

**IN THE MATTER OF
ONTARIO REGULATION 123/98
MADE UNDER THE POLICE SERVICES ACT, R.S.O. 1990, C.P.15
AND AMENDMENTS THERETO;**

**AND IN THE MATTER OF
POLICE CONSTABLE WILLIAM MACDONALD
AND THE
SAUGEEN SHORES POLICE SERVICE**

APPEARANCES:

Mr. Glenn P. Christie
Legal Counsel - for the Saugeen Shores Police Service

Ms. Joanne Mulcahy
Legal Counsel - for Constable William MacDonald

BEFORE:

O.P.P. Superintendent (retired) Robert J. Fitches

HEARING DATE:

February 5th, 2018

DECISION RELEASED:

April 10th, 2018

DECISION & DISPOSITION

Preliminary Issue:

Originally, Constable MacDonald was charged along with a fellow officer. Allegations of misconduct against this fellow officer were withdrawn at the request of both counsel.

The Allegations

Constable William MacDonald was served with Notice of Hearing dated November 26th, 2015 which alleged as follows:

That on May 31, 2015, contrary to Section 2(1)(g)(ii) of the Schedule to Part V of Ontario Regulation 286/10 of the Police Services Act, R.S.O. 1990, c. P-15, as amended from time to time, you committed the offence of Unlawful or Unnecessary Exercise of Authority in that you; 'uses any unnecessary force against a prisoner or other person contacted in the execution of duty'.

In that on May 31st, 2015 you used unnecessary force in the arrest of Tayler Schihl.

Agreed Statement of Facts

An agreed statement of facts was submitted for my consideration:

1. This matter arises out of an OIPRD directed hearing.
2. On May 30, 2015, Constable MacDonald was on duty as a police officer for the Saugeen Shores Police Service. His shift carried over into May 31st.
3. In the early morning hours of May 31st, 2015, a fellow officer observed a black vehicle (a black Honda) travelling at what the officer believed was a high rate of speed. This officer tried to follow the vehicle.
4. Constable MacDonald was nearby and also observed the vehicle travelling on the street. He observed that the vehicle did not stop at a stop sign.
5. Constable MacDonald was not following the vehicle, but was travelling on what he thought was a parallel path.
6. Shortly thereafter, Constable MacDonald was not able to locate the vehicle and he was therefore not attempting to stop the vehicle.
7. About an hour later, the fellow officer radioed Constable MacDonald that he believed he had located the vehicle parked in a driveway of a residence.
8. The fellow officer attended the front door, explaining the reason for his interest and asked to speak to all of the occupants of the house.
9. Constable MacDonald ended up going into the backyard of the premises because he heard the complainant tell the other officer that she was going to get her son and Constable MacDonald had believed the vehicle had been involved in the incident and was concerned that an associated party would attempt to flee from the rear of the residence. Constable MacDonald entered the back yard of the residence and locate the affected person, who was sleeping in the backyard.
10. Constable MacDonald used force to arrest the affected person, who was on the ground and had been asleep when Constable MacDonald arrived.
11. It was subsequently learned that the affected person was not driving the Honda that evening at all.

Allegation

12. The allegation is Unlawful or Unnecessary Exercise of Authority contrary to 2(1)(g) – in that Constable MacDonald used unnecessary force in the arrest of the affected person.

Plea and Finding

Prior to having the Agreed Statement of Facts read into the record, Constable MacDonald entered a guilty plea to one count of Unlawful or Unnecessary Exercise of Authority.

After having heard facts of the case, and inconsideration of Constable MacDonald's guilty plea, I found Constable William MacDonald Guilty of one count of Unlawful or Unnecessary Exercise of Authority.

Proposed Disposition

Counsel for both sides submitted that an appropriate penalty in these matters would be a DEMOTION FROM CONSTABLE FIRST CLASS TO CONSTABLE SECOND CLASS FOR A PERIOD OF SIX MONTHS.

Reversion to Constable First Class would be automatic at the expiration of the six-month time period, with no requirement for requalification.

Submissions on Disposition

By Counsel – Ms Mulcahy and Mr. Christie

Ms. Mulcahy submitted that when considering Constable MacDonald's employment history, his potential for rehabilitation and his guilty plea at an early opportunity, a Demotion as described above would be a fitting disposition. It was also suggested that this disposition ought not to be viewed as a precedent; rather it is unique to the facts and circumstances relating to this misconduct and this officer. I was asked to consider the financial impact of such a demotion; that being several thousand dollars.

