

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

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

AND IN THE MATTER OF

York Regional Police

AND

POLICE SERGEANT WARD TAYLOR #615

CHARGES: UNLAWFUL OR UNNECESSARY EXERCISE OF AUTHORITY

DISPOSITION WITH REASONS

Before: Superintendent Rhonda Corsi
York Regional Police

Counsel for the Prosecution: Mr. Jason Fraser
York Regional Police

Public Complainant: Mr. Neil Beatty

Counsel for the Defence: Mr. Bill MacKenzie
York Regional Police Association

Hearing Date: September 19-20, 2022

Acknowledgements

I would like to thank Mr. Fraser, Prosecution for York Regional Police, Mr. MacKenzie, Defence Council for Sgt. Ward Taylor and Mr. Neil Beatty the Public Complainant for their participation in this tribunal, exhibits tendered and submissions.

The Hearing - Allegations of Misconduct

A Hearing was held on the 19th and 20th of September, 2022 under Part V of the *Police Services Act*, R.S.O. 1990, c. P.15, as amended, for Sergeant Ward Taylor #615 where two counts of misconduct were identified:

1. Unlawful or Unnecessary Exercise of Authority sec. 2(1)(g)(i)
Sec. 2. (1) Any chief of police or other police officer commits misconduct if he or she engages in, (g) Unlawful or Unnecessary Exercise of Authority, in that he or she, (i) without good and sufficient cause makes an unlawful or unnecessary arrest.

2. Unlawful or Unnecessary Exercise of Authority sec. 2(1)(g)(i.1)
Sec. 2. (1) Any chief of police or other police officer commits misconduct if he or she engages in, (g) Unlawful or Unnecessary Exercise of Authority, in that he or she, (i)(1) without good and sufficient cause makes an unlawful or unnecessary physical or psychological detention.

Notice of Hearing

The Notice of Hearing was issued to Sergeant Ward Taylor #615 on the 7th of March, 2022. It contained two counts of Unlawful or Unnecessary Exercise of Authority as described above. On the 19th of September, 2022, the Notice of Hearing was read into the record.

Plea

Sergeant Ward Taylor #615 appeared before me, York Regional Police Superintendent Rhonda Corsi, on the 19th of September, 2022 in answer to the Notice of Hearing. Sergeant Taylor entered a plea of “not guilty” to both counts of Unlawful or Unnecessary Exercise of Authority.

Exhibits

The exhibits for the matter are listed in Appendix A.

Agreed Statement of Facts

On the 19th of September, 2022 the prosecution, defence counsel and public complainant submitted an Agreed Statement of Facts¹:

1. On August 5, 2021, York Regional Police received a report concerning a stolen rental vehicle. An Asian woman who identified herself as “J.L.” rented a Mercedes G-Class SUV from GTA Exotics, a company that specializes in renting luxury vehicles. The Mercedes, valued at \$250,000, was rented for six days and was to be returned on August 5, 2021 at 8:00 p.m. A GTA Exotics employee attended J.L.’s Markham address and spoke with the real J.L. It became apparent that she had been a victim of identity theft and that the Mercedes had been rented fraudulently by someone else.
2. The GTA Exotics employee attempted to locate the Mercedes using its Global Positioning System (GPS) tracker. However, the tracker was disconnected and the vehicle could not be found. According to the GPS tracking system, the Mercedes was last detected at 8:30 p.m. travelling near Birchmount Road and Rougeside Promenade in Markham. Police searched the area but the vehicle was not located.
3. The Mercedes was equipped with radio transmitters installed by Tag Tracking, a company that specializes in recovering stolen vehicles. Once the vehicle was reported stolen, the company activated the transmitters in the vehicle. They used their network of fixed antennas to find the general location of the vehicle. A company technician, Sylvain Froment, was then dispatched to use equipment in his company vehicle to track the signal. The technician also had a handheld device to pinpoint the vehicle’s location.
4. On August 12, 2021 at 6:45 p.m., Mr. Froment, called 911 to report that he had located the Mercedes at _____ Road in King and that he believed the vehicle was in the property’s garage.
5. _____ Road is the home of the public complainant. It is a rural residential property set back approximately 300 feet from the road with a sprawling single-family home, detached three-car garage and long, gravel driveway.

¹ Exhibit 4, Agreed Statement of Facts

6. York Regional Police officers responded to the call at approximately 6:54 p.m.
7. Sergeant Ward Taylor #615, a 1 District supervisor, attended the area and parked at a nearby Esso gas station located at the corner of Street and Road at approximately 7:39 p.m. Sgt. Taylor called Mr. Froment who was parked about 700 metres west of Road. Mr. Froment explained to Sgt. Taylor how his tracking equipment worked to locate and zero in on the signal from the Mercedes's transmitters. He further advised that he had taken three readings, from Road, from Street east and from Road where it curves north and he was able to get a fix of the location to the west. He could not take a reading from the north of the property as it would have required him to go onto private property to take the reading. He assured Sgt. Taylor that the signal was coming from the area of the house. Sgt. Taylor understood that the equipment was 100% accurate within 100 metres.
8. The Uniform Constables and CIB investigators in this matter all indicated in their notes that they formed grounds to believe that the stolen Mercedes was in the garage based on Mr. Froment's assertion that his readings were accurate within 100 feet of his equipment. With the exception of Sgt. Taylor, all officers documented that a 100 foot radius would ensure 100% accuracy of the signal transmissions. Sgt. Taylor's notes state that Mr. Froment had advised the reading would be accurate within 100 metres.
9. At approximately 7:50 p.m., Sgt. Taylor called the 1 District Criminal Investigations Bureau (CIB) to advise Acting Detective Shawn Elliott #2071 of the situation and the need for a search warrant.
10. Sgt. Taylor requested four police cars to set up a perimeter around Road and requested a member of the Canine Unit in case of a foot chase.
11. Between 8:05 p.m. and 8:17 p.m. additional 1 District officers began arriving at the Esso station, which became the staging area, including Police Constable Christian Fusco #2416, Police Constable Travis Chamberlain #2133, Police Constable Shawn Doyle #2285, Police Constable Jason Noble #2675 and Police Constable Adam Hankins #2084 from the Canine Unit.
12. Sgt. Taylor directed the officers to monitor the exit paths from the residence in case anyone attempted to leave with or without the stolen Mercedes. Officers were directed to deploy tire deflation devices and to follow the Mercedes if it ran over the tire deflation devices until it was inoperable. Sgt. Taylor directed officers not to engage in any suspect apprehension pursuit with the stolen vehicle.

