

February 1, 2021

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 ALLEGATIONS OF MISCONDUCT AGAINST CONSTABLE  
[REDACTED] OF THE WEST VANCOUVER POLICE DEPARTMENT

DISCIPLINE AUTHORITY'S FINDINGS AND REASONS UNDER SECTION 125(1)(b)

(Supplement to Form 3)

TO: Constable [REDACTED] Member

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

AND TO: Clayton Pecknold Commissioner  
Police Complaint Commissioner

- I. Discipline Proceeding – the allegations of misconduct against the member.
  1. This Discipline Proceeding pursuant to sections 123 to 125 of the Police Act pertains to allegations of misconduct against Constable [REDACTED]. The

allegations, which are set out below, concern, firstly, the member conducting himself in a manner that the member knows, or ought to know, would be likely to bring discredit on the municipal police department and, secondly, the member neglecting his duty. The details of the allegations relate to the member involving himself in an ongoing RCMP investigation of a theft of the member's property and the member leaving sensitive police information and potentially dangerous police equipment in an unlocked vehicle.

## II. History of Proceedings

2. This matter arises from information provided by the West Vancouver Police department to the Police Complaint Commissioner in May 2018. The Commissioner was advised that on May 16, 2018 Constable [REDACTED], a member of the West Vancouver Police Department, while off duty, called the Surrey RCMP to report a theft from his personal vehicle. Personal property belonging to the member as well as a high capacity ammunition magazine, an access card to the [REDACTED] RCMP detachment office and his police notebook were taken by the thieves who fled the scene in a vehicle. Later that day Constable [REDACTED] called the Surrey RCMP to advise he had a suspect in his custody. RCMP members attended and arrested the suspect. Some of the stolen personal property was recovered. The magazine, access card and police notebook were not.
3. On May 28, 2018, the Commissioner ordered an investigation of the conduct of Constable [REDACTED] pursuant to section 93(1)(a) and (b)(i) of the Police Act after concluding that the conduct of the member would, if substantiated, constitute misconduct pursuant to section 77(3)(h) of the Police Act (discreditable conduct) and section 77(3)(m)(ii) of the Police Act (neglect of duty). Sergeant [REDACTED] of the West Vancouver

Police Department was assigned to conduct the investigation.

4. On September 13, 2018, Sergeant [REDACTED] submitted a request for a suspension of the investigation because the suspected thief, [REDACTED] had been criminally charged and those charges were before the Court. On September 21, 2018, the Office of the Police Complaint Commissioner ordered the Police Act investigation be suspended pursuant to section 179(4).
5. On January 22, 2020 the suspension was lifted. Mr. [REDACTED] had entered a guilty plea and been sentenced to serve a Conditional Sentence Order in the community. Sergeant [REDACTED] who had replaced [REDACTED] [REDACTED] was ordered to complete the investigation.
6. Sergeant [REDACTED] considered the evidence and delivered her Final Investigation Report dated March 30, 2020 to the Discipline Authority, Inspector [REDACTED] of the West Vancouver Police Department. She concluded that the evidence did not prove the alleged misconduct against Constable [REDACTED]. She recommended the allegations be deemed unsubstantiated.
7. On April 17, 2020, Inspector [REDACTED] issued his decision pursuant to section 112 of the Police Act. Inspector [REDACTED] considered two allegations of misconduct and determined that the evidence in the Final Investigation Report did not appear to substantiate the allegations. The allegations considered by Inspector [REDACTED] were:
  1. *Discreditable Conduct* pursuant to section 77(3)(h) of the *Police Act*, for inserting himself into an RCMP investigation when he should not have.

2. *Neglect of Duty* pursuant to section 77(3)(m)(ii) of the *Police Act*, for leaving police property inside an insecure vehicle.

