

**PEEL REGIONAL POLICE SERVICE DISCIPLINE HEARING
IN THE MATTER OF ONTARIO REGULATION 268/10**

**MADE UNDER THE *POLICE SERVICES ACT*, RSO 1990,
AND AMENDMENTS THERETO;**

IN THE MATTER OF

PEEL REGIONAL POLICE SERVICE

AND

CONSTABLE PRABHJOT SINGH, #3906

NEGLECT OF DUTY

DECISION WITH REASONS

Before: Superintendent (Ret.) Greg Walton
Ontario Provincial Police

Counsel for the Prosecution: Ms. Jovana Orabovic

Counsel for the Defence: Mr. Peter Brauti
Ms. Deepa Negandhi

Public Complainant: S.P.¹

Hearing Dates: December 14 and 15, 2020

¹ Public Complainant initialized to anonymize involvement

NOTE: With the consent of Counsel, the original decision dated December 29, 2020 was amended; the public complainant's name was removed, and initials were utilized to anonymize her involvement.

Allegation of Misconduct

Neglect of Duty

Constable (Cst.) Prabhjot Singh committed neglect of duty in that on or about January 21, 2019 and January 22, 2019, without lawful excuse, he neglected or omitted to perform a duty as a member of the Peel Regional Police Service constituting an offence against discipline as prescribed in section 2(1)(c)(a)(i) of the Code of Conduct, Ontario Regulation 268/10, as amended under the *Act*.

Representation / Plea

Represented by Mr. Peter Brauti and Ms. Deepa Negandhi, Cst. Singh pleaded not guilty to the allegation of misconduct on December 14, 2020. Ms. Jovana Orabovic represented the Peel Regional Police Service as prosecutor at the two-day hearing. Although the hearing was held in-person at the Peel Regional Police Service headquarters building, S.P., the Public Complainant, participated in the hearing via video link. S.P. had consulted with her counsel prior to the hearing and on one occasion during the hearing but did not have counsel present as representation during the hearing.

Decision

After reviewing and considering all the evidence and submissions presented, I find Cst. Singh not guilty.

The Hearing

The Notice of Hearing alleges one count of neglect of duty, but it does not characterize specific act(s) of conduct which have been identified as misconduct by the Office of the Independent Police Review Director (OIPRD) and the Peel Regional Police Service. Mr. Brauti submitted he had considered bringing forth a motion to have the matter dismissed on this ground, however, Ms. Orabovic and Mr. Brauti agreed on the particulars in question. The issue as presented by Counsel is whether Cst. Singh had reasonable grounds to arrest S.P., and if he did not, does the conduct meet professional misconduct; does it constitute neglect of duty?

Ms. Orabovic noted that a statement of particulars had been served upon Cst. Singh in conjunction with the Notice of Hearing being served. The Notice of Hearing provided to the Tribunal was not accompanied by particulars of offence so I will focus on the issue of reasonable grounds to arrest as indicated by Counsel.

Ms. Orabovic and Mr. Brauti submitted an Agreed Statement of Facts (ASoF) which accounted for all the evidence on behalf of the prosecution. The ASoF has been signed by Ms. Orabovic, Cst. Singh, S.P., and Counsel Mr. Brian Eberdt. The ASoF is marked as Exhibit #6 and reads as follows (amended):

Cst. Singh has been a member of the Peel Regional Police Service since August of 2014. On the date of the incident, he was assigned to station duty at the 22 Division front desk. He is currently assigned to the 22 Division Intelligence Bureau.

On January 21, 2019, Cst. Singh was assigned to station duty and working at the Peel Regional Police Service 22 Division front desk. At approximately 10:20 p.m. an individual (the Victim) walked into the station and reported being a victim of a fraud at Square One shopping mall (Square One) in Mississauga. Cst. Singh determined that he would conduct the investigation himself, given that he believed the identity of the alleged perpetrator was confirmed.

The Victim reported that approximately one week prior, a white female, blonde hair, blue eyes, of medium build, approximately 26 years old, approached him at Square One and asked for \$720.00 in cash in exchange for a cheque made out to the name of S.P. for \$720.00 The woman (the Perpetrator) indicated that she lived in Caledon, worked as a cleaner and needed the cash immediately for her Ontario Student Assistance Plan (“OSAP”) loan. The Victim was initially reluctant to help the Perpetrator, but eventually agreed. The Victim attended TD Bank located at Square One with the Perpetrator and gave her the cash she asked for. The Victim and the Perpetrator spent approximately 15-20 minutes together. The Perpetrator advised the Victim that he could deposit the cheque in three to four days. He attempted to do so but the cheque bounced.

The Victim advised Cst. Singh that he located the person he believed to be the female by conducting a search of the name “S.P.” on social media. He located the same woman on three different social media platforms all of which had pictures posted of S.P., the OIPRD Complainant in this matter. The Victim had attempted to reach out to her to recover his money but did not get a response. The Complainant blocked the Victim after receiving several messages from him. The Victim showed Cst. Singh approximately four photographs of the person that he identified on social media, as depicted in her various social media profiles. The

individual depicted in the Facebook photo was of the Complainant who at the time was 46 years old and resided in Toronto. The Victim also provided Cst. Singh with a photo of the cheque given to him. The cheque payor was listed as Martin Zalewski and his address was listed. The payee was listed as S.P.. The Victim also provided a written complaint.