13. Sgt. Taylor requested to have the police helicopter, Air 2, fly over _____ Road to make sure he accounted for all of the buildings and vehicles on the property.
14. At 8:34 p.m., PC Fusco and PC Chamberlain took up positions at the end of the driveway at _____ Road. PC Doyle set up a perimeter point at Lorne Avenue, east of the property. PC Noble set up on a small access road near _____ Street and to the northwest of the property. PC Hankins, the canine officer, remained at the Esso station with Sgt. Taylor.
15. Mr. Froment asked uniformed officers twice to go onto the property to accurately pinpoint the transmitted signal but he was told a judicial authorization was required for access to a private property.
16. At 8:45 p.m., Sgt. Taylor contacted the Real Time Operations Centre and briefed the Duty Inspector on the situation and his operational plan. He then contacted 1 District Staff Sergeant Colin Organ #1617 to advise of the situation and his operational plan. Sgt. Taylor attempted to contact the Auto/Cargo Theft Unit but they were unavailable. At 9:15 p.m., Sgt. Taylor spoke with Detective Constable Adam Chilvers #2296 to confirm that a search warrant was being prepared for the residence.
17. At 9:18 p.m., a male, later identified as Neil Beatty, the public complainant, came out of the home, walked to the foot of the driveway and spoke with PC Chamberlain and PC Fusco. PC Chamberlain relayed this information on his police radio. DC Chilvers came over the air advising that anyone coming from the residence was arrestable for possession of stolen property over \$5,000.
18. Mr. Beatty identified himself and asked what was going on as he noticed the police cars and some movement at the end of his driveway. PC Chamberlain advised Mr. Beatty of the stolen vehicle investigation and asked if he lived at the residence. Mr. Beatty confirmed that he lived there with his wife, Nancy Beatty, who was in the house. PC Chamberlain advised that there were reasonable grounds to believe that a stolen vehicle was in Mr. Beatty's garage and Mr. Beatty was then placed under arrest for possession of stolen property over \$5,000 at 9:19 p.m.
19. PC Fusco assisted PC Chamberlain with the arrest. PC Chamberlain handcuffed Mr. Beatty to the rear and PC Fusco brought Mr. Beatty to his cruiser. He searched the prisoner incident to arrest and placed him in the back of the car. At 9:22 p.m., PC Fusco read Mr. Beatty his rights to counsel and the caution. Mr. Beatty initially declined to speak with a lawyer. Following the caution, he kept insisting that the officers search his garage. He repeatedly consented to the search of his garage.

However, PC Fusco advised him that a search warrant was already being sought. The officer explained to Mr. Beatty that individuals had a reasonable expectation of privacy to their dwelling and that the police could not just walk up to someone's garage and open it without breaching section 8 of the *Charter*. Although Mr. Beatty was advising the officer that he had given consent to search his garage, PC Fusco explained that he was under arrest and searching the garage without a warrant may jeopardize the investigation. PC Fusco relayed this information to Sgt Taylor and PC Chamberlain.

20. Sgt. Taylor did not consider his offer to search the residence on consent as that would allow him to stop the search at his discretion and opened the avenue in court as to whether or not his consent was informed or coerced by police.

21. PC Chamberlain took a statement from Mr. Froment on the roadside near Road at approximately 9:33 p.m. At that time, Mr. Froment advised:

- He works for Tag Tracking Company located in Montreal;
- Their client called them to report the Mercedes stolen;
- They activated the transmitter on the vehicle and the antennas that are across Canada;
- The antennas gave a radius to start the search and then he went with his truck and equipment to narrow the search;
- He made several rounds of the neighborhood to pinpoint the transmitter;
- He confirmed the location with his directional [handheld] antenna;
- He created a radius using streets in the area. The equipment shows hot and cold areas so the closer he gets to the transmitter the higher the signal and the further he gets the lower the signal;
- He used the directional antenna and pointed it at the residence in 360 degrees to making sure to aim the antenna at the location from all directions.
- He received training on the equipment and has been using it for 4 months;
- Based on his training and experience with the equipment he believed that the transmitter was at Road.

22. PC Fusco transported Mr. Beatty to 1 District Headquarters in Newmarket at 9:39 p.m. At 9:41 p.m., Mr. Beatty advised the officer that he wanted to speak with counsel and provided the names of two lawyers. They arrived at 1 District at 9:54 p.m. Mr. Beatty was booked by S/Sgt. Organ at 10:00 p.m. PC Fusco conducted a secondary search of Mr. Beatty and then lodged him in a cell at 10:18 p.m.

23. Unsuccessful attempts were made to contact Mr. Beatty's counsel of choice. After being advised of these efforts at 11:02 p.m., Mr. Beatty asked to speak with duty counsel. Duty counsel was called at 11:08 p.m. and Mr. Beatty spoke with her from 11:13 p.m. to 11:39 p.m. He was then returned to his cell.
24. DC Chilvers arrived at _____ Road at approximately 10:00 p.m. He spoke with Mr. Froment who explained that there were two transmitters on the Mercedes and that both were tracking in the same area.
25. Detective Constable Leigh (Ted) Kinsinger #1986 of 1 District CIB prepared necessary documentation to obtain the search warrant. The search warrant was authorized by a Justice of the Peace, by email, at approximately 10:57 p.m.
26. At 11:10 p.m., Sgt. Taylor was advised that the search warrant had been authorized and that CIB investigators were enroute to perform the search.
27. At 11:35 p.m., a search warrant execution briefing was conducted with Sgt. Taylor, A/Det. Elliott, DC Kinsinger, DC Chilvers, PC Hankins, PC Chamberlain and Detective Constable Adam Jacobs #2232. DC Chilvers called Mrs. Beatty and advised that police would be executing a search warrant on her property, to put their dogs in a washroom and to come out to the porch to meet officers as they delivered the warrant. (DC Jacobs had spoken with Mr. Beatty while he was in custody and had obtained Mrs. Beatty's cell phone number as well as information concerning the Beatty family's two German Shepherds.) The warrant was presented to Mrs. Beatty at 11:45 p.m.
28. DC Jacobs, DC Kinsinger and DC Chilvers walked towards the detached garage. DC Jacobs looked through the garage window and could see a white SUV and a white pick-up truck but no sign of the stolen Mercedes. At 11:49 p.m., A/Det. Elliott asked Mrs. Beatty to open the garage and confirmed that the Mercedes was not there.
29. Officers conducted a walkthrough of the residence to verify no one else was inside and to look for keys, licence plates or other evidence associated with the stolen vehicle. No such evidence was found.
30. PC Chamberlain stayed with Mr. Froment while the warrant was executed. Sgt. Taylor motioned for Mr. Froment to come up the driveway as he had been maintaining contact with the signals from the Mercedes's transmitters. Mr. Froment drove his vehicle halfway up the driveway and then, with his handheld detection device, pointed to a field directly east of the driveway. The transmitters were ultimately located in a ditch on the south side of _____ Road, opposite the Beatty residence.

