

September 25, 2019

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 FINDINGS AND REASONS UNDER SECTION 125(1)(b)  
(Supplement to Form 3)

TO: Constable [REDACTED] Member

AND TO: Constable [REDACTED] Member

AND TO: [REDACTED]  
Counsel for [REDACTED] Counsel

AND TO: [REDACTED]  
Counsel for [REDACTED] Counsel

AND TO: Clayton Pecknold Commissioner  
Police Complaint Commissioner

I. Discipline Proceeding – the allegation of misconduct against the members.

1. This Discipline Proceeding pursuant to sections 123 to 125 of the Police Act pertains to an allegation of misconduct against Constable [REDACTED] and Constable [REDACTED]. The allegation, which is set out below, concerns the members providing false or misleading oral or written statements. The details of the allegation relate to each member providing a false or misleading duty statement on January 23, 2018 and a false or misleading oral statement during an interview on April 4, 2018.

II. History of Proceedings

2. The former Police Complaint Commissioner Stan Lowe initiated an investigation in June 2017 regarding a complaint made by [REDACTED] that members of the Vancouver Police Department acted inappropriately when they dealt with [REDACTED], on [REDACTED]. The investigation resulted in allegations of misconduct against two officers Constable [REDACTED] and Sergeant [REDACTED] for neglect of duty.
3. The investigation was expanded in July 2018 to include allegations of neglect of duty and deceit against Constables [REDACTED] and [REDACTED]. The Final Investigation Report into the allegations against Constables [REDACTED] and [REDACTED] was completed on January 8, 2019. The external discipline authority delivered his decision on January 22, 2019 pursuant to section 112 of the Police Act. He held that the allegation of deceit did not constitute misconduct. I was appointed to review that finding pursuant to section 117 of the Police Act. On March 19, 2019 I decided the evidence

appeared sufficient to substantiate the allegation and a Discipline Proceeding was ordered.

4. The Discipline Proceeding convened on April 24, 2019 and was adjourned pursuant to section 123(10). The evidence was heard on July 9 and 10, 2019 and counsels' submissions were made on September 9, 2019. On the same date, I advised counsel I would accept further submissions until September 16, 2019 following which I would consider the evidence and submissions closed.
5. Pursuant to section 125(1) this decision is due by September 30, 2019.

### III. Allegation and the Police Act

6. It is an allegation of misconduct pursuant to section 77(3)(f)(i)(A) of the Police Act that is relevant to this Discipline Proceeding.
7. Section 77(3)(f)(i)(A):
  - (3) Subject to subsection (4), any of the conduct described in the following paragraphs constitute a disciplinary breach of public trust, when committed by a member:
    - (f) "deceit", which is any of the following:
      - (i) in the capacity of a member, making or procuring the making of
        - (A) any oral or written statement that, to the member's knowledge, is false or misleading.
8. Section 125(1)(a) requires me as discipline authority to decide, in relation to each allegation of misconduct, whether the misconduct has been proven. Applicable case law establishes that the standard of proof is a

balance of probabilities, and the question is whether there is clear, cogent and convincing evidence establishing that the actions of the officer amount to misconduct.

#### IV. Evidence

9. The records considered in this proceeding consist of the Final Investigation Report and accompanying documents. As well, I have considered the testimony of Constables [REDACTED] and [REDACTED] and the written submissions of counsel.

#### V. Findings

10. Having completed a review of the Final Investigation Report and the records referenced in it and having considered Constable [REDACTED] and Constable [REDACTED] testimony, the following summary represents my findings in relation to the evidence.
11. On [REDACTED] at approximately [REDACTED] telephoned the Vancouver Police Department claiming he had committed two break and enters earlier that morning. He wanted to turn himself in for the crimes. Constable [REDACTED] and Sergeant [REDACTED], who were members of a [REDACTED] patrol team, were dispatched and drove to [REDACTED] location at the Vancouver [REDACTED] where he was detained for investigative purposes. [REDACTED] presentation concerned the officers. He appeared to be mentally unstable. They questioned whether, in fact, he had committed the break and enters.
12. During the investigation Constable [REDACTED] and Sergeant [REDACTED] obtained information regarding [REDACTED] criminal record, his contacts with

police and whether there were outstanding warrants for his arrest. They also contacted dispatchers in [REDACTED] and [REDACTED] to find out if any break and enters had been reported.