Cst. Singh conducted an investigative check of the name S.P. on the Canadian Police Information Centre (CPIC). Offline queries show that at 10:30 p.m. Cst. Singh started his query by looking up the name S.P. and the estimated age of 26. He then queried S.P. with the age of 30 at 10:34 p.m. Cst. Singh again queried S.P. at the age of 45 at 10:38 p.m.

Cst. Singh also used the Ministry of Transportation (MTO) database to conduct a search of S.P. as identified in the social media photos. One of the Complainant's social media photographs showed her as a child with a caption "circa 1978." Based on this, Cst. Singh approximated the Complainant's age as mid 40's. Using the approximate age of 45 on MTO, two results were identified, and one matched the social media photographs provided by the Victim. Based on this query, Cst. Singh determined that the "S.P." as located on social media by the Victim currently resided in Toronto, not Caledon, and with an age of 46, not aged 26. Based on this information Cst. Singh queried CPIC with the name S.P. and the corresponding date of birth at 10:46 pm. The query returned a result that S.P. had no criminal record.

Cst. Singh had a conversation with Acting Staff Sergeant (A/S/Sgt.) Brad Nelson who was acting as the officer in charge of the station about the investigation. A/S/Sgt. Nelson asked whether Cst. Singh had spoken with the Criminal Investigation Bureau (CIB). Cst. Singh then had a conversation with Detective (Det.) Steven Ahrens from the 22 Division CIB regarding his investigation.

Cst. Singh then confirmed with A/S/Sgt. Nelson that he spoke with the CIB about the case. Per procedure, Cst. Singh requested A/S/Sgt. Nelson's approval to engage the Toronto Police Service (TPS) to perform an arrest in the jurisdiction of Toronto. When speaking with A/S/Sgt. Nelson, Cst. Singh described the fraudulent conduct as well as the fact that the Victim had identified the Complainant as the Perpetrator. He did not mention the difference in age between the Victim's statement and the MTO information and did not advise A/S/Sgt. Nelson as to how he identified the alleged Perpetrator.

Cst. Singh then obtained approval from A/S/Sgt. Nelson to send the arrest request to the TPS. A/S/Sgt. Nelson approved the CPIC message based on the information provided to him by Cst. Singh. The CPIC message was sent at 11:16 p.m. on January 21, 2019.

That night, at approximately 11:56 p.m. TPS constables Talesnik and MacKasey were dispatched to a call for a wanted party pursuant to the Peel Regional Police Service CPIC message sent by Cst. Singh. The call notes stated that Peel Regional Police Service had reasonable grounds to arrest S.P. for fraud under \$5,000.

On January 22, 2019 between 12:31 and 12:45 a.m. the TPS officers attended S.P.'s residence. S.P. answered the door, identified herself and advised the officers about an issue with a person who had been harassing her via social media over the preceding few days. It is not disputed that these are the messages sent by the Victim.

The TPS officers advised S.P. that they were present in order to arrest her on behalf of Peel Regional Police in relation to a charge of fraud under \$5000.00. S.P. became confused.

TPS Constable Talesnik provided S.P. with the options of going with him in order to be handed over to Cst. Singh; making arrangements with Cst. Singh in order to be arrested at another time; or Peel Regional Police could obtain a warrant for her arrest. S.P. decided to attend with the officers. The TPS officers advised her of the charge, handcuffed her, provided her with rights to counsel and transported her to 22 Division where she was transferred into custody of the Peel Regional Police.

Once in custody of the Peel Regional Police, S.P. was asked if she wanted to speak with counsel and eventually agreed to speak with Duty Counsel who ultimately advised her not to answer any questions.

S.P. was subsequently interviewed by Cst. Singh and provided with details of the allegation. She was asked a number of questions which she refused to answer on the advice of Duty Counsel. One of the questions that she was asked to answer was whether she was at Square One on January 13, 2019 to which she replied "no." Cst. Singh then sought to clarify this answer by asking whether she meant "no I was not at Square One" or whether she was indicating "no, I do not wish to answer the question." S.P. indicated that she did not wish to answer the question.

Cst. Singh believed he had reasonable grounds to proceed with the criminal charge of fraud under \$5,000.00. S.P. was charged and processed in the normal course. At approximately 4:00 a.m. S.P. was released by A/S/Sgt. Nelson. She was given a notice to appear in court and was advised of a fingerprinting date.

After S.P. was arrested Cst. Singh received an email from the Victim with the social media photographs of S.P. and a copy of the fraudulent cheque.

Almost two months after S.P.'s arrest, Cst. Singh attempted to obtain security footage from Square One on March 16, 2019. He was advised that no footage existed for the area around TD Bank. Around the same time, Cst. Singh noted that he intended to draft a production order for S.P.'s bank account. As he was preparing to do so, he received notice that the criminal charge against S.P. had been withdrawn.

The charge of fraud under \$5,000.00 against S.P. was withdrawn by the Crown on March 28, 2019 subsequent to discussion with her counsel.

Ms. Orabovic called no further evidence once the ASoF was tendered as an exhibit. S.P. offered no evidence and chose to not make submissions after conversing with her counsel. Cst. Singh was the sole witness called by Mr. Brauti.

Testimony of Cst. Singh

Cst. Singh commenced his career with the Peel Regional Police Service in August 2014. He has spent the bulk of his career in primary response but is currently responsible for gathering pertinent information and disseminating it to appropriate bureaux. Cst. Singh has not been the subject of previous formal discipline.