31. At 12:01 a.m., PC Fusco received a call from Sgt. Taylor advising the outcome of the search warrant execution and directing the unconditional release of Mr. Beatty. At 12:10 a.m., S/Sgt. Organ released Mr. Beatty and he was driven back to his residence. Mr. Beatty was back home at approximately 12:35 a.m.

Witness Testimony

Mr. Neil Beatty

1. Mr. Beatty testified that he has lived at _____ Rd. his whole life. The home has been in the family since 1929, he raised his 4 adult children there. He and his wife are the only two people that reside there. He had no prior involvement with the police other than traffic tickets. He did not have a criminal record and had never been arrested before. He is an educator, retired school superintendent and his wife is a retired teacher.
2. His home, located on the property at _____ Rd. has a detached three car garage. The entrance to his driveway off of _____ Rd. is approximately 300 feet long. The garage is located 300 meters from _____ Street, the curve in Road to the house is 800 meters. To the north of his residence is private property with no access until Highway 9, which is 3 km away.
3. On the 12th of August, 2021, Mr. Beatty and his wife were at home watching the Roger's Cup on television. At approximately 6:00 pm, he observed a white work vehicle parked across the road. It remained there for an extended period of time. Nobody was seen around the vehicle. He believed it left around 7:00 pm.
4. Shortly after 9:00 pm, Mr. Beatty noticed vehicles travelling slowly by their laneway, from east to west on _____ Road. He knew then that something was off.
5. At 9:12 pm he and his wife became increasingly curious. Mrs. Beatty took one of their two german sheppard dogs and wandered down the laneway making some observations. When she returned she reported seeing two police cruisers, 2 officers and a wire or something across the end of their laneway.
6. At 9:15 pm, Mr. Beatty walked down his laneway. He observed marked police cars, an officer and a spike belt across his laneway. He engaged the officer in conversation, asking what was happening.

7. The officer asked three questions and Mr. Beatty responded:
Do you live here? – yes
Who lives here? – my wife
Anybody else? – no
8. The officer told Mr. Beatty they believed there was a stolen vehicle on the property or in the garage. Mr. Beatty was shocked, told the officer that was crazy, there was nothing there, it was not possible.
9. Mr. Beatty was placed under arrest immediately for possession of stolen property, handcuffed behind his back and put in the police vehicle, all within seconds. He continued to argue with the officer(s), that this was nuts and offered to show them the garage and behind the garage. He told the officer(s) to look in the garage, that there was not a stolen vehicle inside, his wife was home and this was a major mistake. He was given his rights to counsel and advised that everything was being recorded from inside the police vehicle. They repeatedly asked if he had a lawyer and Mr. Beatty told them no, he was innocent. He continued to offer for either he or his wife to show them the garage, or to look in the windows as it would solve everything.
10. Mr. Beatty was in his pyjamas, running shoes and a t-shirt. He was angry and concerned that his neighbours were watching him being arrested. He could hear the police radio, the helicopter and the police dog barking. It was then he learned the stolen vehicle was high-end. He was also aware that thefts of high-end vehicles in the Region at that time were an issue.
11. He provided his name, his wife's name and the presence of his two dogs. He was asked what was inside the garage. He responded: F150 truck, Ford Escape and a 1955 farm tractor.
12. Constable Fusco informed Mr. Beatty he was being transported to Newmarket and being held in detention until the search warrant was delivered. Mr. Beatty requested that his wife be contacted. Upon arrival he met with S/Sgt. Organ who reviewed his arrest for possession of a stolen Mercedes and rights to counsel. S/Sgt. Organ told Mr. Beatty he would be held until the search warrant was complete.
13. They removed his shoelaces and cut the drawstring from his shorts. Mr. Beatty felt humiliated but also saw humour in the situation. He knew it would resolve and it was going to make a great story. Mr. Beatty spoke with Duty Counsel after

Constable Fusco could not get in touch with the lawyers of choice. Just shy of 12:00 am, Constable Fusco told him he was being released. S/Sgt. Organ explained the vehicle was not found, and he could speak with Sgt. Taylor upon his return home.

14. Upon arriving home, Sgt. Taylor had left the scene which annoyed Mr. Beatty. Another Detective explained that the tracker guy advised he could locate the vehicle within a 100-foot radius. He was wrong. They found a tracker in the ditch on the opposite side of the road. Mr. Beatty testified he had earlier observed the vehicle drive by that location umpteen times. The officers were pinning it on the tracker guy and they were mad at him. They were very apologetic that the guy screwed up. They made him apologize and answer Mr. Beatty's questions. The tracker guy couldn't explain. They had found two trackers in the ditch.
15. Mr. Beatty was in police custody for 3 hours and 15 minutes from time of arrest to time of release.
16. The following day, 13th of August, Detective Rebecca McGregor called Mr. Beatty's wife to answer any questions. Mr. Beatty contacted the police station to speak with Sgt. Taylor who was not working at the time. He followed up with an email.
17. Sgt. Taylor responded to Mr. Beatty's email, stating he was currently sitting in a church awaiting a wedding to commence and was on vacation and would be returning on August 27th and they could talk then if he liked, to email his availability from August 27-30.² Mr. Beatty was furious.
18. On the 26th of August, 2021 Sgt. Taylor called Mr. Beatty. Mr. Beatty took notes of the conversation.³ Mr. Beatty noted that Sgt. Taylor was in charge that evening. There was no way the officers would have just come to his door and asked to search the garage and that the courts do not support the use of consent to search process. That approach was dangerous. The tracker guy insisted his information was accurate within 100 feet. The tracker guy was not able to do a 360-degree search. After learning the vehicle was not on his property the tracker guy walked up and down the road and found the device. Sgt. Ward did not offer an apology. Sgt. Ward was pleased that the officers who dealt with Mr. Beatty were polite.
19. Mr. Beatty felt a whole range of emotions at different times during this event. Initially he thought it was a joke, he was shocked, frustrated, angry, embarrassed,

² Exhibit 7 – Email exchange between Mr. Beatty and Sgt. Taylor, August 13, 2021

³ Exhibit 6 – Sgt. Taylor Phone Call – Notes by Mr. Beatty

worried for his wife. He found humour here and there but eventually became preoccupied and obsessed. He was greatly annoyed at Sgt. Taylor for standing him up on the roadway and not calling him back while he was on vacation.

