

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

AND

IN THE MATTER OF A REVIEW OF ALLEGATIONS OF MISCONDUCT AGAINST

CONSTABLE [REDACTED]

AND

CONSTABLE [REDACTED]

NOTICE OF ADJUDICATOR'S DECISION

To: Constable [REDACTED] (Members)
Constable [REDACTED]
c/o Vancouver Police Department
Professional Standards Section

And to: Chief Constable Adam Palmer
c/o Vancouver Police Department
Professional Standards Section

And to: Sergeant [REDACTED] (Investigating Officer)
c/o Vancouver Police Department
Professional Standards Section

And to: Inspector [REDACTED] (Discipline Authority)
c/o Vancouver Police Department
Professional Standards Section

And to: Mr. Frank Chong
Chair, c/o Vancouver Police Board

And to: Prabhu Rajan
Police Complaint Commissioner

Introduction

This is a review under section 117 of the *Police Act*, R.S.B.C. 1996, c. 367 concerning allegations of misconduct against Constable [REDACTED] and Constable [REDACTED] both of the Vancouver Police Department ("VPD"). I shall refer to the officers as "Constable [REDACTED]" and "Constable [REDACTED]" respectively. I have been appointed, as a retired judge, to conduct the review.

The allegations of misconduct arise out of Constable [REDACTED] deployment of a police service dog to effect the arrest of a man (the "Affected Person") who had apparently broken into a Shoppers Drug Mart store in the early morning hours of June 22, 2022, and Constable [REDACTED] actions in subduing the Affected Person and removing him from the store.

On June 22, 2022, the VPD informed the Office of the Police Complaint Commissioner (the "OPCC") of the incident pursuant to section 89 of the *Police Act*.

On August 24, 2022, the VPD requested the OPCC to order an investigation into the conduct of Constable [REDACTED].

On September 9, 2022, the OPCC made an order for investigation pursuant to section 93(1)(a) and (b)(i) of the *Police Act*, not only in relation to Constable [REDACTED] but also in relation to Constable [REDACTED]. An investigation was conducted, which resulted in the production of a Final Investigation Report ("FIR").

Summary of the Incident

The circumstances of the incident as disclosed by the Final Investigation Report and the evidence and attachments to it, may be briefly summarized.

At 3:17 a.m. on June 22, 2022, VPD received two 911 phone calls from civilians reporting that a man (later identified as the Affected Person) had broken into the Shoppers Drug Mart store at [REDACTED] in Vancouver, British Columbia. One of the callers, Mr. [REDACTED] reported that the man had broken the glass with his leg and entered the store. He said that the man had previously been in a fight with a bus driver. The other caller, Mr. [REDACTED] reported that the man was going in and out of the Shoppers Drug Mart store through the smashed glass door. He said the man was screaming and hollering, and he described him as suffering from some type of mental episode.

At 3:22 a.m., Constable [REDACTED] (whom I shall refer to as "Constable [REDACTED]" and Constable [REDACTED] (whom I shall refer to as "Constable [REDACTED]" responded to the area and took up a position of containment as a plainclothes unit. They described the Affected Person as being uncooperative and refusing to leave the store.

Constable [REDACTED] who was a certified dog handler, arrived with [REDACTED] police service dog. [REDACTED] partner, Constable [REDACTED] whom I shall refer to as "Constable [REDACTED]", also arrived at the scene.

Seeing that the Affected Person was inside the store, and believing him to be arrestable for break and enter, Constable [REDACTED] yelled at him that he was under arrest and ordered him to come out with his hands up. The Affected Person looked directly at the police dog and at Constable [REDACTED] and Constable [REDACTED] in full uniform, and made no attempts at surrender.

Constable [REDACTED] advised Constable [REDACTED] to open the door so that the police dog could enter. The Affected Person grabbed the door handle in an apparent attempt to prevent police from entering. Constable [REDACTED] observed that the glass in the door was "spidered", and that entry could be gained by pushing the glass inward. [REDACTED] yelled at the Affected Person to come out or he would get bitten. The Affected Person did not comply with police commands and continued to pull the door closed from the inside.

Constable [REDACTED] gave the police dog the command to bite, and the dog squeezed through the glass and bit the Affected Person's lower right leg. This took the Affected Person to the ground, giving Constable [REDACTED] an opportunity to enter through the glass.

Constable [REDACTED] and Constable [REDACTED] also entered. Constable [REDACTED] delivered a series of kicks to the Affected Person's back, as the Affected Person was trying to gouge the eyes of the police dog. Constable [REDACTED] removed the dog, and Constable [REDACTED] dragged the Affected Person outside, where his injuries were promptly attended to by fire personnel.