At the time of this incident, he had been working at the front desk of 22 Division in uniform. Cst. Singh stated the Victim walked into 22 Division to report he had been defrauded of \$720.00. The Victim explained that a white female with blue eyes and a medium build approached him near the bus terminal of Square One. The female requested he give her cash in exchange for her work cheque in the amount of \$720.00. The Victim was reluctant but relented due to her persistence. Together, the Victim and the Perpetrator attended the TD Bank where he withdrew the funds and provided them to her. Several days later, he was unable to deposit the cheque into his account due to non-sufficient funds.

The Victim explained to Cst. Singh how he used social media to locate and identify the woman who had defrauded him. The Victim made several attempts to communicate with

the person now known to him as S.P., but she did not reply to his correspondence and in fact blocked him from having further contact once he indicated he planned to notify police to make a complaint.

As depicted in the ASoF, Cst. Singh explained his CPIC and MTO searches for S.P.. Once Cst. Singh determined the S.P. who had been identified by the Victim was “mid 40’s” he pointed out this age discrepancy to the Victim. The Victim conceded he may have been off by the age description; it was merely an estimate, but the Victim assured Cst. Singh that the S.P. he had identified via the social media platforms was definitively the same person who defrauded him. Cst. Singh stated that he was satisfied that the S.P. he had identified via the MTO photograph matched the photographs that the Victim had obtained via social media and concluded they were the same person (conceded this is the Public Complainant).

Cst. Singh stated he confronted the Victim at least three times about the age discrepancy issue but Cst. Singh became convinced the Perpetrator was the same S.P. depicted in the photographs because the Victim was so adamant and never wavered. Cst. Singh relied on the fact that the Victim had been in very close proximity to the female for approximately 20 minutes and was best situated to form a positive identification. Cst. Singh was even further convinced S.P. was responsible for the fraudulent transaction when the Victim assured him he would be willing to swear under oath as to her identity. Cst. Singh stated that he found the Victim credible and he had no reason to disbelieve him.

Cst. Singh testified that in his mind, the Victim’s credibility was further bolstered when he signed a written statement explaining the incident including the identification of S.P. as the Perpetrator.

Cst. Singh testified the MTO photograph of S.P. not only matched the person identified as S.P. on social media, but the physical description provided by the Victim was accurate except for the age discrepancy. Cst. Singh was satisfied with the Victim’s explanation that his age estimation of 26 was an estimate, but he was sure about the identification, nonetheless.

Cst. Singh testified that he conversed with A/S/Sgt. Nelson about the investigation, the checks he had completed and that he had reasonable grounds to make an arrest based on the positive identification of S.P.. Cst. Singh conceded he may not have mentioned the age discrepancy. A/S/Sgt. Nelson agreed reasonable grounds existed but directed Cst. Singh to seek a second opinion from a member of the CIB.

Cst. Singh stated that he communicated the full nature of his investigation to Det. Ahrens and he concurred; reasonable grounds to arrest S.P. existed. Cst. Singh testified that he reported back to A/S/Sgt. Nelson who gave his approval to send a CPIC message to the TPS seeking their assistance with the arrest.

Cst. Singh stated the approval from A/S/Sgt. Nelson and from Det. Ahrens affirmed his position on grounds to arrest; had they indicated he lacked grounds to arrest, it would have affected him but neither supervisor indicated more investigation was required.

Cst. Singh sent the CPIC request to the TPS and a short time later he received a phone call from a member of the TPS from inside S.P.'s residence informing him she was in custody and they would be transporting her to 22 Division.

Cst. Singh met the TPS members in the booking area of 22 Division, continued the arrest and just before he put S.P. in contact with Duty Counsel, she stated that a person had been messaging her, harassing her about outstanding money.

Cst. Singh testified about the subsequent interview of S.P. which had been played in its entirety before the Tribunal and marked as Exhibit # 8. Cst. Singh testified he was open to hearing her explanation, but S.P. did not answer questions during the interview on the advice of Duty Counsel. He testified that if she denied the allegation and informed him she had not been at Square One on that date for example, he would have taken steps to verify that. He stated that if a viable alibi existed, he would have explored it before laying a criminal charge. Cst. Singh stated he believed he had reasonable grounds to lay the charge but was open to changing his mind based on new information obtained resulting from the interview; he provided ample opportunity for S.P. to deny or provide an alibi, but one was not provided.

Cst Singh testified this type of fraud is quite common but identifying an apparent suspect is unusual. Cst. Singh stated the offence victimized a member of the community and was based on the Victim's good will. He felt that he needed to act quickly to ensure additional people were not victimized by S.P..

Cst. Singh stated he did not consider obtaining the cheque to have it fingerprinted; not having her prints on it would not have affected his grounds because it would have been handled by a multitude of people. He also noted S.P. does not have a criminal record and therefore, her fingerprints would not be on file. Cst. Singh conceded that given the same set of circumstances again, he would contact the payor, Mr. Zalewski in this case. Cst. Singh explained that doing so may have provided him a better idea of where the cheque came from, but he did not know how it would have affected his grounds to arrest.

Cst. Singh testified he was starting the process of seeking a production order at the time the criminal charge was withdrawn.

In cross examination, Cst. Singh acknowledged one of the core duties of a police officer is to investigate criminal offences in accordance with the law, the Charter of Rights and Peel Regional Police Service policy.