20. Mr. Beatty knew he was innocent and knew this incident was going to resolve. He is looking to test the police service and his opinion of York Regional Police will depend on the outcome of this tribunal. Mr. Beatty was treated with respect throughout, better than he would have expected. He believed the officers should have completed a more thorough investigation and not relied on a single piece of information. Mr. Beatty did not accept what he was told from S/Sgt. Organ, Detective McGregor, Detective Constable Chilvers and Constable Fusco.

Sergeant Ward Taylor #615

1. Sergeant Ward Taylor has 34.5 years of police experience. He has been a Sergeant since 2006.
2. On August 12th, 2021 he was the assigned 5 pm to 5 am patrol Sergeant in 1 District. His role as a patrol sergeant is to monitor and attend certain calls, utilize resources, field legal or procedural questions, provide guidance, maintain and monitor activities of officers on the road and oversee major calls. He is one of four sergeants on the platoon. His supervisors are the Staff Sergeant who remains in the police station and the operational Duty Inspector. On this date there was no Duty Inspector on the road.
3. Sgt. Taylor was reviewing the calls for service queue. He noticed a stolen vehicle call for service and was not too far away. The vehicle was stolen from Markham and the complainant had an electronic detector and believed the vehicle was at a specific location. Sgt. Taylor reviewed the original theft report. Dispatch had relayed the vehicle was in the garage.
4. Sgt. Taylor contacted the complainant, Mr. Froment. Mr. Froment was employed by TAG Tracking. TAG had been hired by a car rental company. Mr. Froment was a qualified equipment operator. TAG had installed 12 transmitter devices on a stolen Mercedes. They had initially tracked the vehicle days before but lost the location. Mr. Froment was receiving signals for 2 of the transmitters. The batteries were low and he was worried the transmitters would shut off. He had triangulated the location from 3 readings, Road south of the address, Street east, Road where it spans up north of the residence; to the east and one from the west. Mr. Froment opined that Mr. Beatty's residence was right where it

triangulated within 100 meters. This was the best Mr. Froment could do without going onto private property. The only other house was on the edge of 100 meters. Mr. Froment was absolutely sure the vehicle was in the garage. Sgt. Taylor had no reason to discount the information provided by Mr. Froment. He had used the technology on many occasions.

5. The 100-meter triangulation and the isolation of the residence played a big factor into the decision concerning the correct location. A triangulation of 100 feet did not make sense as it was such a short distance. The vehicle could have been seen from the end of the driveway at 100 feet. Sgt. Taylor had not been at this residence before and did not know who lived there.
6. After the conversation with Mr. Froment, Sgt. Taylor formed reasonable and probable grounds that the signal was coming from the garage and that the vehicle or a part of the vehicle was inside and that they could obtain a warrant. Sgt. Taylor shared his reasonable and probable grounds with the Duty Inspector who did not communicate any concerns, advising the Criminal Investigations Branch (CIB) could handle the case.
7. Sgt. Ward's two priorities were the recovery of the property and determining who was responsible. He was cognizant of officer safety. He employed the necessary resources, set up a perimeter, authorized the deflation device with a safe passage and instructed there was to be no suspect apprehension pursuit. AIR2 flew over Road to determine there were no other buildings on the property. Sgt. Ward was preparing for a search warrant. His operational plan did not include direction if people were to be found in the residence or if anyone exited the residence. Mr. Froment had not shared any concern regarding people inside the house.
8. Sgt. Ward spoke to Detective Constable Chilvers and provided his formal grounds. He did not receive any concerns from Chilvers.
9. At approximately 9:18 pm Sgt. Taylor received information that a male emerged from the residence. Detective Constable Chilvers then ordered the arrest of the male over the radio. Sgt. Taylor agreed with the arrest as he was the owner of the residence. Possession of Property Over \$5,000.00 was an arrestable offence with a reverse onus and a presumption. It was not reasonable to have the male stand off to the side of the road; no knowledge of who he was and did not want him to have the ability to call into house for officer safety reasons. The destruction of evidence was also a concern. He was transported to 1 District to exercise his rights to call counsel. Sgt. Taylor did not want him sitting in the back of a police vehicle

at the end of his driveway. Sgt Taylor thought CIB would have interviewed him. He did not have concerns with Mr. Beatty's wife remaining in the residence.

10. Sgt. Taylor testified that guidance from the Crown Attorney's office had been to obtain a search warrant, unless exigent circumstances exist, for a search on private property. Consent searches, although they are an option, are problematic; determining if the consent is informed, ensuring it is not coerced and that there is no intimidation. Further, consent can be removed at any time. The search warrant was already in progress. Sgt. Taylor never considered Mr. Beatty's offer to search the garage. He had already formed his reasonable and probable grounds concerning stolen property. If he had not formed his grounds he could have knocked and asked but this was not the case. Sgt. Taylor's reasonable grounds for the arrest also informed the grounds for the search warrant. Consent searches are always an option, but in this case it was not a good option.
11. The search warrant was executed and the vehicle was not located. Sgt. Taylor requested Mr. Froment attend the driveway. At approximately 30 meters Mr. Froment turned his vehicle around and it was at that point Sgt. Taylor lost faith, and determined the vehicle was most likely not there. He called 1 District to have Mr. Beatty released.
12. Sgt. Taylor deferred CIB to speak with Mr. Beatty as ultimately the investigation belonged to them and they had the information related to the warrant. CIB sought the warrant and made the decision to arrest Mr. Beatty.
13. The following day Sgt. Taylor received an email from Mr. Beatty and responded while he was off duty, in a church waiting for a wedding to begin. ⁴ Mr. Beatty obviously was not happy with the response from the detective office. Sgt. Taylor was accountable for what he does and did not want Mr. Beatty to think he was ignoring him.
14. Sgt. Taylor's first day back to work on August 26th, 2021, he contacted Mr. Beatty by telephone. During the conversation he relayed to Mr. Beatty that the tracker guy had told him the tracker was accurate within 100 meters not 100 feet. He explained the dynamics of the organization, that he was the immediate supervisor for the officers on scene but the more CIB engaged they became in charge and he moves into a support role. The operational plan was approved by the S/Sgt and the RTOC (Real Time Operations Center) which are two layers above him. Sgt. Ward was in charge, he was present throughout and was the highest ranking officer on scene.