Constable [REDACTED] gave the Affected Person his *Charter* warning at 3:25 a.m. Emergency Health Services ("EHS") was called and the Affected Person was transported to St. Paul's Hospital for treatment for the dog bite. The Affected Person was released on an Undertaking to Appear at 4:21 a.m.

Alleged Misconduct

The OPCC identified the following alleged misconduct with respect to Constable [REDACTED]

Abuse of Authority pursuant to section 77(3)(a)(ii)(A) of the *Police Act*, which is oppressive conduct towards a member of the public, including, without limitation, in the performance or purported performance, of duties, intentionally or recklessly using unnecessary force on any person; and

Neglect of Duty pursuant to section 77(3)(m)(ii) of the *Police Act*, which is neglecting, without good and sufficient cause, to promptly and diligently do anything that is one's duty as a member to do.

The allegation of misconduct with respect to Constable [REDACTED] was potentially defined as:

Abuse of Authority pursuant to section 77(3)(a)(ii)(A) of the *Police Act*, which is oppressive conduct towards a member of the public, including, without limitation, in the performance or purported performance, of duties, intentionally or recklessly using unnecessary force on any person.

"Misconduct" is defined in section 77(1) of the *Police Act* as including a disciplinary breach of public trust under section 77(3). For present purposes, sections 77(3)(a)(ii)(A), 77(3)(m)(ii) and 77(4) are relevant:

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

(a) "abuse of authority", which is oppressive conduct towards a member of the public, including, without limitation,

...

(ii) in the performance, or purported performance, of duties, intentionally or recklessly

(A) using unnecessary force on any person, or ...

(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;...

...

(4) It is not a disciplinary breach of public trust for a member to engage in conduct that is necessary in the proper performance of authorized police work.

The Investigation

On October 4, 2022, Sergeant [REDACTED] ("Sergeant [REDACTED]) of the VPD Professional Standards Section was assigned to investigate, pursuant to the order of the OPCC. He reviewed the related general occurrence reports, police dog reports, computer aided dispatch reports, radio calls, related policy and relevant case law. He also conducted witness interviews with the two civilian witnesses who had called 911 to report the incident, Mr [REDACTED] ("Mr [REDACTED]) and Mr [REDACTED] ("Mr. [REDACTED]).

On January 11, 2023, Sergeant [REDACTED] was informed by Crown Counsel that criminal charges had been approved against the Affected Person, and on January 24, 2023, the *Police Act* proceedings were suspended in order not to prejudice the criminal proceedings.

The criminal proceedings were concluded on December 21, 2023, when the Affected Person pleaded guilty to one count of Break and Enter with Intent to commit an indictable offence, contrary to section 348(1)(a) of the *Criminal Code*. The suspension of the *Police Act* investigation was then lifted on February 22, 2024.

On March 19, 2024, Sergeant [REDACTED] ("Sergeant [REDACTED]") was assigned to continue the *Police Act* investigation. He conducted interviews with the officers, and he reviewed the related general occurrence reports, police dog reports, computer aided dispatch reports, radio calls, closed circuit television (CCTV) recordings, and related policy and case law.

He completed his investigation and submitted the Final Investigation Report to the Discipline Authority on June 11, 2024.

The Discipline Authority Decision

On July 5, 2024, the Discipline Authority, Inspector [REDACTED] ("Inspector [REDACTED]") issued her decision pursuant to section 112 of the *Police Act*. She found that the allegations against Constable [REDACTED] of Abuse of Authority and of Neglect of Duty did not appear to be substantiated, and that the allegation of Abuse of Authority against Constable [REDACTED] did not appear to be substantiated.

Review by the Police Complaint Commissioner and Appointment of Retired Judge

The Police Complaint Commissioner reviewed the matter pursuant to section 117(1) of the *Police Act*, and considered that there was a reasonable basis to believe that the decision of Inspector [REDACTED] as Discipline Authority was incorrect.

It should be noted that for the purpose of this section 117 Review, I am not provided with a copy of the Discipline Authority's decision. The only information I have about that decision and the reasons for it are the description provided by the Police Complaint Commissioner in the Notice of Appointment of Retired Judge.

In that Notice of Appointment, the Police Complaint Commissioner expressed concerns that the Discipline Authority apparently made a factual error about the length of time that the members were on the scene, saying that it was 18 minutes. Concerns were also raised that the Discipline Authority did not correctly assess the adequacy of the warning given to the Affected Person and the reasonableness of the degree of force used, particularly in light of the age, health, and mental state of the Affected Person.

Accordingly, the Police Complaint Commissioner appointed me, as a retired judge, to conduct a review under section 117 of the *Police Act*.

The Nature And Scope of a Section 117 Review

The appointment of a retired judge and the nature and scope of a review are governed by section 117 of the *Police Act*.