8. The Police Complaint Commissioner reviewed the Discipline Authority's decision and considered that there was a reasonable basis to believe that the decision was incorrect.
9. On May 14, 2020 the Police Complaint Commissioner appointed me to review the investigating officer's report, the evidence and the records pursuant to section 117 of the Police Act.
10. On May 29, 2020 I decided the evidence appeared sufficient to substantiate the allegations and a Discipline Proceeding was ordered.
11. The Discipline Proceeding convened on July 24, 2020 and was adjourned from time to time pursuant to section 123(10). Constable [REDACTED] testified on January 20, 2021 and counsel's written submission was delivered on January 21, 2021.
12. Pursuant to section 125(1) this decision is due by February 4, 2021.

### III. Allegations and the Police Act

13. The two allegations of misconduct pursuant to the Police Act that are relevant to this Discipline Proceeding are set out in Section 77 (1).  
"Misconduct" means:

(3) Subject to subsection (4), any conduct described in the following paragraphs constitute a disciplinary breach of public trust, when committed by a member:

(h) “discreditable conduct”, which is, when on or off duty, conducting oneself in a manner that the member knows, or ought to know, would be likely to bring discredit on the municipal police department.

(m) “neglect of duty”, which is neglecting, without good or sufficient cause, to do any of the following:

(ii) promptly and diligently do anything that it is one’s duty as a member to do.

14. 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

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

#### V. Discussion of the Evidence

16. Having completed a review of the Final Investigation Report and the records referenced in it and having considered Constable [REDACTED]'s testimony, I am satisfied the evidence proves the following:
- a) On May 16, 2018, at 06:30 Constable [REDACTED] telephoned 911 to report a theft from his vehicle.
  - b) At 06:46 the file was dispatched to Surrey RCMP Constable [REDACTED] who commenced a patrol looking for the suspect vehicle. Constable [REDACTED] contacted Constable [REDACTED] to clarify where the theft occurred and at which cross street.
  - c) Constable [REDACTED] drove to the alleyway where Constable [REDACTED] says he lost sight of the fleeing vehicle. He located the alleyway but was unable to find any cameras that might provide him with any information regarding the direction of travel of the vehicle. About 30 minutes later Constable [REDACTED] contacted Constable [REDACTED] and they arranged to meet at the Surrey RCMP district office so Constable [REDACTED] could take a statement from Constable [REDACTED]
  - d) At 07:00 Constable [REDACTED] saw Surrey RCMP Constable [REDACTED] who was involved at that time in an unrelated investigation. Constable [REDACTED] approached Constable [REDACTED], identified himself as an off duty West Vancouver officer and told [REDACTED] about the theft. The member told Constable [REDACTED] that he realized more of his possessions were missing. Constable [REDACTED] used his police computer to access information regarding the file. The information that came up, which both officers were able to see on the screen, included the identity of the registered owner of the suspect vehicle. Constable [REDACTED] then left

in his vehicle. At 07:16 Constable [REDACTED] contacted Constable [REDACTED] and advised him regarding his meeting with Constable [REDACTED].

- e) At 08:02 Constable [REDACTED] interviewed Constable [REDACTED]. Constable [REDACTED] told Constable [REDACTED] that in addition to the personal property taken, he was missing a Glock high capacity pistol magazine containing several rounds of ammunition, an access card to the [REDACTED] RCMP detachment office and his police notebook.
- f) At 08:30 Constable [REDACTED] drove to the Surrey residence of [REDACTED] [REDACTED] the registered owner of the suspect vehicle. Constable [REDACTED] had seen the address of the registered owner while looking at Constable [REDACTED]'s computer. Constable [REDACTED] told Ms. [REDACTED] about the theft from his vehicle, identified himself as a police officer, and said that he wanted to get his stolen property returned. Ms. [REDACTED] said she had lent her vehicle to her friend [REDACTED]. She then telephoned Mr. [REDACTED] who agreed to meet with Constable [REDACTED] and to return the stolen property.
- g) At 09:04 Constable [REDACTED] called 911 to report he had Mr. [REDACTED] in his custody. At 09:13 Surrey RCMP Corporal [REDACTED] arrived at the location where Constable [REDACTED] had Mr. [REDACTED] in custody. She arrested Mr. [REDACTED]. Constable [REDACTED] recovered some of his personal property, however, the magazine, ammunition and his notebook were never recovered.

h) At 13:21 Constable [REDACTED] interviewed [REDACTED] and recorded the interview during which Mr. [REDACTED] admitted stealing Constable [REDACTED]'s property.