Cst. Singh admitted he did not ask to see the Victim's bank statement, nor did he ascertain if the Victim had a criminal record, but he had no suspicion that he was being untruthful in any way. Cst. Singh stated he did not believe the Victim was mistaken; he was adamant about the identity of the Perpetrator being S.P. Cst. Singh stated he was also impacted by the fact S.P. blocked the Victim's social media inquiries. He stated he had never heard of fraudsters contacting potential victims in this manner so he would have expected her to engage the Victim on one of the social media platforms.

Cst. Singh testified he did not make any attempts to obtain video footage from Square One prior to effecting the arrest of S.P. because the office would have been closed at that time of night. When he did contact Square One, two months after the fact, video footage was not available. He conceded he did not take independent steps to confirm the identity of the Perpetrator, but he had the "best source, the Victim."

Cst. Singh reiterated in cross-examination that he provided Det. Ahrens the complete details of the investigation when he sought his opinion including the age discrepancy between the Victim's estimation of 26 and S.P.'s age of 46. Cst. Singh agreed with Ms. Orabovic that it is not for Det. Ahrens to have reasonable grounds to arrest S.P., it is his belief which is required.

Cst. Singh agreed with the assertion that the Victim's safety was not in question, he was not being threatened. Despite S.P.'s lack of criminal record, Cst. Singh stated he was concerned about repetition of the offence, he thought it prudent to arrest S.P. as soon as possible to ensure she could not victimize others.

Exhibit #9 is Peel Regional Police Service Directive I-B-722(F). The purpose of the 40-page document "is to offer a clear understanding in relation to the investigative process conducted by the Service." Under the Heading "Conducting Preliminary Investigations" at tab N, the policy states:

- One of the most important elements of any investigation is the actions taken by the initial investigating Officer. The first Officer at the scene of an Occurrence shall:
- (a) Observe and note all conditions, events or remarks;
 - (b) Be cognizant of, and identify any potential danger;

- (c) Safeguard against loss of life or destruction of property.
- (d) Where grounds exist, arrest the suspect, if still present or escaping;
- (e) Notify Communications Centre personnel of any pertinent information;
- (f) Request the attendance of a Supervisor, where warranted or mandatory;
- (g) Locate and identify all witnesses, conduct interviews where possible and commit statements to writing
- (h) Protect the integrity of the crime scene and safeguard any potential evidence;
- (i) Request specialized units, where required;
- (j) Arrange for the collection of evidence; and,
- (k) Report the incident via D.D.S./D.D.E

Cst. Singh testified he did not feel it necessary to contact the Fraud Bureau and that he believed that he met the investigative standard outlined in the directive. He stated investigative steps can occur following the arrest of an individual and the investigator can still be in compliance with the standard.

Tab AB of the Directive addresses “Background Investigations.” Cst. Singh stated he complied with this aspect of policy by conducting CPIC and MTO checks which added to his grounds to believe S.P. was the Perpetrator.

Submissions and Analysis

Exhibit #10 is Mr. Brauti’s Written Submissions, Exhibit #11 is his Book of Authorities and Exhibit #12 is Ms. Orabovic’s Book of Authorities. Counsel agreed and I accept that “clear and convincing evidence” is the standard of proof as it pertains to the *PSA*. Found at tab 18 of Exhibit #11 is the matter of *Jacobs v. Ottawa Police Service*, 2016 ONCA 345 wherein the Court stated:

...we are bound by the Supreme Court’s statement in *Penner* that the standard of proof in *PSA* hearings is a higher standard of clear and convincing evidence and not a balance of probabilities.

I consider clear and convincing evidence to be well beyond a balance of probabilities, yet less than the criminal code standard of beyond a reasonable doubt. To make a finding of guilt, the evidence must be so clear, so reliable, and so convincing as to persuade me the allegations are true and the facts in issue satisfied.

At tab 19 of Exhibit #11 is the matter of *Gottschalk v. Toronto Police Service*, 2003 CanLII 85796 wherein the Commission stated:

The disciplinary offence of neglect of duty is found at section 2(1)(c)(i) of the Code. A police officer is guilty of such misconduct if he or she “without lawful excuse,

neglects or omits promptly and diligently to perform a duty as a member of the police force.”

As was noted by the Commission at page 1375 of *Hewitt and Devine*:

Essentially, this is a two part test. As the Commission stated in *Soley and Ontario Provincial Police* (1996) 3 O.P.R. 2098 (O.C.C.P.S.) at page 1100: The charge of neglect of duty is a serious charge under the Code of Conduct. To be convicted of this charge, it must be shown that:

The member is required to perform a duty, and the member failed to perform this duty because of neglect, or did not perform the duty in a prompt or diligent manner.

Once proven, the member, to avoid discipline, must show that:

[The member] had a lawful excuse for not performing the duty in the prescribed manner.

This standard has been adopted in a number of Commission decisions. It is also worth noting that neglect of duty is not an absolute offence. The law is clear that there must be either “wilfulness” or “a degree of neglect which would make the matter cross the line from a mere performance consideration to a matter of misconduct.”

At tab 1 of Exhibit #11 is the matter of *R. v Storrey*, [1990] 1 SCR 241 wherein the Court noted:

...the Criminal Code requires that an arresting officer must subjectively have reasonable and probable grounds on which to base the arrest. Those grounds must, in addition, be justifiable from an objective point of view. That is to say, a reasonable person placed in the position of the officer must be able to conclude that there were indeed reasonable and probable grounds for the arrest. On the other hand, the police need not demonstrate anything more than reasonable and probable grounds. Specifically, they are not required to establish a *prima facie* case for conviction before making the arrest.