Subsection 117(1) provides that the retired judge is to do the following:

- (a) review the investigating officer's report referred to in section 112 or 116, as the case may be, and the evidence and records referenced in that report;
- (b) make her or his own decision on the matter;
- (c) if subsection (9) of this section applies, exercise the powers and perform the duties of discipline authority in respect of the matter for the purposes of this Division.

Subsection 117(7) stipulates that the review is to be completed and the parties notified within ten business days, and subsections 117(8)-(11) specify the nature and effect of the review decision.

Specifically, section 117(8)-(11) provides:

117. (8) Notification under subsection (7) must include

- (a) a description of the complaint, if any, and any conduct of concern,
- (b) a statement of a complainant's right to make submissions under section 113 [*complainant's right to make submissions*],
- (c) a list or description of each allegation of misconduct considered by the retired judge,
- (d) if subsection (9) applies, the retired judge's determination as to the following:
 - (i) whether or not, in relation to each allegation of misconduct considered by the retired judge, the evidence referenced in the report appears sufficient to substantiate the allegation and require the taking of disciplinary or corrective measures;
 - (ii) whether or not a prehearing conference will be offered to the member or former member under section 120 [*prehearing conference*];

(iii) the range of disciplinary or corrective measures being considered by the retired judge in the case, and

(e) if subsection (10) applies, a statement that includes the effect of subsection (11).

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

(10) If, on review of the report and the evidence and records referenced in it, the retired judge decides that the conduct of the member or former member does not constitute misconduct, the retired judge must include that decision, with reasons, in the notification under subsection (7).

(11) The retired judge's decision under subsection (10)

(a) is not open to question or review by a court on any ground, and

(b) is final and conclusive.

Some guidance on the interpretation of section 117 may be found in *Scott v. British Columbia (the Police Complaint Commissioner)*, 2016 BCSC 1970. There, Justice Affleck remarked at paragraph [39]:

[39] Section 117 of the *Police Act* is unfortunately worded in some respects. On one possible interpretation a retired judge appointed pursuant to the *Act* is directed to reach conclusions about the conduct of a member of a police force before a disciplinary hearing has been conducted by the retired judge in respect of that conduct. I do not accept the legislature intended such an approach to be taken. If that was the appropriate interpretation it would inevitably raise a serious issue of an apprehension of bias when the retired judge made preliminary findings adverse to the petitioner and was then required to conduct a disciplinary hearing. I conclude that the retired Judge adopted an interpretation which has now led to that unfortunate outcome.

Those remarks were in relation to the interpretation of section 117(9), which is worded somewhat differently from section 117(10).

In short, my task on this section 117 review is to review the Final Investigation Report and the evidence and records referenced therein, and make my own decision of whether the member's conduct appears to constitute misconduct under section 117(9)

or whether the conduct of the member does not constitute misconduct under section 117(10).

It is important to note that my review under section 117 is not an appeal from any previous determination. It is not a review of the reasons of the Discipline Authority nor is it a review of the Police Complaint Commissioner's reasons for rejecting the decision of the Discipline Authority. Rather, my mandate under section 117(1) of the *Police Act* is to review the Final Investigation Report and the evidence and records referenced in it and then make my own decision on the matter.

The Final Investigation Report and the Alleged Misconduct

The Final Investigation Report is 89 pages long, and the records attached to it comprise several hundred pages of materials, including the officers' notes and reports, and other materials from the police file. It includes interviews with the members and other witnesses. It also includes audio recordings of police dispatches and of interviews, as well as the CCTV video recordings of the incident.

Typically, an investigation like this one would include one or more interviews with the Affected Person. In this case, however, the Affected Person could not be located for an interview, despite repeated efforts, including phone calls, leaving messages, and attendance to his last known residence, without success.

On a review of all the material, I agree that the relevant allegations of misconduct with respect to Constable [REDACTED] are:

Abuse of Authority pursuant to section 77(3)(a)(ii)(A) of the *Police Act*, which is oppressive conduct towards a member of the public, including, without limitation, in the performance or purported performance, of duties, intentionally or recklessly using unnecessary force on any person; and

Neglect of Duty pursuant to section 77(3)(m)(ii) of the *Police Act*, which is neglecting, without good and sufficient cause, to promptly and diligently do anything that is one's duty as a member to do.

The relevant allegation of misconduct with respect to Constable [REDACTED] is:

Abuse of Authority pursuant to section 77(3)(a)(ii)(A) of the *Police Act*, which is oppressive conduct towards a member of the public, including, without limitation, in the performance or purported performance, of duties, intentionally or recklessly using unnecessary force on any person.