13. Constable [REDACTED] and Constable [REDACTED] were part of the same [REDACTED] patrol team and were on route in their police car to [REDACTED] location to assist Constable [REDACTED] and Sergeant [REDACTED]. Constable [REDACTED] was using the police car computer to make enquiries regarding [REDACTED]. He was communicating with the dispatchers as well and relaying information to Constable [REDACTED] and Sergeant [REDACTED].
14. The dispatchers informed the team that no reports of any break and enters had been made in the areas where [REDACTED] said he committed the crimes. Constable [REDACTED] and Sergeant [REDACTED] were aware of [REDACTED] criminal record and that there was an outstanding [REDACTED] warrant for his arrest. There was no report of any break in at the time, no evidence of a crime scene and, although he was acting strangely, the officers had no grounds to detain him pursuant to the Mental Health Act. He was released from their custody shortly after [REDACTED].
15. The information provided by the dispatchers to Constable [REDACTED] and Sergeant [REDACTED] turned out to be incorrect. Later that day a follow up police investigation determined that [REDACTED] had committed two break and enters at the locations he described to Constable [REDACTED]. One of the break and enters to a [REDACTED] was not reported to police until after he was released. The other break in to a [REDACTED] store had, in fact, been reported to the police before [REDACTED] telephoned to turn himself in; however, during a shift change of dispatchers in [REDACTED] it appears one dispatcher failed to advise her replacement of the report. When Constable [REDACTED] and Sergeant [REDACTED] requested information about possible

break and enters the replacement dispatcher advised them she had no reports. Had the correct information been given to the officers I am satisfied [REDACTED] would not have been released.

16. The Final Investigation Report contains a summary of the officers' computer text messages and radio communications. A review of this evidence proves the following:
- a) Constable [REDACTED] was dispatched to the Vancouver [REDACTED] [REDACTED] where [REDACTED] had used a pay telephone to call the police. She arrived there at [REDACTED] and had [REDACTED] in her custody by [REDACTED]
  - b) Between [REDACTED] and [REDACTED] several things happened. Sergeant [REDACTED] arrived at the [REDACTED] to assist Constable [REDACTED]. They communicated with the dispatchers to determine whether any break and enters had been reported. Constable [REDACTED] drove from the [REDACTED] towards the [REDACTED] while Constable [REDACTED] searched police databases for information on [REDACTED]. There was some discussion amongst the four officers whether to send police officers to the areas where [REDACTED] said he committed the break and enters. There was a suggestion that Constable [REDACTED] and Constable [REDACTED] go; however, for the reasons set out below in my Analysis, I am satisfied there is no clear evidence they were assigned this task. By [REDACTED] the dispatchers had advised Constable [REDACTED] and Sergeant [REDACTED] that there were no reported break and enters. Between [REDACTED] and [REDACTED] Sergeant [REDACTED] in consultation with Constable [REDACTED] made the decision to release [REDACTED]. At [REDACTED] Constable [REDACTED] sent a text to Constable [REDACTED] advising her that he and Constable [REDACTED]

would be at her location in two minutes. At [REDACTED] Constable [REDACTED] cleared herself from the investigation and was dispatched to attend another investigation at a nearby [REDACTED] store. A few seconds later she advised Constables [REDACTED] and Constable [REDACTED] they could clear. Constable [REDACTED] acknowledged her radio broadcast and he and [REDACTED] returned to their patrol duties in [REDACTED]. At [REDACTED] the following further texting between Constable [REDACTED] and Constable [REDACTED] occurred:

[REDACTED] to [REDACTED] "all good",

[REDACTED] to [REDACTED] "ran him and saw his CPIC entries...so he pretty EDP then",

[REDACTED] to [REDACTED] "no BNE's reported as of yet so he may be crazy",

[REDACTED] to [REDACTED] "copy we checked with info seems like it per his CPIC",

[REDACTED] to [REDACTED] "ya or has quite the imagination",

[REDACTED] to [REDACTED] "I got it",

[REDACTED] to [REDACTED] "we owe you thanks",

- c) At [REDACTED] Constable [REDACTED] sent a text to her [REDACTED] dispatcher requesting the investigative file on [REDACTED] be changed to a suspicious circumstances report.