When considering the fact situation, I was asked to take into account that during Constable MacDonald's interaction with the affected person, there was no malice at all. It was simply a case where Constable MacDonald believed he was dealing with the person who had been driving the black Honda when, in fact, he was not. It turned out he was not at the right house.

Constable MacDonald's career history is blemish-free. He served previously with Peel Regional Police Service, where he was the recipient of commendations and awards. His evaluations indicated a very positive work ethic and an individual with the knowledge, skills and abilities that are required in a police officer.

Constable MacDonald has found this situation to have been a significant learning opportunity. Letters from co-workers were written in support of Constable MacDonald. His Association is supporting him fully, and it was noted that the Chief of Police and Inspector were present at these proceedings and stand behind Constable MacDonald. It is worth noting that during his time off, Constable MacDonald has volunteered for the Canadian Cancer Society; a very strong indication of his positive attitude and his willingness to contribute to his community.

Constable MacDonald's personal circumstances were also raised as issues for my consideration. The MacDonald family has been dealing with some health issues and their barn burned down some time ago, all of which has had an emotional and financial impact on the entire family.

Discussion

As I indicated verbally at the hearing, I have no hesitation in endorsing the disposition being proposed by counsel. I believe it is appropriate and is also within the parameters of what would be deemed to be suitable, all things considered.

It is apparent that Constable MacDonald acted with haste when he arrested the individual on May 31st, 2015. Although there might have been reason to suspect his actions would be justified, it is apparent that he lacked the appropriate grounds beyond suspicion to take the actions that he took. .

When considering whether or not to accept the proposed disposition in this matter, I was aided a great deal by counsel for both sides, and in particular I was assisted by the documentation that was submitted on Constable MacDonald's behalf. The sum-total of these items leaves little doubt that Constable MacDonald is a very useful and positive addition to the Saugeen Shores Police Service, as he was to the Peel Regional Police Service. His positive attitude seems to have remained intact throughout these rather difficult circumstances; which is worth recognizing in my decision-making process.

When a police officer affects an arrest, he or she exercises one of the more dramatic powers of the office; that of removing someone's rights and the ability to move about freely. When arrests are made, it is important that individual officers recognize the onerous power they are employing and ensure that each and every arrest is completely justified; both subjectively and objectively. In this case, Constable MacDonald failed to give appropriate consideration to the impact of what he decided to do and he is now paying the price for that error in judgment.

Police Services around the world are made up of individuals who are, at least for the foreseeable future, human. As humans, they are not infallible. From time to time, their infallibility will lead them to make mistakes. That is what occurred in this case.

If there was some malice, or some ulterior motive for Constable MacDonald arresting this person on May 31, 2015, I would have no hesitation in assessing a penalty that is far more significant than what has been proposed. The facts of this case do not suggest anything untoward in this regard and Constable MacDonald's career history would suggest that such motives would have been out of character in any event.

It appears that Constable MacDonald has had some personal challenges in his family life. These issues are not being held up as any sort of justification for his conduct but perhaps only to provide some context to his life at the same time as this penalty is being assessed. My fervent hope is that these personal challenges abate and that Constable MacDonald and his family are able to move on from this and fully enjoy the new life they have embarked upon in this lovely part of the province.

Prior to concluding, I would like to commend the Chief of Police and the Inspector, as well as the Association, for their obvious, visible support for this officer. It is my view that actions such as these assist greatly in the positive reintegration of subject officers back into their regular duties with as little negativity as possible. Given the very human nature of the facts before me around the character of the misconduct, I believe it was the right thing to do.

It is my hope that Constable MacDonald has indeed learned from this experience and I have no reason whatsoever to believe that he has not.

Finding & Disposition

Finding

As previously stated, Constable William MacDonald has been found

GUILTY

of UNLAWFUL OR UNNECESSARY EXERCISE OF AUTHORITY (1 count).

Disposition

I hereby endorse the disposition as proposed by counsel.

Effective February 5th, 2018, Constable MacDonald is:

DEMOTED FROM CONSTABLE FIRST CLASS TO CONSTABLE SECOND CLASS FOR SIX MONTHS.

REVERSION TO CONSTABLE FIRST CLASS SHALL BE AUTOMATIC AFTER THE SIX-MONTH PERIOD HAS ELAPSED, AND THERE SHALL BE NO NEED FOR CONSTABLE MACDONALD TO REQUALIFY AS CONSTABLE FIRST CLASS.



Robert J. Fitches
Superintendent (ret'd.)
Hearing Officer

April 10th, 2018

Date