I have reviewed the entire Final Investigation Report and the evidence and records referenced in it. I have also listened to the audio recordings and watched the CCTV video recordings. I shall not here summarize all of the material in the FIR, although I have read and considered it all. I shall, however, summarize some of the material that

is most relevant to the allegations of alleged misconduct, including the interviews with the two civilian witnesses who reported the break and enter to the police through 911 calls, the CCTV video of the incident, and statements of the two respondent officers, Constable [REDACTED] and Constable [REDACTED]

Mr. [REDACTED] Evidence.

One of the 911 callers, Mr. [REDACTED] was interviewed, and his observations may be summarized as follows.

Mr. [REDACTED] was working as a security guard in an establishment near [REDACTED] Street in downtown Vancouver on June 22, 2022. At around midnight, he observed a man, later identified as the Affected Person, who kicked and damaged some glass near the Sephora store. The man then went to the Shoppers Drug Mart, where he kicked out the front glass door and went inside. The alarm inside the Shoppers Drug Mart went off. Mr. [REDACTED] reported the incident to police, who attended the scene with a police dog. The officers and dog controlled the man, who appeared to be in a lot of pain and was screaming.

Before this incident, Mr. [REDACTED] had observed the same man get into an altercation with a bus driver, who apparently did not want him on his bus, due to his behaviour. The man did not comply with the driver's direction to get off the bus, but rather screamed and yelled at the driver. Mr. [REDACTED] and a co-worker helped the bus driver to remove the man, who appeared strong. The man appeared to have bumps on his stomach. He screamed, and he hit things at random.

Mr. [REDACTED] Evidence

The other 911 caller, Mr. [REDACTED] was interviewed, and his observations may be summarized as follows.

Mr. [REDACTED] is the nightshift concierge at a location at the corner of [REDACTED] Street. On June 22, 2022, he heard the sound of glass breaking. He went outside and observed a man, later identified as the Affected Person, kicking in the front door of the Shoppers Drug Mart store. Mr. [REDACTED] went back to his office to retrieve his phone and then returned outside and called 911. By that time, the Affected Person was inside the Shoppers Drug Mart. Police arrived shortly after his 911 call. Mr. [REDACTED] could hear the Affected Person scream at one point, and he believed this was due to a police dog being sent inside the store. Police remained on scene for a couple of hours after the incident occurred.

Mr. [REDACTED] said that the police arrived within two minutes of his reporting the break and enter. Mr. [REDACTED] heard an officer yell at the Affected Person to come out. He said "you could hear that a half a mile away, they were really clear about that."

The officers told the man to put his hands up, come out, and something to the effect of lay down, and the officers seemed to be trying to get the man to stop what he was doing, to which he did not comply.

The officers then let the police dog in. The man was screaming, and there was a big “kerfuffle” as other officers went inside. Mr. [REDACTED] could not recall any time frames, from when the dog arrived to deployment, nor from commands toward the suspect to deployment of the dog. Other officers entered the store right after the dog entered. Mr. [REDACTED] did not observe the dog make contact with the man and did not observe the actions from the other officers or the suspect during the incident.

Constable [REDACTED] Evidence

Constable [REDACTED] was interviewed by Sgt. [REDACTED] and [REDACTED] evidence may be summarized in this way.

Constable [REDACTED] is an experienced member of the Vancouver Police Department. At the time of this incident, Constable [REDACTED] had thirteen years of service and two years with the Canine Unit. [REDACTED] has taken numerous training courses (many of them multiple times), including firearms training, crisis intervention and de-escalation, taser certification, boxing and pinning, trauma-informed practice, mental illness and disorders, homeless awareness, and anti-racism awareness. [REDACTED] holds a Certificate of Validation as a police service dog handler.

On June 22, 2022, Constable [REDACTED] was working as a dog handler with a police service dog wearing a marked police vest. Constable [REDACTED] was in company of Constable [REDACTED]. Constable [REDACTED] and Constable [REDACTED] were dispatched to a commercial break and enter in progress. Constable [REDACTED] recalled that a security guard had reported observing a male smash the front door of the Shoppers Drug Mart and enter inside. The male was seen going in and out of the store and was also observed screaming incoherently and acting erratically. Other officers responded, and Constable [REDACTED] arrived to the south of the business. Constable [REDACTED] deployed with [REDACTED] police service dog on a 6 foot leash in company of Constable [REDACTED]. When Constable [REDACTED] arrived on scene, [REDACTED] was advised that the male was still inside the Shoppers Drug Mart. Upon rounding a corner, Constable [REDACTED] observed the male inside the glass door.