17. The evidence establishes that Constable [REDACTED] and Constable [REDACTED] were peripherally involved in the investigation of [REDACTED]. They made some enquiries regarding his background, and they were communicating this information to Constable [REDACTED] and Sergeant [REDACTED] by text, police radio and possibly cell phone while on route to the

██████████ Before they arrived they were told they weren't required. They never had any direct contact with ██████████ before returning to their patrol duties.

18. ██████████ was released by Constable ██████████ and Sergeant ██████████ shortly after ██████████. He left the area and made his way to a residence in Vancouver where shortly ██████████ ██████████ He was arrested at the scene and charged with several offences including ██████████ ██████████. He was found guilty, ██████████ ██████████ Constable ██████████ Sergeant ██████████ and Constable ██████████ said they were told about the ██████████ later that same day. Constable ██████████ could not recall whether it was that day or the next morning he heard about the crime. The Final Investigation Report contains a ██████████ ██████████ ██████████ While the four officers may not have been aware of all the details of the offences, I am satisfied they would have been told and would have discussed amongst themselves the ██████████ Constable ██████████ testified it was a ██████████. His words were ██████████

19. On May 17, 2017, a period of ██████████ after the police arrested ██████████, filed a complaint with the OPCC. She alleged that members of the Vancouver Police Department failed to take appropriate action regarding ██████████ on ██████████ She stated the police should have detained him because he



admitted to two break and enters, was wanted on an [REDACTED] arrest warrant and was exhibiting erratic behavior.

20. In June 2017, the Commissioner ordered the complaint be investigated by the Vancouver Police Department. Initially the investigation was focused on allegations of misconduct against Constable [REDACTED] and Sergeant [REDACTED]. The investigator Sergeant [REDACTED] obtained written duty statements from Constables [REDACTED] and [REDACTED] in [REDACTED]. In [REDACTED] Sergeant [REDACTED] decided to interview Constables [REDACTED] and [REDACTED] and to obtain the global satellite position (GPS) records for their patrol car.
21. Constables [REDACTED] and [REDACTED] prepared their duty statements on [REDACTED]. They testified they spoke to each other beforehand and reviewed Constable [REDACTED] report but other than that they had no notes or documents to refresh their memories. In his duty statement Constable [REDACTED] wrote:

“I do recall attending the area of [REDACTED] and [REDACTED] with PC [REDACTED] to check if any Break and Enters had been committed to a [REDACTED] store in the area. I did not locate a [REDACTED] store that appeared to have been broken into in the area”

Constable [REDACTED] wrote:

“PC [REDACTED] and I were requested to attend the area of [REDACTED] in Vancouver to check whether a Break and Enter and been committed to a furniture [REDACTED]. According to the male that PC [REDACTED] was speaking to, he reported that he committed a Break and Enter to a

██████████ store that was on the ██████████ side of ██████████  
██████████

I do not recall if it was PC ██████████ or A/Sgt ██████████  
who made this request to attend the above location.

I recall attending the area of ██████████  
██████████ to check if there were any Break and Enters to a furniture  
██████████ in the area. I did not locate a ██████████ store that appeared to  
have been the subject of a Break and Enter.”

22. On ██████████ Sergeant ██████████ interviewed Constable ██████████ by  
telephone and Constable ██████████ in person. Sergeant ██████████ was  
present for the interviews. He was there in his capacity as the members’  
Vancouver Police Union representative. Sergeant ██████████ had shared the  
GPS data before the interview with Sergeant ██████████ Constable ██████████  
and Constable ██████████ were also told before the interview that the GPS data  
showed their police car had been driven into the areas where ██████████  
██████████ said he committed two break and enters.

23. During his interview Constable ██████████ described what he and  
Constable ██████████ did on ██████████. He said:

■ Do you recall what, if any, instructions you were provided  
specifically?

■ Uh, essentially to check the area around, uh, ██████████ uh,  
and ██████████ I believe or ██████████, uh, to  
see if there’d been any , uh, uh, businesses that had been B&E’d,  
um, as it had been claimed by the, uh, the accused there.