17. Constable [REDACTED] testified he felt the RCMP lacked the resources to investigate the theft. The evidence proves otherwise. The RCMP dispatched Constable [REDACTED] who patrolled looking for the suspect vehicle, a theft report was entered into the RCMP computers alerting the on-duty members and RCMP Sergeant [REDACTED], who is a member of the police dog unit, attended at the registered owner's residence looking for the suspect vehicle. In the Final Investigation Report, Corporal [REDACTED] was interviewed by Sergeant [REDACTED] and she was asked about Sergeant [REDACTED]'s involvement. Corporal [REDACTED] said:

Sgt. [REDACTED] Are you aware if anyone um, on your watch that day knew that [REDACTED] was taking it upon himself to attend the RO's residence?

Cpl. [REDACTED] No, I'm not aware of any of that. We actually even, when the file came in and was assigned to Constable [REDACTED] a PDS member went and sat on the RO's address to see if the car came back and the car never came back in the time that he was there.

Sgt. [REDACTED] Sorry, who had done that?

Cpl. [REDACTED] The PDS member uh, Sergeant [REDACTED] had gone there and no one had attended. There was no coming or going and he's a very on it guy, very um, into catching bad guys. He didn't see any activity at the house so he left thinking it was not, nothing was



going to happen, so um, we weren't aware of any of that.

18. Sergeant [REDACTED] reviewed the statements of Constable [REDACTED], Corporal [REDACTED] and Constable [REDACTED]. On March 4, 2020 she interviewed Constable [REDACTED]
19. Constable [REDACTED] described his meeting with Constable [REDACTED] on May 16, 2018. He said:

Cst. [REDACTED]: Yes uh, so at the time, I believe it was...May 16th, 2018 um, I believe it was around 7:06AM um, so I was uh, assisting another member from my District, District 4. I was with Constable [REDACTED] um, so we were investigating a break and enter to a business um, so what I, I have positioned my PC towards the building and then uh, an unknown Caucasian male uh, basically approached my vehicle saying uh, he identified himself as uh, off-duty member from West Van Police Department and um, he said he created a file with the Surrey RCMP of uh, a theft from his vehicle and that he wanted to let me know that um, there was an additional item that was stolen from his car that he wasn't able to report it at the time when he initially reported, so I asked him what that was and he was uh, his Oakley backpack was stolen from his uh, from his vehicle as well and uh, at the time um, I thought that was District 4 file so I created it and then there was a theft file uh, present in the, sitting in the queue, uh, so I asked for it um, to be sent to me because I wasn't actually doing anything on, at the time of the assisting uh, another member so I was going to quickly write, write up the file and ap-, uh, I learned that it was already been dispatched um, that was uh, involving a District 2 which is a Guildford or Fleetwood area um, and um, so I contacted the lead investigator which is a Constable [REDACTED] um, and I

advised him what, what the file was and then um, that was pretty much what I can gather from him.

Sgt. [REDACTED] Okay um, did you have any conversation with Jordan [REDACTED] regarding the address of the registered owner of the vehicle that he um, the suspect vehicle.

Cst. [REDACTED]: So I, I did, I did pull up the file.

Sgt. [REDACTED] Mmhmm.

