counsel have provided me with several cases where retired judges have commented on the seriousness of the deceit. These decisions establish that a finding of deceit is always serious but does not inevitably lead to dismissal.

13. In imposing the appropriate discipline or corrective measures in this case I must adopt the approach set out in section 126(3) and consider the aggravating and mitigating circumstances in section 126(2). The appropriate outcome should correct and educate the member unless it is unworkable or would bring the administration of police discipline into disrepute.

VII. The Aggravating and Mitigating Circumstances Considered

Seriousness of the misconduct

14. The misconduct of Constables [REDACTED] and [REDACTED] is serious. The members' intention in providing the false or misleading statements was to support their fellow officers. I agree with the comments of Adjudicator Pitfield in his December 2012 decision into a complaint against Constable [REDACTED] where he said:

In my opinion, deceit practised by an officer in the course of employment, particularly where the deceit arises in the course of a review of an officer's conduct by a senior officer, is something that cannot be trivialized or lightly dismissed. A police service must have confidence that its officers will be truthful and forthright when reporting to superiors and when recounting the nature of their conduct. To say or expect anything less undermines the relationship of employer and employee at a most basic level, and is of particular concern where the deceit pertains to an officer's conduct toward one or more citizens. Minimizing the nature and consequences of deceit pertaining to conduct involving the person or property of a member of the public would adversely affect and tend to undermine public confidence in the integrity of police services on which citizens place so much reliance.

I am satisfied however that the misconduct of Constables [REDACTED] and [REDACTED] is not the most serious example of deceit. This is not a case where the deceit was committed with the intention to cover up the members' own egregious conduct, nor did it implicate a citizen in a crime that was not committed, nor was it motivated by personal gain.

The members' record of employment

15. Constable [REDACTED] has no service record of discipline and the one entry on Constable [REDACTED] service record is not, in my view, relevant. The material filed on their behalf proves both officers are highly motivated, diligent and dedicated police officers. Constable [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

16. Both members have received numerous commendations during their [REDACTED] [REDACTED] years working as police officers. The evidence proves their superior officers support them. I find that each officer's record of employment is a significant mitigating consideration.

The impact of the proposed disciplinary or corrective measures

17. Counsels' submission that I suspend without pay Constables [REDACTED] and [REDACTED] would be, I am satisfied, a significant financial penalty for both members.

Whether the member accepts responsibility for the misconduct and is willing to take steps to prevent its recurrence

18. Constables [REDACTED] and [REDACTED] while acknowledging that the GPS data proves they did not look for evidence of a break in, have maintained that their false statements were made as a result of an honest mistake in recalling another investigation in which they were involved. This has been their position since the police investigation was taken over by Staff Sergeant [REDACTED]. At the discipline proceeding they claimed they did not intentionally mislead the investigation, rather that they were confused and honestly mistaken. Neither member has directly accepted responsibility although Constable [REDACTED] now says he respectfully acknowledges my decision. Constable [REDACTED] has not indicated he accepts my decision.

The likelihood of future misconduct

19. [REDACTED] submits that there is no reason to expect any future misconduct on Constable [REDACTED] part. She says these proceedings have had a profound deterrent effect on him, that he should be considered of good character, and the finding of misconduct should be considered an isolated and an anomalous incident. The letter of support written by [REDACTED] was referred to by counsel. [REDACTED] has known Constable [REDACTED] for six years. [REDACTED] remarked on Constable [REDACTED] strength of character, his dedication to his work, and his strong desire to continue to serve and protect the public. [REDACTED] has learned from this experience, will accept the decision of the Independent Police Complaints Commission and continue to work towards being recognized at the end of his service as a Police Officer who worked hard to overcome this ruling and serve the City of Vancouver Police with distinction." I am satisfied that there is very little likelihood that Constable [REDACTED] will misconduct himself in the future.

20. ██████████, Counsel for Constable ██████████ submits that Constable ██████████ lapse of judgment in this case is very out of character for him, as exemplified by the very high regard in which he is held by supervisors and colleagues. Counsel submits there is a very low chance that Constable ██████████ will misconduct himself in the future. After reviewing the material filed on behalf of Constable ██████████ I agree he is a hard working, dedicated police officer committed to serving and protecting the public. He is a man of otherwise good character who made a bad decision to lie thinking this would help a fellow officer. I am satisfied that these proceedings have had a deterrent effect on Constable ██████████ and that there is very little likelihood that he will misconduct himself in the future.

Whether the Vancouver Police Department contributed to the misconduct

21. I do not find this to be a relevant consideration.

The range of disciplinary or corrective measures taken in similar circumstances

22. I have reviewed the cases contained in ██████████ written submission. The misconduct in question in those cases involved police officers who were found to have lied in a duty report about an underlying event which in itself also constituted misconduct. In many of the cases the officer then repeated the deceitful story when being interviewed and in some cases repeated the story again in evidence. The decision of the retired judge in each of the cases was to suspend the member without pay.
23. In my opinion, it is relevant to consider that in those cases the intent of the officers in lying was to cover up their own misconduct or to benefit themselves in some way. This was not the motivation underlying Constable ██████████ and Constable ██████████ lie. In my earlier reasons I found that the

evidence did not prove the members were assigned to look for evidence of any break ins and there was no clear and convincing proof that they neglected their duty. There was no underlying misconduct on their part nor was there any personal benefit or gain to be had by lying. I found that they lied in an effort to support two other officers. Comparing the seriousness of the misconduct of Constables [REDACTED] and [REDACTED] to the misconduct of the officers in the cases referred to I would place it somewhere in the middle to upper middle of the range.

Other aggravating and mitigating circumstances

24. As stated earlier, the significant aggravating circumstance is the seriousness of the misconduct.
25. The significant mitigating circumstances are the members' records of employment, their contributions to the community and dedication to their police duties. As well, the misconduct of Constable [REDACTED] and Constable [REDACTED] appears to be an isolated incident and out of character for these two experienced police officers. It is unlikely that these members would misconduct themselves in the future.

VIII. Conclusion

26. In my opinion, the disciplinary or corrective measures that could apply in this case are dismissal, reduction in rank or suspension without pay. Section 126(3) requires me to give precedence to an approach that seeks to correct and educate unless it is unworkable or would bring the administration of police discipline into disrepute.
27. If I dismiss the members that will not correct or educate them. It will end

their careers as police officers. [REDACTED] and [REDACTED] submit that I should not dismiss Constables [REDACTED] and [REDACTED] rather that I should suspend them without pay and that to do so would not be unworkable. I agree.

28. In my view the larger concern here is whether dismissal is required to preserve public confidence in the administration of police discipline. In the case *R. v. Collins*, [1987] 1 S.C.R. 265, the court discussed whether a decision would bring the administration of justice into disrepute. Dickson C.J. said:

Since the concept of disrepute involves some element of community views, the test should be put figuratively in terms of the reasonable person: would the admission of the evidence bring the administration of justice into disrepute in the eyes of the reasonable person, dispassionate and fully apprised of the circumstances of the case.

I am satisfied that the reasonable person fully apprised of the circumstances in this proceeding involving Constable [REDACTED] and Constable [REDACTED] would not lose respect for the administration of police discipline if the members were suspended without pay. A fully informed reasonable member of the public would agree that dismissing these otherwise good police officers is not necessary.

29. After considering the material filed on behalf of Constable [REDACTED] and Constable [REDACTED] and having regard to the circumstances set out in section 126(2) I propose the following sanction:

a) Each member be suspended without pay for 20 days.

Dated at Victoria, British Columbia,
November 21, 2019

David Pendleton

David Pendleton
Adjudicator