■ Okay. So do you remember him saying both of those locations,  
██████████ and ██████████ or just  
one or the other?

- Uh, definitely the, the, uh, [REDACTED] area.
- Okay
- And then, um, yeah, that one specifically.
- Do you, do f-, do you actually remember physically driving over there and having a look?
- Yeah, I understand that there is, you know, um, you know, GPS records, and stuff that shows us going, uh, over that, that area to check. So, uh, you know, I, I do recall going over there, but, um, again, just with it being [REDACTED] that's passed now, it, uh, you know, I couldn't tell you anymore sort of specifics of the night. You know, vaguely driving to the area to check.
- Okay. Um, and so in relation to that check and going over to that area, uh, what do you recall specifically doing, like in, in, like describe what you have, would've done in relation to that check if you can recall the details.
- Yeah, I mean, I can't recall specifics. I mean, certainly had we, had we found, um, you know, a business in that area that had been, uh B&E'd, then there would've been, you know, we would've acted accordingly and a report taken. But, uh, uh, I don't recall discovering anything that would've been consistent with what the, uh, you know, accused claimed that he had done in that area.
- Okay. So from you recol-, from that answer, from your recollection, you did not find B&E at [REDACTED]  
[REDACTED]
- Yeah, that's correct.
- Um, do you remember getting out of the car and physically walking and checking the stores in that area? Do, was it driving? W , was it just observations? Do you, do you remember any of the details?

■ Yeah, no, I, I can't remember specifically, uh, that, uh, those, the finer details.

24. In his interview Constable [REDACTED] said:

■ Um, we were informed that the person that, uh, Cst [REDACTED] and Acting Sgt. [REDACTED] were dealing with, um, had stated that he had been involved with a break and enter in the area of [REDACTED] in Vancouver. And it was requested of us to go over into that area and to see if we could see anything that was associated to a break and enter, if there was any, any evidence of a break and enter. Uh, I believe it was a [REDACTED] store that was referred to. Um, so we went into that area and looked to see if we could see any [REDACTED] stores that had any evidence that, uh, they were involved in a break and enter.

■ Um, so s-, on that particular bit of information there, what, what did you do exactly like, uh, in rel-, to try and locate these B&Es?

■ Uh, we drove the area. Um, I believe that we may have seen a couple [REDACTED] stores. I, I can't really remember, uh, specifically what we did. I just remember driving into the area, looking up and down the area that we were requested to go to, to see if we could, uh, you know, if there was any damage to any of these, uh, businesses, any evidence that we could see as to whether or not there was a break and enter.

25. Following the [REDACTED] interviews the GPS data was reexamined and it was determined that Sergeant [REDACTED] initial interpretation was incorrect.

The GPS data, in fact, revealed the police car was never driven to the locations of the break and enters.

26. On July 10, 2018 the OPCC issued an Amended Order for Investigation which now included alleged misconduct by Constable [REDACTED] and Constable [REDACTED] for neglect of duty and deceit. The Commissioner also felt it necessary in the public interest that the alleged misconduct be investigated by an external police force. He ordered the Chief Constable of the Delta Police Department to appoint a new investigator to replace Sergeant [REDACTED] and he ordered the Chief Constable of the New Westminster Police Department to act as a Discipline Authority.
27. Constables [REDACTED] and [REDACTED] alleged failure to investigate possible crime scenes forms the basis for the allegation of neglect of duty. The Chief Constable of the New Westminster Police Department is dealing with that matter. Their [REDACTED] duty statements and their [REDACTED] [REDACTED] interviews wherein they say they drove around looking for break and enters form the basis for the allegation of deceit.
28. On [REDACTED] Staff Sergeant [REDACTED] of the Delta Police (Sergeant [REDACTED] replacement) interviewed Constables [REDACTED] and [REDACTED]. He asked both members to explain why they said they drove around looking for break and enters given that the GPS data proved otherwise. Constable [REDACTED] said:

[REDACTED] Okay. Um, and with regards to the GPS report that I've referenced already, you've had a chance to look at it.

[REDACTED] Mm-hmm.