Cst. [REDACTED]: Um, uh, whether...what Constable [REDACTED] has reported and then I did query the vehicle. I believe it was a [REDACTED] [REDACTED], I think that was the BC License Plate number, if I can recall correctly and it was involving a green KIA um, and then I asked him, if, if that was the vehicle and he just said yeah, that's the one, and then um, I, I, I can't recall properly on this one um, I believe I, I actually like, like ran the address on that vehicle, on the, on the actual MDT map.

Sgt. [REDACTED] Okay.

Cst. [REDACTED]: And then I think I can recall saying something about the address was in District 1, which is the Whalley area. And he was, he was right next to me on my left on the driver side door and then uh, 53 I, I believe he was looking at my screen as well and he did look at the address as well.

Sgt. [REDACTED] Did he ask you at anytime to provide him the address?

Cst. [REDACTED]: No, he did not.

Sgt. [REDACTED] Okay, did you read it out to him at all?

Cst. [REDACTED]: That part I don't recall. I, I, I can recall...just entering into the map system.

Later in the interview Constable [REDACTED] stated:

Sgt. [REDACTED] Oh okay, um, did [REDACTED] um, advise you at all that he was going to be going to the um, RO's residence?

Cst. [REDACTED]: No, he did not.

Sgt. [REDACTED] Okay, did he, did he ask you for a phone number from...

Cst. [REDACTED]: Uh, no, he, he did not ask me for...

20. Constable [REDACTED] was interviewed by Sergeant [REDACTED] on March 4, 2020 as part of her investigation. He explained to Sergeant [REDACTED] how he got the address of the registered owner of the suspect vehicle. He said:

Cst. [REDACTED]: Uh, I realized that when I reported my uh, item, specifically my car initially that, I, I may have not indicated that I was also missing a backpack uh, an Oakley backpack to be specific, so I walked up to uh, Constable [REDACTED]'s police vehicle and advised that I've been a victim of a crime that occurred in this general area uh, and I requested that he MDT the member just to let them know that this

item was also missing uh, he wasn't aware of the file uh, that officer ran the work queue uh, found the file that was associated. Ah, he opened the file and started scrolling through it to determine who the lead investigator was and in the process of him scrolling through the file I noted certain notes on the file including the suspect vehicle and where the RO resided.

Sgt. [REDACTED]: Were you aware at all through the course of the investigation that the Mounties had attended the RO's address?

Cst. [REDACTED]: I had no idea.

Sgt. [REDACTED]: And uh...when did you decide that you were going to go to the RO's address?

Cst. [REDACTED]: Uh, I think it was after I gave my statement at the Surrey headquarters 'cause it wasn't very far away from it and uh, my initial idea was to sit at the residence just to see if the suspect vehicle had come home yet, 'cause if it had been in the driveway, my intention was to contact the Surrey RCMP so they can do the follow-up 'cause I know they're a busy police department and they didn't have the resource to have somebody sit on the house all day long waiting to...return...miniscule items to somebody else.

21. Constable [REDACTED] told her he decided to go to the owner's residence because he believed the Surrey RCMP did not have the resources to investigate the matter. He said:

Sgt. [REDACTED]: Okay, um, why did you decide to go to the RO's res

and not like, what made you assume you needed to do that? Was there a reason why you didn't leave that to the RCMP to do given that, that would seem like the appropriate thing for the RCMP to do?

Cst. [REDACTED]: Ordinarily I would, but given I know Surrey's overwhelmed with workload, with low employee numbers, I knew they wouldn't have the resources to spare to sit there all day and I was willing to sit there all day until the car came home if necessary.

Sgt. [REDACTED]: Okay.

Cst. [REDACTED]: So, it's just a staffing issue and yeah, resources.