The glass door appeared “spidered”, not entirely smashed, so [REDACTED] could not see directly into the store. [REDACTED] challenged the male (later identified as the Affected Person), giving him multiple opportunities to exit, and advised him to come out and put his hands up. The male pushed up against the door and tried to prevent police entry. Constable [REDACTED] yelled at the male that he was under arrest and to come out or the male would be bitten by the police dog.

At that point, the male backed up, started to go towards the back of the store and clenched his fists in a fighting stance as if he was going to fight police. The only

entrance into the store was a gap between the spidered glass and the door. The male was given a final warning and he clenched his fists as if he was taunting the Constables and wanting to fight the officers, posing a risk to the police and the police service dog.

At that point, Constable [REDACTED] deployed [REDACTED] police service dog to prevent the male from retreating back into the store. The police dog engaged the male's lower leg and the male went to the ground. Police made entry through the broken glass. Once inside, Constable [REDACTED] grabbed hold of the police dog's harness. Constable [REDACTED] observed that the male was actively grabbing at the police dog's eyes and muzzle.

Shortly after, Constable [REDACTED] removed the police dog off the bite as other officers took the male into custody.

The male had been given multiple opportunities to surrender, and Constable [REDACTED] believed no lower level of force would be appropriate in that scenario to take the male into custody. The area of the arrest was very small. Putting an officer in first would cause immediate danger to the officer.

In reply to some follow-up questions, Constable [REDACTED] added these remarks. Constable [REDACTED] was approximately five feet from the male when [REDACTED] first observed him behind the glass door. Upon the police dog engaging the male, Constable [REDACTED] entered the door. As soon as [REDACTED] entered through the door, [REDACTED] grabbed hold of the police dog's collar and harness and gave commands to the male to stop grabbing at the police dog's eyes and for the male to get on his stomach. Once the male was under control, Constable [REDACTED] took the police dog off the bite.

Due to the tight confines, Constable [REDACTED] controlled the police dog until another officer could open the door. After removing the police dog from the bite, Constable [REDACTED] did not observe the male's behaviour as [REDACTED] was facing away from him. Constable [REDACTED] then exited the store with [REDACTED] police dog and had [REDACTED] hand cleaned up as [REDACTED] had cut [REDACTED] hand on the glass. Constable [REDACTED] observed Fire Department members looking at the bite on the man's leg and ensured an ambulance was called to the scene. . During the arrest, Constable [REDACTED] observed a leg strike by another officer but did not recall how many strikes. Constable [REDACTED] did not observe the man immediately after he was placed in handcuffs. [REDACTED] did not observe any other use of force after the arrest by another officer, and [REDACTED] did not have any further interaction with the man after removing the police dog from the bite.

Constable [REDACTED] Evidence

Sergeant [REDACTED] interviewed Constable [REDACTED] whose evidence may be summarized as follows.

On June 22, 2022, while on duty and in uniform, Constable [REDACTED] was dispatched to a reported break and enter at the Shoppers Drug Mart on [REDACTED] Constable [REDACTED] recalled that a plainclothes unit attended to begin observations.

Constable [REDACTED] attended as a one-person unit and in consultation with the dog handler (Constable [REDACTED]), the decision was made to challenge the suspect inside the vestibule of the store. Constable [REDACTED] approached with the dog handler and other officers. Constable [REDACTED] observed the Affected Person inside the vestibule and broken glass on the front door through which Constable [REDACTED] believed he had entered. Constable [REDACTED] observed the Affected Person holding the door closed. Another member kicked at the glass and the Affected Person backed off. Constable [REDACTED] observed that the Affected Person looked like he was limbering up to fight by waving his arms around in circles as one would to warm up. The Affected Person also presented an angled body posture as if he was about to fight.

The dog handler issued some commands, but Constable [REDACTED] could not recall exactly what was said. The dog handler pushed against the glass and the Affected Person pushed the glass back. The dog handler was able to push [REDACTED] dog in and the dog bit. The Affected Person went down with the dog. Constable [REDACTED] entered the vestibule with the dog handler and another police member. Constable [REDACTED] had [REDACTED] taser drawn. Constable [REDACTED] believed the Affected Person presented assaultive cues by squaring up. The Affected Person was trying to gouge the dog's eyes out. Constable [REDACTED] was unsure if [REDACTED] was allowed to use intermediate weapons to prevent grievous bodily harm or death to a police dog. [REDACTED] decided against using [REDACTED] taser, but kicked The Affected Person five times in his hip or side/love handle area. Constable [REDACTED] applied these kicks because the Affected Person was assaultive and committing several offences, namely, break and enter, obstruction for failing to exit the vestibule, and also committing the offence of assaulting a law enforcement animal or attempting to wound it, and Constable [REDACTED] was concerned about preventing the commission or repetition of that offence.