■ And contained within there, the conclusions of the engineers that your unit, uh, 1 ■ did not attend uh, that area. Can you explain why that is?

■ Um, uh, honestly I can't recall now, I mean that's, that's information that was presented to us at the time, um, you know, during the first statement we were advised and you know, told by, you know, people we know and, and trust that their GPS had showed us going there and, and again with the, you know, the time that's passed, ■, um, you know, and I actually, you know, I did have a, a recollection of, of going to that area. Um, clearly it shows now it wasn't that day but um, I do still recall going, myself and ■, I have a, a recollection of being in that general area, sort of ■ and being in lanes and uh, you know, checking rear doors and..., of businesses and stuff but, um, again now it's uh, it's hard to say when that would've been. If it, if it wasn't that day then perhaps it was the next or..., but it, I can't say for certain now, uh...

Constable ■ said:

■ Do you have an explanation as to why the GPS material does not show you attending that area, when in fact your duty report and statement indicates that you did?

■ Yeah, um, I think the important thing to note is that my, my duty report is referencing my recollections of our tasks and our actions throughout the day. And my recollection, my, my recollection still is, I have a recollection of ■ and I attending ■. Um, I even have a

recollection of the weather that day and I, I have, I have speci..., I can, I can actually feel the sort of that cold, sunny morning air. I, I have that recollection of going to [REDACTED] and uh, checking businesses in that area. Uh, however, I think it's important to note that since the evidence showing on GPS that we didn't uh, the, the GPS shows that we didn't go to [REDACTED] on that morning, that maybe my recollection is of another incident when we went to [REDACTED] to check businesses. Um, in my n..., over [REDACTED] of patrol, [REDACTED] of which was working with [REDACTED], wh..., uh, I could, w...we checked businesses countless times. Um, g..., [REDACTED]..., [REDACTED] and I at the time of this incident had only ever worked in [REDACTED] together which was the [REDACTED]. But it wasn't uncommon for us to go out of district, into [REDACTED] into [REDACTED] or in [REDACTED] [REDACTED] to check on businesses and that sort of thing. Um, so, I have a recollection of us, of us going, uh, obviously, it wasn't during the time frame in which the GPS indicates which is a, is a, I can recall the GPS as showing a time frame for a whole shift which, mm, [REDACTED] 'til you know, [REDACTED] in the [REDACTED]. So I'm not too sure if when we maybe went to check the next day or, when or I'm, if my recollection of actually going and checking for these businesses in that area is just from a completely uh, unrelated incident. Um, but my recollection as, as to how I refer to it in my duty statement from [REDACTED] was a recollection of us going and checking businesses, that's my recollection. Um, obviously now I'm questioning myself as to whether my recollection was from another unrelated incident or if it was at a different time that

we went to go check. I, I'm having a hard time recalling now to be fair.

29. I am satisfied that Constable [REDACTED] and Constable [REDACTED] would have been aware of the OPCC investigation of Constable [REDACTED] shortly after the investigation was ordered in June 2017. The investigation was expanded to include Sergeant [REDACTED] in October 2017. Constable [REDACTED] and Constable [REDACTED] had been [REDACTED] before the [REDACTED] incident and remained [REDACTED] when Constable [REDACTED] [REDACTED] Constable [REDACTED] remained on the [REDACTED] team until [REDACTED] when he transferred to the [REDACTED] where he stayed until moving in the [REDACTED] [REDACTED]
- Although Sergeant [REDACTED] left the [REDACTED] Team in late [REDACTED] I am satisfied Constables [REDACTED] and [REDACTED] were in contact while working together and would have discussed the investigation and the allegations of neglect of duty facing Constable [REDACTED] and Sergeant [REDACTED]. Those discussions would have occurred before Constable [REDACTED] and Constable [REDACTED] provided their duty statements in [REDACTED] [REDACTED] and were interviewed in [REDACTED]. Constable [REDACTED] testified the allegation against Constable [REDACTED] and Sergeant [REDACTED] was shocking and disappointing. Constable [REDACTED] testified he was absolutely shocked when he found out about the allegation against Constable [REDACTED] and Sergeant [REDACTED]. He described it as absolutely ludicrous.
30. Constable [REDACTED] and Constable [REDACTED] both testified they had vague and imprecise recollections of their part in the investigation of [REDACTED] [REDACTED]. I don't accept this and their evidence on this point is not credible. Although they had no direct contact with [REDACTED] I am satisfied they were



aware this man committed a [REDACTED] within hours of his release. They would have been aware of some or many of the [REDACTED] of the crime. If they had forgotten some of the events surrounding the investigation of [REDACTED] at the [REDACTED] in the [REDACTED] before the OPCC investigation commenced, their memories would have been refreshed when they discussed the misconduct allegation amongst themselves.