22. Constable [REDACTED] described his meeting with the owner Ms. [REDACTED]. He said:

Cst. [REDACTED]: So I knocked on the door, a female answered, so initially I just said, I asked who...the owner of the green Kia was who lived there. She advised it was her car uh, and she asked why. I said well, 'cause whoever's driving your car stole out of my car. I'd like to get my stuff back and she kind of said oh okay, and then uh, she's like, well my friend has them, like, well can you get in touch with the friend, like, I need to get to work. Can I, I want to get my stuff back. She said I can give him a call and now she was giving him a call, I think, kind of to make conversation. She's like, oh so you're heading to work, like, what do you do for work? And I'm like, I'm a police officer and she's like, so the next words out of her mouth to the male who answered the phone were... She's like, you robbed a cop. You fucking idiot, and then offered to have me talk to him on the phone.

Sgt. [REDACTED]: Okay, and then tell me about that conversation um, with him on the phone.

Cst. [REDACTED]: So I think the female said this guy's name is [REDACTED], so I said hey, [REDACTED], you have my stuff and I'd like to get it back. I'm at your house. Can you meet me here? And he said I'm not near there right now, but I can meet you in the Guildford area. I asked him to pick a, a spot. He told me the Dairy Queen in Guildford which I knew it was up on 152nd, so I said that's fine um, I'll drive there if not...and meet you. And then at that point we disconnected and I actually contacted Constable [REDACTED] and left him a voicemail on his desk line 'cause that's the number he gave me to know what's going on so I didn't have to go meet suspects by myself, and then I never got a call back him. I never heard from him again, so I parked at the Dairy Queen. A gentleman walked up to my car. I got out of my car. I was asked...the gentleman if he was [REDACTED] He said yes. [REDACTED] proceeded...to give me back a stack of my ID, so not my wallet but like my, my [REDACTED] my driver's license, that sort of thing. And then he was pretty apologetic and I said that's great. I appreciate that but where's the rest of my stuff. He indicated he had thrown some stuff out the windows and then also said some of my stuff was in the dumpster behind the Save on Foods, so then he proceeded to walk me to the dumpster behind Save on Foods uh, and then it was like a locked compounded gated, gar-, garbage area and then he actually climbed in and started throwing out my stuff, which...was, included my back pant, my Gatorade, like a CD case um, and then my backpack was full with a bunch of stolen mail from...around the Fraser Valley area.

23. Sergeant [REDACTED] asked Constable [REDACTED] why he felt it was necessary to insert himself into the Surrey RCMP investigation. Constable [REDACTED] said:

Sgt. [REDACTED]: Um, is there a reason that you inserted yourself or basically put yourself on duty at one point during this investigation?

Cst. [REDACTED]: No...?

Sgt. [REDACTED]: So, for, for example, the reason I ask is um, I would consider that the moment that you showed up at the RO's address that you've put yourself on duty, especially when you identify yourself as a police officer um, and I'm wondering if you can elaborate on why you felt that, that was necessary.

Cst. [REDACTED]: Actually I don't know if I would have brought it up. Like I said, that was a question that you know, the owner proposed to me. I did go there using my title as a chance to benefit myself. She asked what I did for work and I responded honestly um, I actually didn't consider myself a police officer at the time. I just exercising my kind of chartered rights to protect myself and try to get it back and like I said, I know part of that is if you do an off-duty arrest or civilian arrest that I have to produce someone to an officer forthwith is...which is what I did.

24. Constable [REDACTED] testified at the Discipline Proceeding. He said he was driving to work from his home in Surrey to [REDACTED] when he developed [REDACTED]. He realized he was not going to make it to a bathroom, so he pulled over to the shoulder of the road and ran into a bushy area where he [REDACTED]. When he emerged from the bush, he saw two people rummaging through his

vehicle. As he approached his vehicle they quickly returned to their vehicle and drove off. Constable [REDACTED] realized some of his personal property had been stolen so he pursued the suspect vehicle and called 911 to report the theft. He lost sight of the vehicle in an alleyway. He called his commanding officer Sergeant [REDACTED] of the West Vancouver Police Department and told him about the theft. He told Sergeant [REDACTED] that some police equipment and an access card were missing. Constable [REDACTED] told Sergeant [REDACTED] his wallet had been stolen so he had no money and was low on gas. Constable [REDACTED] testified that Sergeant [REDACTED] then suggested to him that he take the day off.