⁴ Exhibit 7 – Email exchange between Mr. Beatty and Sgt. Taylor, August 13, 2021

15. Sgt. Taylor sympathized with Mr. Beatty's position, told him he was sorry and apologized that this happened to him, it was very unfortunate. Sgt. Taylor believed that he was looking for him to say that they did something wrong. Sgt. Taylor was only prepared to say that it was a mistake. They could only go by the information they had at the time.
16. If this same scenario arose again Sgt. Taylor would procedurally do nothing different. Mr. Froment had sat on scene for hours with the trackers in the ditch just down the road from him. Sgt. Taylor would have TAG Tacking confirm in the presence of the police and be more suspect with tracking companies. He would also conduct more investigation concerning people who exit the residence.
17. Sgt. Taylor's notes did not contain notations of his conversation with Mr. Froment. The conversation was noted in his duty report and interview with the Professional Standards Bureau.

SUBMISSIONS, ANALYSIS AND FINDINGS

The following analysis is based on a clear path of reasoning. The prosecution and defence presented the Tribunal with a joint Book of Authorities that contained eleven tabbed indexes.⁵

Submission of the Prosecution

Mr. Fraser outlined that the onus is on the Prosecutor to establish on clear and convincing evidence that there was an unlawful or unnecessary exercise of authority. In this case there are two necessary elements: the arrest and or detention of the complainant was unlawful or unnecessary and that it was without good and sufficient cause.

The question of whether the arrest or detention was lawful needs to be further examined as to whether it was subjective and objective. Mr. Fraser did not make submissions whether any of the involved officers subjectively believed they had grounds but rather whether or not the grounds were objectively reasonable, using the reasonable person standard.

⁵ Book of Authorities

The second element; was there good and sufficient cause. Good faith alone and subjective belief does not mean that there was sufficient cause. The Code of Conduct is clear on unlawful or unnecessary exercise of authority; one or the other constitutes a violation of the code.

The Law

Clear and Convincing Evidence

Carmichael and Ontario Provincial Police, 1998 CanLII 27137 (ON CPC)⁶

Para. 5. Sufficiency of Evidence “The applicable burden of proof in this case is that of ‘clear and convincing’ evidence. There must be weighty, cogent and reliable evidence upon which a trier of fact, acting with care and caution, can come to a reasonable conclusion that the officer is guilty of misconduct.”

Jacobs v. Ottawa Police Service, 2016 ONCA 345 (CanLII)⁷

The standard of proof in Police Service Act hearings is clear and convincing evidence, higher than a balance of probabilities and somewhere lower than beyond a reasonable doubt.

Element of Misconduct

Wong and Toronto Police Service, 2015 ONCPC 15(CanLII)⁸

Para. 25. Outlines the two necessary elements for Unlawful or Unnecessary Exercise of Authority. “(1) an unlawful or unnecessary arrest and (2) the officer must not have had good or sufficient cause to make the arrest.” Para. 27, Offers that an officer acting in good faith does not necessarily meet good and sufficient cause, it is merely a consideration and must be examined on its own merits.

Fenton v. Toronto Police Service, 2017 ONCPC 15(CanLII)⁹

The Commission again adopts the two elements for Unlawful or Unnecessary Exercise of Authority. Para. 105 “However, in *Wowchuk and Thunder Bay Police Service*, 2013 CanLII 101391 (ONCPC), the Commission held that depending on the totality of the evidence a separate analysis whether an officer had good and sufficient cause is not required.”

⁶ Exhibit 11 Book of Authorities Tab 2

⁷ Exhibit 11 Book of Authorities Tab 4

⁸ Exhibit 11 Book of Authorities Tab 10

⁹ Exhibit11 Book of Authorities Tab 3

Wowchuk & Bernst v. Thunder Bay Police Service, 2013 ONCPC 11 (CanLII)¹⁰

Two different arguments. One from the OIRPD and one from the respondent officer. Para. 72. The officer was acting in good faith so it did not amount to misconduct. Para. 58. The OIRPD “argued that the phrase ‘sufficient cause’ on its plain meaning, imports an objective element into the analysis. The Commission adopted the OIRPD standpoint. Good faith is a factor but it is not determinate.

Ardiles and Toronto Police Service, 2016 CanLII 2434 (ONCPC)¹¹

Decision needs to consider good and sufficient cause.

Tomie-Gallant v. Board of Inquiry, 1996 CanLII 12477 (ONSCDC)¹²

Onus is on the prosecution to prove all the elements of misconduct and to prove on clear and convincing evidence what happened was wrong.

R. v. Storrey, 1990 CanLII 125 (SCC)¹³

The arresting officer must subjectively have reasonable and probable grounds and those grounds have to justify objective detail. The objective viewpoint is the reasonable person standard. If a reasonable person was faced in the same position as the officer, he must be able to conclude that there were reasonable and probable grounds for the arrest.

The Facts

Mr. Fraser states the facts are not in contention however; did what happened that day amount to an unlawful exercise of authority.

The issue is the sole grounds that justified the deprivation of Mr. Beatty’s liberty, which is the information provided by Mr. Froment.

The ASF included that Mr. Froment took three readings, west, east and south. He could not obtain a north reading as he would have to enter onto private property. The uniform and CIB officers all indicated in their notes that their grounds were based on Mr. Froment’s assertion that the readings were accurate within 100 feet. Sgt. Taylor’s recollection was 100 meters. In the Information to Obtain a Warrant 100 feet was referenced.

Mr. Froment twice asked uniform officers to go onto the property to accurately pinpoint the signal.

Mr. Froment told PC Chamberlain he had received training on the equipment and had been using it for four months. He had used his directional antenna and pointed it at the

¹⁰ Exhibit 11 Book of Authorities Tab 11

¹¹ Exhibit 11 Book of Authorities Tab 1

¹² Exhibit 11 Book of Authorities Tab 9

¹³ Exhibit 11 Book of Authorities Tab 7

residence in 360 degrees to make sure he aimed the antenna at the location in all directions.