After several kicks from Constable [REDACTED] and several commands from the dog handler, the Affected Person stopped trying to gouge the dog's eyes out. At that moment, the dog handler removed [REDACTED] dog from the Affected Person and another member attempted to place him into handcuffs. Constable [REDACTED] noticed a large bulge in the Affected Person's stomach and abdomen area and Constable [REDACTED] avoided kicking that area as [REDACTED] did not want to cause any significant injury. Two sets of handcuffs were used as the Affected Person was unable to place his hands behind his back. The door to the vestibule was unlocked, the police dog was taken out of the vestibule, and after the Affected Person was secured in handcuffs, Constable [REDACTED] dragged him out to get him medical aid for the dog bite.

Constable [REDACTED] was aware there was broken safety glass on the floor and Constable [REDACTED] did not want to sit the Affected Person up and then stand him up as the area was tight, and due to his previous assaultive behaviour, he might try to resist further.

Once outside, the Affected Person was treated for the dog bite and transported.

Constable [REDACTED] said that [REDACTED] did observe something wrapped around the Affected Person's arm but did not note that it was a cast until later when he was being taken into custody.

Constable [REDACTED] Evidence

Sergeant [REDACTED] interviewed Constable [REDACTED] whose evidence may be summarized as follows.

On June 22, 2022, Constable [REDACTED] was partnered with the on-duty police service dog handler, Constable [REDACTED] and [REDACTED] dog. At about 3:19 a.m., they attended to a reported break and enter at a Shoppers Drug Mart store. Upon arrival, Constable [REDACTED] attended the front door and observed a male (the Affected Person) in a vestibule area behind the front door of the Shoppers Drug Mart, whose glass had been broken. Constable [REDACTED] gave the Affected Person verbal commands to open the door, but he refused. Constable [REDACTED] tried to open the door, but the Affected Person pulled it back. Constable [REDACTED] continued to give verbal commands while the Affected Person was "actively resistant", as he continued pulling the door closed.

Constable [REDACTED] kicked at the glass of the door, which appeared to swing open. Constable [REDACTED] advised Constable [REDACTED] that the glass portion would swing open, and Constable [REDACTED] sent [REDACTED] police dog through the opening in the glass. Constable [REDACTED] and Constable [REDACTED] then entered through the opening in the glass, with the intent of taking the Affected Person into custody by controlling his arm. Constable [REDACTED] was not able to handcuff the Affected Person, so he obtained zip ties. He believed that the Affected Person was arrestable for break and enter.

Once the Affected Person was in custody, Constable [REDACTED] returned to the police dog handler vehicle with Constable [REDACTED] and the police dog.

Constable [REDACTED] observation of the Affected Person's demeanour was that he was actively resistant by refusing Constable [REDACTED] verbal commands to open the door and by actively pulling the door shut against Constable [REDACTED] attempts to open it. As Constable [REDACTED] kicked at the door, the Affected Person moved away from the door and took up a "fighter position" with bent knees and bladed stance as if he was "inviting some physical contact to be coming...looking like he maybe wanted to fight." Constable [REDACTED] did not remember if the Affected Person said anything.

Other than observing the police service dog being deployed, Constable [REDACTED] did not recall any other members using force.

Constable [REDACTED] Evidence

Constable [REDACTED] was interviewed, and his observations were summarized as follows:

On June 22, 2022, Constable [REDACTED] was working in uniform with Constable [REDACTED]. Just after 3:00 a.m., Constable [REDACTED] and Constable [REDACTED] received a call of a break and enter. They took up a position of containment at [REDACTED]

Constable [REDACTED] heard that a plainclothes unit had located the suspect (the Affected Person) and was making visual observations. Constable [REDACTED] heard via police radio that a

dog handler (Constable [REDACTED] was challenging the Affected Person. Constable [REDACTED] recalled that the dog handler was partnered with Constable [REDACTED]. Constable [REDACTED] was also present. Constable [REDACTED] heard via police radio that as police members were challenging him, the Affected Person was pulling the door and was not compliant. Constable [REDACTED] and Constable [REDACTED] attended the front door. Constable [REDACTED] observed that Constable [REDACTED] and [REDACTED] police dog, Constable [REDACTED] and Constable [REDACTED] were already inside the door to the Shoppers Drug Mart. Constable [REDACTED] entered through the door and observed that the dog had contacted the Affected Person. Constable [REDACTED] waited until the dog released its bite before moving in to assist in taking the Affected Person into custody. Constable [REDACTED] recalled that the Affected Person had a cast on one arm that required restraining him with “zap straps” instead of handcuffs.

EHS was requested for the Affected Person, and he was released on an Undertaking to Appear.

Constable [REDACTED] Evidence.