25. Constable [REDACTED] testified he was concerned about possible negative consequences arising from the loss of his police notebook, access card and police equipment and tools. He explained there was no policy or rule preventing him from continuing to investigate a crime where he was the victim. He said this was a crime in progress.
26. Constable [REDACTED] said that he went to the registered owner's home because he felt the Surrey RCMP did not have the time, staff or resources to investigate the theft. He said he had taken the day off and he had a responsibility to get his property back.
27. Constable [REDACTED] testified that after attending the registered owner's residence and speaking to [REDACTED] he telephoned Constable [REDACTED]. Constable [REDACTED] did not answer so Constable [REDACTED] left a message telling Constable [REDACTED] that he had contacted the suspect Mr. [REDACTED] and had arranged to meet him. Constable [REDACTED] testified that although he did not want to go to the meeting by himself he felt his only options were to sit and wait for Constable [REDACTED] to return his call or go get his property back. Constable [REDACTED] said that he felt meeting Mr. [REDACTED]



did not seem to be very risky because Mr. [REDACTED] sounded cooperative and apologetic. He felt it was unlikely Mr. [REDACTED] would wait around for him and the chosen location was a public area that Constable [REDACTED] said was unlikely to pose a threat to him or require him to have any of his protective police tools or equipment.

## VI. The law

28. Discreditable conduct is defined in the Police Act as follows:

(h) “discreditable conduct”, which is, when on or off duty, conducting oneself in a manner that the member knows, or ought to know, would be likely to bring discredit on the municipal police department.

29. Neglect of duty is defined in the Police Act as follows:

(m) “neglect of duty”, which is neglecting, without good or sufficient cause, to do any of the following:

(ii) promptly and diligently do anything that it is one’s duty as a member to do.

30. I have considered the written submission of Mr. [REDACTED], counsel for [REDACTED] as well as the authorities he provided including *Downing v. Edmonton (Police Service)*, *Mancini v. Courage (Niagara Regional Police Service)* and the British Columbia decisions of the Honourable Ian Pitfield dated August 11, 2010 and the Honourable Marion Allan dated July 30, 2013.

31. Adjudicators Pitfield and Allan agreed with the following definition of discreditable conduct set out in *Mancini v. Courage*:

The concept of discreditable conduct covers a wide range of potential behaviours. The test to be applied is primarily an objective one. The conduct in question must be measured against the reasonable expectation of the community.

32. Mr. ██████ submits that a more complete definition of the reasonable expectation of the community is found in the decision in *Girard v. Delaney*. In *Girard*, the test to assess the allegation of discreditable conduct is described as follows:

1. The test is primarily an objective one.
2. The Board must measure the conduct of the officer by the reasonable expectations of the community.
3. In determining the reasonable expectations of the community, the Board may use its own judgment, in the absence of evidence as to what the reasonable expectations are. The Board must place itself in the position of the reasonable person in the community, dispassionate, and fully apprised of the circumstances of the case.
4. In applying this standard the Board should consider not only the immediate facts surrounding the case, but also any appropriate consideration where the officer is required by the circumstances to exercise his discretion.
5. Because of the objective nature of the test, the subjective element of good faith (referred to in the *Shockness* case) is an appropriate consideration where the officer is required by the circumstances to exercise his discretion.

33. I am satisfied that the definition of discreditable conduct discussed in Mancini and Girard and approved of by Adjudicators Pitfield and Allan is applicable to the allegation against Constable [REDACTED]. The standard of proof of misconduct is proof on a balance of probabilities.