The evidence of Mr. Beatty is reliable and credible. He has no criminal record and no prior involvement with the police. He is a retired school superintendent and lives with his wife. Mr. Beatty is a regular citizen and it is important to keep in mind the impact this has had on him.

At approximately 6:00 pm Mr. Beatty notices Mr. Froment's vehicle. During the 911 call Mr. Froment also thought he had been observed. After further observations Mr. Beatty goes outside and within a short amount of time he is arrested, handcuffed behind his back and transported to 1 District. He was humiliated by the process at the police station and the idea of potentially his neighbours having watched.

Mr. Beatty repeatedly offered to have the officer's look in the garage but was never afforded the opportunity to consent prior to his arrest.

Sgt. Taylor did not act with malice or in bad faith. He acted with the best of intentions but things went wrong. Sgt. Taylor was the supervisor and in charge of the officers onscene.

The telephone call to Mr. Froment is essentially the only evidence that leads to the only grounds to justify the deprivation of Mr. Beatty's civil liberties.

It was Constable Chilvers who said that Mr. Beatty that was arrestable but Sgt. Taylor was in charge of those officers.

The grounds for the arrest were entirely based on Mr. Froment's conversation with Sgt. Taylor. Sgt. Taylor gave detailed evidence and the same evidence informed his report and interview with Professional Standards, however he did not make any notes. Everything flowed from the conversation.

The discrepancy between 100 feet and 100 meters becomes an issue. A critical piece of information as to whether or not the information from Mr. Froment can be relied upon. He was not able to complete the 360 assessment.

Sgt. Taylor did recognize that there should have been more scrutiny on Mr. Froment's determination of the location.

Other than Mr. Froment's information, there was no other investigation. An operational plan was completed. Lots of consideration for the recovery of property and section 8, search and seizure of the Charter. Section 9 of the Charter was not considered at all, there was no consideration to people inside the house or if anyone left. From an objective standpoint it was reasonable that at some point and time, somebody might leave that house. The only consideration was protecting the case.

Consent

Sgt. Taylor had formed his reasonable and probable grounds. Consent would not be considered; the wheels were in motion for the warrant. This was evidence driven. Sgt. Taylor was aware of *R. v. Wills*.

R. v. Wills, 1992 CanLII 2780 (ONCA)¹⁴

Consent is established on the balance of probabilities that consent is expressed or implied, the consenter had authority to do so, it was voluntary, the consenter was aware of the police conduct that led to asking for the consent, the consenter can refuse and is aware of potential consequences.

There is no case law that states that consent was not a viable option in this case. It was a difficult choice and in the end the priority was to place more value in protecting the case instead of the liberty of Mr. Beatty.

R. v. Michaud, 2007 ONCJ 355 (CanLII)¹⁵

Para. 41 The test of “exercising an informed, free and willing mind, he invited the officers to enter or consented to their entry without feeling compelled to do so”

That is the test and could have been used in this case.

R. v. Boudreau, 2021 ONCJ 283 (CanLII) ¹⁶

Circumstance where they had not informed the individual that they could refuse consent.

Para. 21 “the police are not required to provide this advice, but its absence can lead to a finding that the giver of the consent was not aware of the right to refuse. The final three criteria in *Wills* were not compiled with.”

Consent was an option and available in Mr. Beatty’s case it just wasn’t tried.

Detention

Was it necessary to have Mr. Beatty transported to 1 District and held in custody. Was it reasonable. The evidence was it was necessary to preserve the evidence, concerns for officer and public safety and to prevent Mr. Beatty from telephoning into the house to destroy evidence and make a break for it.

There was so much concern for Mr. Beatty that he had to be arrested but Mrs. Beatty was left in the house. They knew Mr. Froment was aware he was being watched. Two cruisers were left at the end of the driveway. Sgt. Taylor testified that CIB may have wanted to speak to Mr. Beatty.

¹⁴ Exhibit 11 Book of Authorities Tab 8

¹⁵ Exhibit 11 Book of Authorities Tab 6

¹⁶ Exhibit 11 Book of Authorities Tab 5

Preserving evidence and public and officer safety are by law exceptions and you can detain.

The only grounds in this case rely on Mr. Froment. The two transmitters out of twelve and three points instead of a 360-degree assessment.

Mr. Fraser argued that the arrest was unnecessary as there was little other evidence gathering, no plan for the people inside the residence, no consideration for section 9 of the Charter and no consideration of a consent search. Even if the arrest was in good faith it did not add up to sufficient cause.

Submissions of Public Complainant

Mr. Beatty did not offer any submissions to the Tribunal.

Submissions of the Defence

Mr. Fraser conceded that the officers had subjective belief and reasonable and probable grounds and otherwise were acting in good faith.

Mr. MacKenzie argues that the arrest was clearly lawful. Unlike criminal court a conduct charge has to be proven that the arrest was necessary. If an arrest is lawful, how does it become unnecessary. The cases contained within the book of authorities do not speak to an arrest being unnecessary. There is no law that speaks to it.

Quite simply the arrest was lawful but the circumstances that happened made it necessary that Mr. Beatty be arrested.

It was subjectively and objectively lawful because of the grounds that were gathered. It then became necessary because Mr. Beatty entered into the mix. His attendance at the end of the driveway while the operation was unfolding and the warrant was being gathered that made his arrest necessary.

Mr. MacKenzie argued that he would be surprised that York Regional Police training would include the consideration of consent once a judicially authorized search warrant is in progress. Mr. Beatty's background was unknown.

The issue of consent is collateral. Consent was offered and declined. It does not factor into whether the arrest was lawful and then became necessary. The arrest was lawful and then became necessary in the circumstances in this case. The officers were acting on reasonable and probable grounds to investigate a stolen vehicle. A justice of the peace authorized a search of that residence based on the reasonable and probable grounds, the same reasonable and probable grounds that were used to arrest Mr. Beatty. The warrant speaks to 100-foot radius; it was authorized based on the belief that the vehicle was on that property. The information that was provided to Sgt. Taylor by Mr. Froment is the information that went to the justice of the peace to inform the search of the residence.

Mr. MacKenzie referenced the location of the residence factoring into the reasonable grounds.¹⁷ It was one residence with one garage. It was not a condominium or a subdivision. There was only one residence within 100 meters. At the time it was obvious based on Mr. Froment's information that there were no vehicles in the field and it was reasonable to deduct that the vehicle was in the garage.