Constable [REDACTED] was working with Constable [REDACTED] that night. He observed other members attempt to take the Affected Person into custody. He observed that the Affected Person had a cast on one arm and a hernia on his stomach, so after he was arrested, he was brought outside on the sidewalk.

At 3:25 a.m., Constable [REDACTED] read the Affected Person his *Charter* rights. The Affected Person told Constable [REDACTED] that he had been on a three-day drug binge and had not slept since then. He had identification indicating that he was 47 years old. Constable [REDACTED] called for EHS to attend, and he released the Affected Person on an Undertaking to Appear.

Other Members' Evidence

Sergeant [REDACTED] interviewed other officers who were present, including Constable [REDACTED] (“Constable [REDACTED] and Constable [REDACTED] (“Constable [REDACTED]. These officers did not enter the Shoppers Drug Mart store, and their evidence adds little to the evidence of the other officers.

Analysis – Abuse of Authority and Neglect of Duty by Constable [REDACTED]

The first allegation of misconduct against Constable [REDACTED] is that [REDACTED] abused [REDACTED] authority by intentionally or recklessly using unnecessary force on the Affected Person in the performance of [REDACTED] duties. This relates to [REDACTED] decision to use [REDACTED] police service dog in the apprehension of the Affected Person.

Second, it is alleged that Constable [REDACTED] neglected [REDACTED] duty by neglecting, without good and sufficient cause, to promptly and diligently do anything that it was [REDACTED] duty as a

member to do. This relates to [REDACTED] duty to give warning before deploying [REDACTED] police service dog.

I shall consider these two allegations together.

There can be no doubt that Constable [REDACTED] had reasonable and probable grounds to believe that the Affected Person was committing the indictable offence of breaking and entering, contrary to section 348(1)(a) of the *Criminal Code*. Constable [REDACTED] was aware that the break and enter had been witnessed by the two civilians who called 911 and reported it to the police. As well, the offence was ongoing, and Constable [REDACTED] witnessed the continuing offence [REDACTED] when [REDACTED] arrived at the scene.

Constable [REDACTED] was legally authorized to apprehend the Affected Person, and [REDACTED] was acting in the performance of [REDACTED] duties when [REDACTED] did so, namely, [REDACTED] common law duty as a police officer to preserve the peace, to prevent crime, to protect life and property, to enforce the law, and to apprehend offenders.

Constable [REDACTED] was trained and certified as a dog handler, and [REDACTED] attended the scene with [REDACTED] police service dog.

The Vancouver Police Department Regulations and Procedures Manual discusses the use of police service dogs at section 1.13, which stipulates that police service dogs may be deployed in the exercise of all regular police duties, including apprehending persons by police dog bite or display, provided that a proper prior warning is given.

On all the evidence, it appears that the decision to use the police service dog, including the use of a dog bite, was a reasonable and responsible decision under the circumstances. The Affected Person had effectively barricaded himself into the vestibule between the front door of the Shoppers Drug Mart and a gate leading into the rest of the store. The police reasonably believed that it would be dangerous for them to enter that confined space to confront the Affected Person without the assistance of the dog.

As well, the evidence supports a finding that an adequate warning was given. Constable [REDACTED] herself said [REDACTED] gave an appropriate warning. This is supported by evidence from the civilian Mr [REDACTED] who said that the police arrived within two minutes of his reporting the break and enter. Mr [REDACTED] heard an officer yell at the Affected Person to come out from the store. Mr [REDACTED] said, "you could hear that a half a mile away, they were really clear about that." The other officers who attended the scene confirmed that an appropriate warning was given.

It has been suggested that Constable [REDACTED] did not allow enough time after [REDACTED] warning for the Affected Person to comply, being a matter of perhaps 18 seconds rather than 18 minutes as mistakenly set out in the decision of the Discipline Authority.

I am satisfied that the length of time was adequate, and that waiting longer would not likely have produced a different result.

Looking at the CCTV video clearly confirms that the Affected Person's attitude was one of aggression and defiance. He showed no sign that he might comply with police requests if only given more time. He knew the police were there with a police dog. He had been warned that the dog would bite if he did not surrender. He chose to defy the lawful demands of the police notwithstanding those warnings.

The correctness of the assessment by Constable [REDACTED] and the other officers that the Affected Person was potentially violent and posed a danger both to them and to the public, is borne out by other surrounding facts, regardless of whether these facts were known to the police at the time.

The civilian witness Mr. [REDACTED] had observed the Affected Person involved in a violent altercation with a bus driver shortly before this incident.