I agree with Counsel that *Gottschalk* is a proper summary of the necessary considerations for the offence of neglect of duty and I am guided accordingly. To make a finding of guilt, I must find based on clear and convincing evidence that Cst. Singh was required to perform a duty and that he wilfully failed to do so out of neglect. His neglect must go beyond that of a performance or training issue to one of misconduct. Or I must find Cst. Singh failed to perform his required duty in a prompt or diligent manner. I must consider

his subjective grounds and also objective grounds, taking the perspective of a reasonable person placed in the same position as Cst. Singh.

Counsel agreed and I accept that a fraud has been committed, at issue is the identify of the Perpetrator. Mr. Brauti submitted Cst. Singh clearly had a subjective belief reasonable grounds existed to arrest S.P., but subjective belief is insufficient, it must be accompanied by objective grounds. Mr. Brauti submitted that even if objective grounds were lacking, that does not mean there is misconduct, Cst. Singh has available to him, the defence of acting in good faith. Ms. Orabovic conceded Cst. Singh did have subjective grounds to arrest S.P., but objective grounds do not exist.

Mr. Brauti questioned why the charge of “unlawful or unnecessary exercise of authority” was not relied upon, it is a Code of Conduct offence specific to a situation such as this where the allegation is that of less than reasonable grounds to effect an arrest. I am also curious as to why the specific offence of unlawful or unnecessary exercise of authority was not utilized, but that does not suggest that the offence of neglect of duty may not apply. I am also puzzled as to why the neglect of duty allegation is confined to a lack of reasonable grounds and does not include an allegation of negligent investigation, especially when the position taken by Ms. Orabovic is that I must consider investigative steps available but not taken when I contemplate Cst. Singh’s grounds to arrest or lack thereof. I note that had the particulars of allegations included a faulty or negligent investigation, this would have been a moot point and I would have been obligated to account for available investigative steps not taken in my analysis.

I accept Counsel submissions recognizing Cst. Singh had subjective grounds to effect an arrest, his testimony was not contested by evidence to the contrary; he was at the time, and remains convinced that reasonable grounds existed to arrest S.P. based on the investigation he had completed. However, as noted in *Storrey*, objective grounds must also be considered.

I am troubled by the wording of the Notice of Hearing; it leaves anyone reading it questioning what behavior or act that has been neglected. The agreement by Counsel is that the neglect of duty allegation focuses on one specific issue; whether Cst. Singh had reasonable grounds to arrest S.P.. As I have stated, this charge of neglect of duty does not include an allegation that Cst. Singh conducted a negligent or inadequate investigation, only that he did not have reasonable grounds to make an arrest. Ms. Orabovic submitted that in order to conduct an analysis of reasonable grounds, it is important that I consider not only the steps taken by Cst. Singh but also the investigative steps available to him that he did not take.

Obviously, I must consider the investigative steps taken by the officer; he formed his subjective grounds to arrest S.P. based on those steps and I must rely on those same investigative steps to assess those grounds objectively from the perspective of a reasonable person. Less obvious to me is whether I am obligated to consider whether the investigative steps not taken by Cst. Singh is relevant to my analysis?

It is evident there were investigative steps available to Cst. Singh that he did not employ; he did not contact the payor of the cheque, Mr. Zalewski. This could have been a simple phone call which may have provided clarity about the validity of the cheque. The fraud occurred in a bank in a shopping mall. I find it most unlikely that the TD Bank would not have had clear video footage of the incident, video which could have been easily obtained and expeditiously.

Cst. Singh testified that he sought to have the Perpetrator arrested as quickly as possible to avoid a repetition of the offence. However, this was not a crime of violence nor was it a major fraud, it was in the amount of \$720.00; the issue was not so pressing that it necessitated an immediate arrest in my estimation. It is my position that Cst. Singh ought to have taken further investigative steps such as to obtain video from Square One security and or the TD Bank to confirm the identity of the Perpetrator before effecting an arrest. However, the Notice of Hearing does not allege that Cst. Singh failed to conduct a thorough investigation, the focus is on his grounds to arrest S.P.; my finding that he ought to have taken further steps does not mean that he did not have reasonable grounds to arrest based on the information he had at the time.

Section 495 of the Criminal Code states:

A peace officer may arrest without warrant,

- (a) A person who has committed an indictable offence or who, on reasonable grounds, he believes has committed or is about to commit an indictable offence;
- (b) A person whom he finds committing a criminal offence; or
- (c) A person in respect of whom he has reasonable grounds to believe that a warrant of arrest or committal, in any form set out in Part XXVIII in relation thereto, is in force within the territorial jurisdiction in which the person is found.

As mentioned, there is no dispute that a fraud had been committed and the person responsible was subject to arrest, at issue however is whether Cst. Singh had reasonable grounds to believe S.P. was that person responsible for the offence.

I agree with Mr. Brauti's submission that the definition or interpretation of reasonable grounds can be difficult to assess; reasonable people can have differing opinions when considering the same set of circumstances. At tab 4 of Exhibit #11 is the matter of *R. v. Feeney*, [1997] 2 SCR 13 where the Court stated:

...the phrase "reasonable and probable grounds" is not a term of everyday usage and when precisely that threshold is reached is open to some debate. A police officer seeking to apply this standard should not be held to the strictest exactitude of a lawyer, or justice swearing out a warrant. Where, as here, a skillful cross-examination elicits the desired responses from an officer it should not automatically be assumed that the officer lacked the required justification to effect an arrest.