## VII. Analysis

34. I agree with Mr. [REDACTED] that there is no real issue or dispute with regard to the circumstances Constable [REDACTED] found himself in on his drive to work on May 16, 2018. He had to deal with an urgent situation and he left his vehicle unlocked. Sensitive police information, an access card and potentially dangerous police equipment was stolen from the vehicle. Constable [REDACTED] felt it was necessary to act quickly to recover the stolen property. He reported the theft to the Surrey RCMP. He then decided to investigate the matter himself and attempt to get his property back because he felt the RCMP did not have the time or resources to assist. He located the registered owner of the suspect vehicle and then contacted one of the thieves. He recovered some of the stolen property. Mr. [REDACTED] submitted that the public would be sympathetic with the predicament of Constable [REDACTED] and would commend him for solving the crime that the RCMP could not or would not. Counsel submitted that Constable [REDACTED]'s actions do not amount to discreditable conduct.
35. In the Final Investigation Report Sergeant [REDACTED] analyzed four decisions/actions of Constable [REDACTED]. She concluded that none of them would amount to discreditable conduct. Sergeant [REDACTED] stated at page 19:

Although Constable [REDACTED] did insert himself in the Surrey RCMP

investigation and by doing so caused the Surrey RCMP to have to do extra work in order to have the charges against [REDACTED] approved, his actions did not end the prosecution. The concern over promises and inducements was heavily scrutinized by Crown Counsel on 2 occasions (during initial charge approval and again later prior to trial when the transcript of the 2nd 911 call was brought to the attention of Crown by Sergeant [REDACTED]) and ultimately did not impact the prosecution. In fact, it is reasonable to deduce that without Constable [REDACTED] s involvement, [REDACTED] would not have been charged/convicted and Constable [REDACTED] s property may not have been returned.

The decision by Constable [REDACTED], to use information obtained via Constable [REDACTED] through a police database in order to follow up with the RO and ultimately retrieve his stolen property shows poor judgement, but not misconduct. Police frequently ask victims of crime and members of the public to let the police do their jobs. Constable [REDACTED] as the victim of a theft from auto in his neighborhood should have trusted the local police (RCMP) to investigate. Constable [REDACTED] had his reservations that the RCMP were going to complete a thorough investigation and took it upon himself to retrieve his property. The public would not be shocked or outraged by the actions of Constable [REDACTED] and his conduct would not bring discredit to the West Vancouver Police Department or himself.

With regard to the allegation of Neglect of Duty, Sergeant [REDACTED] said at page 20:

Constable [REDACTED] immediately reported the stolen notebooks and

magazine with ammunition to the Duty Sergeant as well as Sergeant [REDACTED] his immediate supervisor as per West Vancouver Police policy (Report of Damage or Loss AG020).

Section 4.3 of the West Vancouver Police Notebook and Notetaking Policy OD0040 speaks to retention of notebooks “by each Member for the duration of their career, securely stored at the Department...” but the section is ambiguous and does not speak to having notebooks in one’s possession while off-duty, seconded or working off-site.

I conclude that Constable [REDACTED] committed no misconduct when he had police notebooks in his backpack or a training magazine with ammunition in his car that were ultimately stolen by Mr. [REDACTED].

36. The issue in this Discipline Proceeding is whether there is clear, cogent and convincing evidence that proves on a balance of probabilities that Constable [REDACTED] neglected his duty and conducted himself in a manner that he knew or ought to know would be likely to bring discredit on the municipal police force.
37. Mr. [REDACTED] submitted that a reasonable member of the public who was fully apprised of the circumstances, which would include knowing that the RCMP would not likely be able to respond to the call quickly enough to recover the property, would not consider Constable [REDACTED]’s actions to be discreditable. With respect, I do not agree that Constable [REDACTED]’s conduct meets the reasonable expectations of the community.
38. The community expects police officers to follow appropriate police practices and procedures in the investigation of crimes. When viewed objectively, what Constable [REDACTED] did on May 16, 2018, does not meet the

reasonable expectations of the community. I am satisfied that Constable [REDACTED] knew or ought to have known that his conduct would be likely to bring discredit on his police department.