The 911 call¹⁸ Mr. Froment asserts the Mercedes is stolen and it was in the 3 door garage. The reasonable grounds were so substantive that a search warrant was granted¹⁹ based on Mr. Froment's information to go on the property and into the residence.

Mr. Beatty's Evidence

Mr. Beatty heard for the first time from Constable Fusco that consent searches were a problem.

Mr. Beatty was transported to 1 District because he wanted to speak to a lawyer. He was booked by S/Sgt. Organ, spoke at great length with duty counsel and the entire time, 3 hours and 15 minutes, he was treated with great respect.

Sgt. Taylor responded to Mr. Beatty while off duty at a wedding. Mr. Beatty was fuming at his response. Sgt. Taylor and Mr. Beatty spoke on the 26th of August. Mr. Beatty made notes²⁰, there was discrepancy concerning 100 meters and 100 feet and whether there was an apology.

Mr. Beatty felt shocked, frustrated, preoccupied and obsessed. He was not vindictive but his opinion of York Regional Police would be dictated by the results of the tribunal. After several conversations with supervisors, Mr. Beatty was told it was standard procedure and they were supporting the way it went down. Despite this information, Mr. Beatty felt that they were defending their people to the hilt.

Sgt. Taylor's Evidence

Sgt. Taylor has been a police officer for 34.5 years and a uniform patrol sergeant for 16 of those years. He has conducted numerous stolen vehicle investigations. He was aware thefts of high end vehicles was a trend in York Region.

¹⁷ Exhibit 5 – Map of Road

¹⁸ Exhibit 8 – 911 call to YRP from Mr. Froment-transcript and recording

¹⁹ Exhibit 10 – Copy of Search Warrant Appendix C

²⁰ Exhibit 6 – Sgt. Taylor phone call notes by Mr. Beatty

Sgt. Taylor formed his reasonable and probable grounds from the information he learned from Mr. Froment:

- He was employed by TAG Tracking.
- Criminals remove the factory installed GPS devices
- TAG Tracking installed 12 hidden transmitters on the vehicles
- They had been tracking the vehicle for a number of days
- There was a complaint filed with York Regional Police concerning this stolen vehicle
- There were two tracking transmitters coming from the area of Road
- Mr. Froment conducted three readings from the south, east and west but not the north due to private property
- The triangulation of the readings focused on Road
- The obvious and only property there was a house with a garage
- The house was approximately 100 meters or 300 feet away
- Mr. Froment was a qualified operator
- Mr. Froment was absolutely sure the vehicle was in the garage

Sgt. Taylor testified that if the equipment was accurate within 30 yards (100 feet) that the vehicle would have been seen from the roadway.

Sgt. Taylor formed his reasonable and probable grounds that the vehicle was on the property at Road and likely in the garage. The S/Sgt. and Duty Inspector acknowledged the appropriate steps were taken and this underlines the bonified subjective belief of reasonable and probable grounds. He contacted the Auto Squad, the Duty Inspector and was instructed to contact CIB who draft warrants. He gathered all other resources available at the time. Set up a perimeter, K9, Air support. Exigent circumstances did not exist; it was not an emergency. The best approach was to obtain a judicial authorization to search a residence.

Sgt. Taylor did not have a plan for a hypothetical arrest as they weren't going to or intended to arrest anyone. The search warrant would have been executed. Mr. Beatty made it necessary for the police to effect the arrest.

Unfortunately, Mr. Beatty walked to the end of his driveway. Constable Chilvers stated over the air that anyone leaving the residence is arrestable for possession of stolen property obtained by crime. Mr. Beatty is arrested because he is the owner of the house. By law the owner of the house is deemed to be in constructive possession. Sgt. Taylor explained that to Mr. Beatty. Possession of stolen property over \$5000.00 is a hybrid offence. The officers had no idea who Mr. Beatty was. It was not reasonable for the officers to assess credibility on the side of the road.

Mr. Beatty could not go back into the house. It was unknown how many people were inside; the officers didn't want Mr. Beatty alerting anyone that a search warrant was coming. Officer safety; there could have been guns. Mr. Beatty could have potentially destroyed

or hidden evidence. He could have escaped. There are many reasons why the police do not let someone go back into a house when they believe a criminal offence has taken place and they have full knowledge the police are there to arrest them.

Investigative detention is not an issue clearly if the reasonable and probable grounds exist for arrest. The police arrest and the individual's rights then kick in. Often times police are criticized for using the investigative detention approach so they do not have to give them their rights, however when they find out they are beyond a person of interest and an arrest is made, police are criticized for not effecting the arrest so the person can exercise their rights. In this case Mr. Beatty was arrested and afforded his rights to counsel.

Sgt. Taylor, in hindsight would still obtain a judicial authorization but having experience with these trackers and companies and a better understanding of how they work and how they can be faulty, would be that much wiser in the future.

The Law

Ardiles and Toronto Police Service, 2016 CanLII 2434 (ONCPC)²¹

G20 arrests and issue of good faith and the burden of proof. Para. 14 “not every unlawful arrest necessarily amounts to misconduct but good faith alone does not satisfy the requirements of ‘good and sufficient cause’. The OIRPD submitted that ‘sufficient cause’ on its plain meaning imports a requirement for an objective analysis”. Para. 24 talks about the criminal code powers of arrest. “In summary then, the Criminal Code requires that an arresting officer must subjectively have reasonable and probable ground on which to base the arrest. Those grounds must, in addition, be justified 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.”

Fenton v. Toronto Police Service, 2017 ONCPC 15 (CanLII)²²

A passage cited from *Allen v. Alberta (Law Enforcement Review Board)*, 2013 ABCA 187 states that good faith is a consideration to be taken into account in considering whether an officer is guilty of misconduct.

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...there must be some meaningful level of moral culpability in order to warrant disciplinary penalties.

Just because someone is arbitrarily detained does not mean it is misconduct. All the facts of the case have to be examined.

²¹ Exhibit 11 – Book of Authorities Tab 1

²² Exhibit 11- Book of Authorities Tab 3

R. v. Boudreau, 2021 ONCJ 283 (CanLII)²³

This criminal case refers to a search warrant and whether or not there was consent to enter a person's home. Para. 15, "The Defence position rests on the fact that the police did not obtain a valid consent to enter the home in which the defendant was found." Para. 29 "This case is more important than the defendant's guilt or the fact that he was a obnoxious drunk. The law has long recognized the sanctity of one's home. The legal authority to enter a residence is neither new nor controversial and ought to be known by all police officers. When such well-established principles are ignored, the administration of justice may suffer if resulting evidence is admitted. This is one of those cases."