...The existence of reasonable and probable grounds is a legal standard and is subject to interpretation. Furthermore, I believe that, at its core, reasonable and probable grounds is "a 'common-sense' concept which should incorporate the experience of the officer"...

Mr. Brauti noted people look at reasonable grounds differently based on their personal experiences. He submitted that at the time, Cst. Singh had approximately five years of policing experience, he went to his supervisor, A/S/Sgt. Nelson and then to Det. Ahrens and they did not suggest he ought to continue his investigation before effecting the arrest.

Mr. Brauti submitted that once Cst. Singh established reasonable grounds, he was entitled to make an arrest despite the fact his investigation was continuing. Mr. Brauti added that in cases where an officer has reasonable and probable grounds to arrest and decides not to affect that arrest, the decision can amount to dereliction of duty.

I agree with Mr. Brauti's position that often there is potential for police officers to face discipline for not acting promptly and/or for not effecting the arrest of an arrestable person. However, it has been my experience that those instances are generally reserved for situations which called for an obvious arrest of an individual from the perspective of a reasonable person based on a specific set of circumstances. I do not accept, given the set of circumstances in this case, that Cst. Singh would have been the subject of discipline for neglecting his duty had he decided to continue his investigation over coming days rather than effecting an immediate arrest of S.P.. It is my position that a reasonable person would find it quite sensible to defer the arrest of S.P. until he could corroborate the statement of the Victim. The circumstances were not so exigent that the immediate arrest of S.P. was necessary to avoid a neglect of duty allegation for failing to do so.

However, I must consider Mr. Brauti's other position; that once Cst. Singh established reasonable grounds, he was entitled to make an arrest despite the fact his investigation was continuing.

At tab 7 of Exhibit #11 is *R. v Amare*, 2014 ONSC 4119 wherein the Court noted:

An arrest will be unlawful, and arbitrary, if the arresting officer does not have reasonable and probable grounds to believe that the subject has committed, is committing, or is about to commit a criminal offence...

Not only must the police officer have reasonable grounds in the subjective sense of a personal, honestly-held belief, but also the asserted grounds must be justified upon an objective measure of a reasonable person standing in the shoes of the officer...

In other words, the 'reasonable grounds to believe' standard "consists of compelling and credible information that provides an objective basis," objective discernible facts, for drawing inferences as the existence of factual circumstances...

The fact "that an experienced constable that has an honest subjective belief, while not conclusive, is itself some evidence that the belief is objectively reasonable"...

Reasonable and probable grounds does not involve a mathematical assessment of facts and circumstances but rather a common-sense, non-technical approach – it is necessarily a qualitative standard upon which reasonable people can differ in some cases...

In assessing whether she or he has reasonable grounds, a police officer must take into account all available information disregarding only such information as she or he has good reason to believe is unreliable...

A court reviewing the existence of reasonable grounds concerns itself "only with the circumstances known to the officers."

In the matter of *Storrey*, the Court noted:

...An arrest which is lawfully made does not become unlawful simply because the police intend to continue their investigation after the arrest.

Mr. Brauti submitted Cst. Singh was not required to conduct additional investigative steps to effect an arrest, he had established reasonable grounds to arrest S.P.. In the matter of *Solomonvici v. Toronto Police Services Board*, 2009 CanLII 39060 (ON SC) at tab 12 of Exhibit #11 states:

What constitutes reasonable and probable grounds? The officer is not required to assess the evidence and determine whether the person would likely be found guilty of the offence. Similarly, the standard is not breached simply because another officer would have proceeded differently. *Hill v. Hamilton-Wentworth Regional Police Services Board*, [2007] S.C.J. No. 41 (S.C.C.) is enlightening on the issue of what reasonable grounds are:

...the appropriate standard of care is the overarching standard of a reasonable police officer in similar circumstances. This standard should be applied in a manner that gives due recognition to the discretion inherent in police investigation. Like other professionals, police officers are entitled to exercise their discretion as they see fit, provided that they stay within the bounds of reasonableness. The standard of care is not breached because a police officer exercises his or her discretion in a manner other than that deemed optimal by the reviewing court... The standard is not perfection, or even the optimum, judged from the vantage of hindsight. It is that of a reasonable officer, judged in the circumstances prevailing at the time the decision was made – circumstances that may include urgency and deficiencies of information. The law of negligence does not require perfection of professionals; nor does it guarantee desired results.

I note that *Solomonvici* and *Hill* are civil matters and are not specific to neglect of duty allegations, but I do find them helpful; the standard cannot be that of perfection, it is that of a reasonable officer judged in the circumstances prevailing at the time the decision was made to arrest. *Amare* is also assistive, Cst. Singh was required to take all available information into account when forming reasonable grounds to arrest S.P. and he discarded the age discrepancy, information he found to be unreliable. Also noteworthy is the fact that a Court, or in this case a reasonable person in the same situation, must only consider the circumstances known to the officer, not the investigative steps available and not taken.

In *Amare*, the Court further noted:

In assessing whether he or she has reasonable grounds, a police officer must take into account all available information disregarding only such information as she or he has reason to believe is unreliable...the officer is not required to “undertake further investigation to seek out exculpatory factors or rule out possible innocent explanations.