## VI. The law

31. A hearing under the Police Act is a civil process and the applicable standard of proof is a balance of probabilities: *F.H. v McDougall*, [2008] 3 S.C.R. 41. Proof on a balance of probabilities requires that the evidence be sufficiently clear, convincing and cogent.
32. The relevant case law and authorities including *Geske and Hamilton Police, OCCPS*, 3 July 2003 and *Ceyssens "Legal Aspects of Policing"* summarize what is necessary to establish a disciplinary breach of public trust involving deceit. Adjudicator William Smart Q.C. in an OPCC decision dated July 30, 2014 in describing the disciplinary default of deceit said:

“There is both a conduct element and a fault element to the disciplinary default of deceit. The conduct element is that the statement must be false or misleading. The fault element is that the member must know the statement is false or misleading. The member must know the statement is false or misleading; otherwise, the member does not have the requisite mental state or intention required to ground a finding of deceit.”

## VII. Analysis

33. There can be no doubt that the members' statements in their duty reports and interviews stating that they drove to the locations described by ██████████ ██████████ 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.

34. In the Final Investigation Report Staff Sergeant ██████████ concluded on page 49:

“With respect to the allegation of Deceit for Cst ██████████ and Cst ██████████ S/Sgt ██████████ 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 ██████████ and Cst ██████████ validated themselves as having attended the areas to check for a BNE as reported by ██████████ when in fact they had not. For these reasons Cst ██████████ and Cst ██████████ 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.”

35. 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 ██████████ and ██████████ 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]

36. 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.
37. 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] 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] [REDACTED] area looking for a break in at a [REDACTED] store.

38. 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 [REDACTED]. 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 [REDACTED] was one of those cases that Constable [REDACTED] and Constable [REDACTED] would not forget.
39. I do not believe Constable [REDACTED] and Constable [REDACTED] when they say their recollection of what happened on [REDACTED] 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 [REDACTED] was unforgettable and Constable [REDACTED] and Constable [REDACTED] would remember they did not drive around looking for break ins.
40. Staff Sergeant [REDACTED] suggested in the Final Investigation Report that Constable [REDACTED] and Constable [REDACTED] 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.

41. ██████████, 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 ██████████ and Constable ██████████ when they made their statements. What they would have recalled in ██████████ was the suggestion of them going to the areas. The submission that Constable ██████████ and Constable ██████████ 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 ██████████ and Sergeant ██████████ who were being criticized for failing to properly investigate ██████████. I am satisfied the members provided the false statements in an effort to protect Constable ██████████ and Sergeant ██████████ from criticism or complaints regarding those officers alleged neglect of duty. The allegations against Constable ██████████ and Sergeant ██████████ involved their failure to properly investigate ██████████ 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 ██████████. By saying they drove to the area and searched for a break in, Constable ██████████ and Constable ██████████ 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 ██████████ and Constable ██████████ did not consider or chose to ignore that GPS data would not corroborate their story when they made their statements.

42. 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.

### VIII. Conclusion

43. The evidence proves on a balance of probabilities that Constable [REDACTED] and Constable [REDACTED] intentionally falsified their statements in an effort to assist their fellow officers. Their loyalty towards Constable [REDACTED] and Sergeant [REDACTED] clouded their judgment and resulted in them making statements that were intentionally false or misleading. I find the allegation of deceitful misconduct has been proven against both members.

### IX. Next Steps

44. Pursuant to section 125 (1)(d) the members may make submissions regarding disciplinary or corrective measures. Pursuant to section 125 (2), those submissions must be made within 10 business days of the member being served a copy of the Form 3 in this matter.

David Pendleton  
Adjudicator  
September 25, 2019