As well, Constable [REDACTED] said that as he was giving the *Charter* warning, the Affected Person told him he was very high from crystal meth, and that he had been on a three-day drug binge and had not slept since then. This was confirmed again in the B.C. Emergency Health Services record, which noted that the Affected Person told them that he had been smoking meth for the past three days, along with opiate use, upwards of ten hours prior.

All these circumstances suggest that the Affected Person was not simply "having a mental episode", but rather was acting violently and aggressively, fuelled in part, perhaps, by drug abuse.

In the result, I consider that the evidence does not appear sufficient to support a finding that Constable [REDACTED] conduct constitutes an Abuse of Authority.

As well, I consider that the evidence does not appear sufficient to support a finding that Constable [REDACTED] conduct constitutes a Neglect of Duty

Analysis – Abuse of Authority by Constable [REDACTED]

The allegation of misconduct against Constable [REDACTED] is that [REDACTED] abused [REDACTED] authority by intentionally or recklessly using unnecessary force on the Affected Person in the performance of [REDACTED] duties. This relates to [REDACTED] delivering kicks when the Affected Person was gouging the eyes of the police service dog, and to [REDACTED] dragging the Affected Person out of the vestibule to be treated for the dog bite.

There is no question that Constable [REDACTED] was acting in the performance of [REDACTED] duties when [REDACTED] assisted in the apprehension of the Affected Person. Like Constable [REDACTED] Constable [REDACTED] clearly had reasonable and probable grounds to believe that the Affected Person had committed, and was continuing to commit the offence of breaking and entering. [REDACTED] had a common law duty as a police officer to preserve the peace, to prevent crime, to protect life and property, to enforce the law, and to apprehend offenders.

In the performance of those duties, Constable [REDACTED] followed the police service dog and other officers into the small vestibule in which the Affected Person had effectively barricaded himself.

[REDACTED] saw that the Affected Person was resisting, notwithstanding the bite of the police dog. [REDACTED] observed the Affected Person trying to gouge the eyes of the police dog.

Constable [REDACTED] possessed a taser, but [REDACTED] made a reasonable decision not to use it.

In order to protect the dog and to prevent further violence, Constable [REDACTED] delivered five kicks to the Affected Person's side. Constable [REDACTED] noticed a large bulge in the Affected Person's stomach area, and [REDACTED] avoided kicking that area in order not to cause any significant injury.

The Affected Person stopped trying to gouge the dog's eyes, and the dog handler removed the dog. The door to the vestibule was unlocked and the dog was taken outside.

After the Affected Person was secured in handcuffs, Constable [REDACTED] dragged him out of the vestibule to get him medical aid for the dog bite. Constable [REDACTED] said [REDACTED] was aware there was broken safety glass on the floor and [REDACTED] did not want to sit the Affected Person up and then stand him up as the area was tight. Due to his previous assaultive behaviour, the Affected Person might try to resist further.

In the situation as it presented itself, I cannot say that the force used by Constable [REDACTED] was unnecessary or excessive. It is an unfortunate fact that police sometimes have to use force in order to fulfill their duties as police officers, and I do not find the force used here was excessive.

Constable [REDACTED] was aware of the issue with the Affected Person's stomach area, and [REDACTED] avoided that area. The kicks [REDACTED] delivered were reasonably necessary to protect the police dog. Once the Affected Person was cuffed, it was necessary to remove him from the confined space of the vestibule. The method employed by Constable [REDACTED] appears to have been the fastest and most effective way of removing the Affected Person so that he could receive medical attention for the dog bites.

In evaluating the risk of harm to the Affected Person, it is helpful to watch the CCTV video. First, the video clearly shows that the glass door that the Affected Person kicked in did not shatter into shards landing on the floor. Rather, the glass was apparently safety glass so that it spidered and remained largely intact. This is not a case where the floor was littered with glass shards.

Second, the video clearly shows that while the Affected Person was taunting the police before they entered with the dog, he did not appear to be unduly bothered or hampered by the cast on his right arm or by the apparent hernia on his abdomen. For example, he forcefully pulled the door closed with his right hand, despite the cast, and he jumped around in a menacing and aggressive way despite the hernia.

In the result, I consider that the evidence does not appear sufficient to support a finding that Constable [REDACTED] conduct constitutes an Abuse of Authority.

Conclusion

Upon my review of the Final Investigation Report and the evidence and records referenced in it, I consider that the evidence does not appear sufficient to support either of the allegations of misconduct against Constable [REDACTED] and it does not appear sufficient to support the allegation of misconduct against Constable [REDACTED].

Pursuant to section 117(11) of the *Police Act*, this decision is not open to question or review by a court on any ground and is final and conclusive.

Dated at Vancouver, British Columbia this 14th day of August, 2024.



Hon. William Ehrcke,
Retired Judge of the Supreme Court of British Columbia, Adjudicator