Mr. Brauti submitted Cst. Singh had reasonable grounds to arrest S.P.; she had been positively identified by the Victim through photographs as the person who had defrauded him. Mr. Brauti submitted that if Cst. Singh lacked reasonable grounds, he must have been awfully close to that legal standard.

Ms. Orabovic submitted that an investigating officer is obligated to conduct an investigation to confirm the veracity of the complaint. Generally speaking, I agree with this assertion, but in this instance the particulars of allegations do not suggest Cst. Singh failed to conduct a thorough investigation. Ms. Orabovic submitted Cst. Singh merely accepted the Victim's account and took no independent investigative steps to ensure the account was accurate before he arrested S.P.. This is mostly accurate; Cst. Singh did accept the Victim's contention that the person who defrauded him was the female he located on social media, but Cst. Singh then utilized CPIC and MTO to confirm that the person identified on social media by the Victim was S.P..

Ms. Orabovic submitted that given the circumstances in this case, a reasonable officer would have conducted further checks prior to effecting an arrest such as to obtain video footage from Square One the following day and to contact the payor, Mr. Zalewski. Ms. Orabovic submitted there was no urgency such as fear of bodily harm necessitating an immediate arrest. I agree, but the question is whether he was obligated to do so before arresting S.P..

Ms. Orabovic noted the duties of a police officer as noted in Section 42 of the *PSA* include: assisting victims of crime; apprehending criminals and other offenders and others who may lawfully be taken into custody, and; laying charges and participating in prosecutions. The duty of a police officer and the Peel Regional Police criminal investigation policy are not ambiguous directives and there was a clear duty on Cst. Singh to abide by these directives accordingly. Nevertheless, Cst. Singh is not alleged to have breached policy.

Ms. Orabovic cited the matter of *Mousseau and the Metropolitan Toronto Police Force*, 1981 CanLII 3042 OCPC found at tab 23 of Exhibit #11 where the Commission stated:

The reasonableness of an officer's conduct must be examined in light of the circumstances as they exist at a particular time. An officer is expected to use discretion and judgement in the course of his duties on many occasions. The police officer's discretion or judgement ought not to be examined scrupulously by the benefit of hindsight, but it is essential to examine the circumstances under which the officer exercised discretion or independent judgement to see to what extent discretion was warranted.

Ms. Orabovic submitted there is no evidence Cst. Singh had lawful excuse to neglect his duty to perform. Ms. Orabovic submitted Cst. Singh demonstrated tunnel vision and confirmation bias in his investigation and therefore it is a matter of wilfulness and also a degree of neglect which would make the matter cross the line from a mere performance consideration to a matter of misconduct. Ms. Orabovic submitted Cst. Singh knew better but still did not take additional investigative steps, he simply looked for a match to the description provided to him. Ms. Orabovic submitted that even if there is no wilfulness, his lack of objectivity and lack of investigative steps elevate the behaviour to the level of misconduct; he violated his duty.

The matter of *Maloney v. Royal Newfoundland Constabulary Public Complaints Commission* 2002 CanLII 54073 (NL SC) can be found at tab 3 of Exhibit #12. Ms. Orabovic relied on this case to illustrate the need for a reasonable police officer go further than officer Maloney did when he had effected an arrest; he was under an obligation to conduct his duty. The Court upheld the Adjudicator's decision that there was no justification for not completing a more thorough investigation prior to effecting an arrest.

Unfortunately, I cannot be guided by *Maloney* because there were two issues being considered in that matter, an inadequate police investigation and an unwarranted arrest/criminal charge. The allegations in this case are specific to Cst. Singh not having reasonable grounds, not that he conducted an inadequate investigation or that he failed to have necessary grounds to lay the criminal charge of fraud. Ms. Orabovic submitted that I ought to consider the fact he had other investigative avenues which were available to him, but I consider that an entirely different allegation, one that suggests he did not conduct a complete and through investigation. Instead, I must focus on whether Cst. Singh had reasonable grounds to believe S.P. was the person responsible for defrauding the Victim of \$720.00 at the time he sought the assistance of the TPS to arrest her.

Similarly, Ms. Orabovic cited the matters of *Dickinson v. Ontario Provincial Police*, 2018 ONCPC 20 and *Neild v. Ontario Provincial Police*, 2018 ONCPC 1 to support her assertion that in a neglect of duty analysis, a hearing officer can consider investigative steps not taken by an officer. I agree that such analysis can be appropriate in a neglect of duty case, but I note that in *Dickinson*, the Notice of Hearing specifically alleged a neglectful investigation and listed obvious investigative steps available and not taken by the officer. In the matter of *Neild*, the Notice of Hearing cited nine bullet points describing how the officer failed to properly supervise an investigation. Cst. Singh's Notice of Hearing does not suggest he failed to conduct certain investigative steps; it states he did not have reasonable grounds to arrest S.P.. This necessitates a completely different analysis.

Ms. Orabovic submitted there is a nexus between the steps Cst. Singh should have taken and whether his grounds for arrest were reasonable. Given the scope of my analysis, I do not accept Ms. Orabovic's submission that an investigating officer is obligated to conduct a thorough investigation to confirm the veracity of the complaint before arresting an individual. As noted in *Storrey*, a lawful arrest does not become unlawful because the investigation is continuing. Had the Notice of Hearing included particulars alleging a neglectful investigation, investigative steps not taken would have formed part of the facts in issue.