39. I have no doubt that Constable [REDACTED] found himself in an embarrassing situation. He had left his vehicle unlocked when he went to relieve himself. He was concerned about the theft of his notebook and police equipment and he quite properly telephoned his Sergeant. He told Sergeant [REDACTED] about the theft but he did not ask for advice or suggestions as to what to do. He did not tell Sergeant [REDACTED] he planned to get his stolen property back. He did not ask Sergeant [REDACTED] to contact the Surrey RCMP to offer his help in the investigation. Instead, Constable [REDACTED] involved himself in the investigation wrongly assuming the Surrey RCMP were not doing anything. In fact, the evidence establishes that the RCMP had opened a theft file and alerted on-duty members via their police computers. Constable [REDACTED] had been dispatched shortly after the 911 call. Constable [REDACTED] patrolled in the area and located the alleyway where the suspect vehicle was last seen. Sergeant [REDACTED] went to the registered owners residence looking for the vehicle.
40. Constable [REDACTED] was the victim of a crime but should not have pursued his own investigation. Sergeant [REDACTED] found his actions caused the Surrey RCMP to do extra work before the Crown would approve charges against [REDACTED]. Constable [REDACTED] potentially compromised the prosecution by leaving open the suggestion he offered [REDACTED] an inducement or favourable treatment.
41. Sergeant [REDACTED] concluded that Constable [REDACTED] s conduct in attending Ms. [REDACTED] s residence and going by himself to meet [REDACTED] showed poor judgment and was not tactically wise. She was concerned his actions

may have jeopardized his and other police officers' safety. However, Sergeant [REDACTED] felt that if Constable [REDACTED] had not gotten involved it was reasonable to deduce that Mr. [REDACTED] would not have been charged and the stolen property may not have been recovered.

42. In my opinion the fact that no one was injured, that some of the stolen property was recovered and that the prosecution was eventually successful does not resolve the issue of whether Constable [REDACTED]'s conduct was discreditable. Discreditable conduct is established if the member knew or ought to have known his conduct would likely result in discredit to the police force, not whether it actually did or not.
43. I am satisfied the reasonable expectation of the community would be that a police investigation be conducted "by the book" following standard police practices and procedures. The community would not expect Constable [REDACTED], who was the victim of a crime, to conduct his own investigation thereby potentially jeopardizing a subsequent prosecution. Constable [REDACTED] went to Ms. [REDACTED]'s residence and to a meeting with Mr. [REDACTED] not knowing whether other people may have been there. By doing so he may have put himself, members of the public and other police officers who may have had to respond at risk. The community would not expect Constable [REDACTED] to put himself into a potentially dangerous situation without appropriate police equipment, without backup and without his commanding officer knowing where he was or what he was doing. I am satisfied, that such conduct would cause a reasonable person in the community to question Constable [REDACTED]'s training and understanding of police practices and procedures, would reflect negatively on his police department and would be likely to bring discredit on the West Vancouver Police Department.

44. Mr. [REDACTED] properly conceded that a police officer who fails to secure a vehicle that contains sensitive police information and potentially dangerous police equipment would commit neglect of duty if the property was lost or stolen. However, he maintains that Constable [REDACTED] was prevented from doing his duty by the emergent situation he found himself in. While there may be situations or circumstances that might excuse an officer from neglecting his duty by failing to lock his car, I am satisfied that [REDACTED] are not an excuse and should not have prevented him from doing his duty to lock his vehicle.

#### VIII. Conclusion

45. The evidence proves on a balance of probabilities that Constable [REDACTED] neglected his duty and conducted himself in a manner he knew or ought to know would be likely to bring discredit to his police department. I find the allegations of misconduct have been proven.

#### IX. Next Steps

46. Pursuant to section 125 (1)(d) the member 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*

David Pendleton

Adjudicator

February 1, 2021