In the matter of *Phoenix v. London Police Service*, 2013 ONCPC 4, the situation is akin to *Neild* and *Dickenson* in that the two counts of neglect of duty specifically listed acts that were neglected or omitted. If Cst. Singh's Notice of Hearing listed the investigative steps he ought to have conducted, I would have been able to conduct a similar analysis.

Ms. Orabovic submitted Cst. Singh failed to exercise his duty in accordance with his obligations and had he taken further investigative steps, he either would have identified grounds to arrest S.P. or he would not have. This is likely a true assumption, but this is not part of my analysis. The allegations are that Cst. Singh did not have reasonable grounds to arrest S.P., therefore, I need not consider the evidence that follows the arrest, such as the interview of S.P. or the fact he was working on a production order.

I find that it is only logical to conclude that once an officer has established reasonable grounds to arrest an individual, the officer is not obligated to further the investigation before effecting that arrest. That is not to say that the officer must arrest, police officers are expected to exercise discretion using common sense. If it is established that objective grounds existed to arrest S.P., the offence of neglect of duty cannot be made out in this instance even though additional investigative steps remained outstanding.

At the time Cst. Singh requested the assistance of the TPS to arrest S.P., he was in possession of a statement from the Victim detailing the incident. The Victim was absolutely certain the person depicted in social media photographs as S.P. was the person who defrauded him. The fraud had occurred recently enough that one would expect the Victim to be able to specifically recall the identity of a person he spent about 15 – 20 minutes with, face to face. He was skeptical of the Perpetrator at the time and would be expected to take considerable care when taking in her appearance.

I find that a reasonable person from the community would likely accept the Victim's positive identification of S.P. just as Cst. Singh did. *R. v. Jacob*, 2013 MBCA 29 can be found at tab 5 of Exhibit #11 wherein the Court stated:

The standard of proof for reasonable grounds to believe, being reasonable belief that an offence has been committed, is not a high or overly onerous standard. While the officer needs to show more than a suspicion, the reasonable grounds standard is less than a *prima facie* case or proof on a balance of probabilities or proof beyond a reasonable doubt.

It has been accepted that a fraud had occurred and was being investigated by Cst. Singh. The Victim steadfastly identified the person on social media as the person who defrauded him, and I find that once Cst. Singh was satisfied that person was the same S.P. located via an MTO search, the threshold of reasonable grounds had been met.

The Victim initially described the Perpetrator as being 26 years of age while S.P. was 46 years of age at the time of her arrest. Cst. Singh testified that on at least three occasions he confronted the Victim on this issue but came away completely satisfied with the Victim's explanation on the age discrepancy.

It could be argued that additional investigative steps ought to have been taken before laying charges and that the investigation may have been inadequate but that is not the focus of this analysis. It is perhaps even likely that a reasonable police officer in the same situation may have conducted further investigation prior to arresting S.P. but I am satisfied that at the time of the arrest, subjective and objective grounds existed.

If I were to decide differently and take the position that objective grounds did not exist at the time of the arrest, Cst. Singh would still not be found guilty of neglect of duty. Cst. Singh sought the guidance of two supervisors prior to receiving approval to arrest S.P.. It has been my experience that a constable must have supervisor approval to send a CPIC message asking another police agency to effect an arrest on their behalf. Cst. Singh did this and received the approval of A/S/Sgt. Nelson. Cst. Singh also spoke to a detective in the criminal investigation bureau. Detectives are meant to bring a level of expertise to an investigation and I presume that is why A/S/Sgt. Nelson directed Cst. Singh to meet with Det. Ahrens. I fail to see how it could be perceived that Cst. Singh wilfully failed to perform a required duty when his investigation was approved by two supervisors. I use the word approval because the CPIC request to TPS seeking assistance to arrest S.P. was approved by A/S/Sgt. Nelson.

At tab 8 of Exhibit #11 is the matter of *Allen v. Alberta* (Law Enforcement Review Board), 2013 ABCA 187 which states:

It cannot be the case that a *Charter* breach is *ipso facto* a disciplinary offence, because it would mean that mere errors in judgement or carelessness would inevitably rise to the level of discreditable conduct. While police discipline may not

require a full level of *mens rea*, and negligence may in some circumstances amount to a disciplinary offence, there must be some meaningful level of moral culpability in order to warrant disciplinary penalties.

Ms. Orabovic submitted Cst. Singh was the officer in charge of the investigation, and it is his grounds which are necessary, not that of his supervising officer. I agree and I have determined Cst. Singh had reasonable grounds to arrest S.P.. However, the fact that Cst. Singh met with two supervisors and neither expressed a concern about the validity of the arrest is an important factor for consideration, as such, I fail to see any level of moral culpability.

Conclusion

To make a finding of guilt, the evidence must be so clear, so reliable, and so convincing as to persuade me the allegations are true and the facts in issue satisfied. I am not convinced by the evidence that Cst. Singh committed neglect of duty on January 21 or January 22, 2019, by neglecting or omitting to perform a duty as a member of the Peel Regional Police Service. I find Cst. Singh had reasonable grounds to arrest S.P. based on the investigation he had conducted at the time.

Decision

After considering the ASoF, the testimony of Cst. Singh, and the submissions of Counsel, I do not find the evidence clear and convincing. I find Cst. Singh not guilty of neglect of duty.



Greg Walton
Superintendent (Ret.)
Ontario Provincial Police

Date electronically delivered: January 11, 2020