The evidence was thrown out, the police thought they had consent and they didn't.

R v. Michaud, 2007 ONCJ 355 (CanLII)²⁴

Para. 36, "It is sufficient to begin by emphasizing that the warrantless entry into a residential premises is presumptively unreasonable and requires the party seeking to justify a warrantless search to rebut this presumption. The central point in *Hunter v. Southam Inc.* is that, subject to limited exceptions that are not present here, a warrant will be required wherever a reasonable expectation of privacy exist. Whatever one's appreciation of the meaning of an expectation of privacy, it certainly existed in the circumstances facing the defendants in the present case, namely, an entry into a private residence."

R. v. Storrey, 1990 CanLII 125 (SCC)²⁵

Pg. 250, "Thus the police need not establish more than reasonable and probable grounds for an arrest. The vital importance of the requirement that the police have reasonable and probable grounds for making an arrest and the need to limit its scope was well expressed. It must be objectively established that those reasonable and probable grounds did in fact exist. That is to say a reasonable person, standing in the shoes of the police officer, would have believed that reasonable and probable grounds existed to make the arrest." Pg. 251, "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." Pg. 254, "An arrest which is lawfully made does not become unlawful simply because the police intend to continue their investigation after the arrest. To repeat, in the case at bar the police had reasonable and probable grounds on which to base their decision to arrest the appellant. Further, there was nothing improper about the police intention to continue their investigation of the crime after they had made the arrest. Neither that intention nor the continued investigation made the arrest unlawful."

This is significant as the officer's had reasonable and probable grounds to make the arrest. They did and afforded Mr. Beatty his rights and then continued the investigation.

²³ Exhibit 11 – Book of Authorities Tab 5

²⁴ Exhibit 11 – Book of Authorities Tab 6

²⁵ Exhibit 11 – Book of Authorities Tab 7

R. v. Wills, 1992 CanLII 2780 (ON CA)²⁶

This case deals with consent. Again Mr. MacKenzie argued that consent was a collateral issue. The arrest became necessary when Mr. Beatty appeared. Consent was offered but was not viable considering everything that was going on. Consent would attract all sorts of scrutiny.

Tomie-Gallant v. Board of Inquiry, 1996 CanLII 12477 (ON SCDC)²⁷

The officer received a call for fraudulent use of credit cards. He met the security officer and after speaking with him was of the opinion that the complainant was arrestable for fraud. The hearing officer found he was guilty of an lawful arrest. Upon appeal Divisional court overturned the decision and found that it was lawful. The officer did have reasonable and probable grounds based on the information that he was given at the time by the security officer. The security officer believed the complainant made a fraudulent purchase and followed him out to the car and he assisted the officer in stopping the car. The investigation continued; the security officer was completely wrong and apologized.

Misconduct

The two counts are duplicate. Mr. Beatty was under arrest. The arrest was lawful and reasonable and probable grounds did exist; but was it necessary as other things could have been done. That is not the test. The arrest was lawful. Due to the Code of Conduct it has to be taken one step further in determining if it was necessary.

There may be some discretion of the officer thereafter. Mr. Fraser questioned why Mr. Beatty was not charged and released on the side of the road with a Form 9 opposed to taking him back to the station and continuing the investigation. Sgt. Taylor exercised his discretion of continuing the arrest of Mr. Beatty. Because he did not choose to release him at the side of the road does not make him guilty of the offence.

The idea of whether the arrest was necessary comes down to the discretion of the officer. It has to be objectively reasonable and it was. While he could have done other things he chose not to.

The onus rests with the prosecution. Threshold is higher than the balance of probabilities it is clear and convincing, lower than a reasonable doubt. it needs to be weighty, cogent and reliable. It was a lawful arrest and as unfortunate as it sounds Mr. Beatty made it necessary when he left his house.

²⁶ Exhibit 11 – Book of Authorities Tab 8

²⁷ Exhibit 11 – Book of Authorities Tab 9

Issues

At issue in this matter is my decision on the appropriate disposition for Sergeant Ward Taylor's alleged misconduct. In making this assessment, the Tribunal is limited to the Agreed Statement of Facts, witness testimony, documentary and voice recorded exhibits, case law and submissions of both the prosecution, Mr. Fraser and defence, Mr. Bill MacKenzie, accepted by Mr. Beatty. I have reviewed all of the evidence submitted to this Tribunal.

The Prosecution has conceded that the subjective belief of the reasonable and probable grounds of Sgt. Taylor are not at issue. The fact that Sgt. Taylor was acting in good faith is not at issue.

What is at issue:

- Did Sgt. Taylor's reasonable and probable grounds meet the objective reasonable person standard; would a reasonable person placed in the same position as the officer be able to conclude that there were reasonable and probable grounds for the arrest?
- Was the arrest necessary?
- Was there good and sufficient cause for the arrest?

Credibility and Reliability of the Witnesses

Sgt. Ward Taylor

Credibility or reliability was not a concern with this witness. Sgt. Taylor is an experienced officer and supervisor. He presented an independent recollection of the events and addressed the distance inconsistency (100 feet opposed to 100 meters) with common sense. He understood the reasonable and probable grounds threshold and further that these grounds could be transferred to another officer. The fact that Sgt. Taylor did not have any notations concerning his conversation with Mr. Froment that ultimately formed a portion of his reasonable and probable grounds is a procedural and performance issue. His independent recollection of the events was predominantly consistent with other evidence before this tribunal. I did not consider this to be detrimental to the credibility or reliability of Sgt. Taylor's evidence. His knowledge of consent searches and the expectation of privacy related to a dwelling house informed his decision making process. His acceptance of responsibility and efforts to speak with Mr. Beatty demonstrate the veracity of his testimony.

Mr. Beatty

Credibility or reliability was not a concern with this witness. Mr. Beatty is a retired educator who has no prior involvement with the police and has resided in the _____ community his entire life. He had a clear and detailed recollection of the events from August 12, 2021. He was able to accurately describe what he observed from his window and when he walked down his driveway. He further described what he heard while at the end of his driveway and while in the rear of the police vehicle. His observations were consistent with elements of the Agreed Statement of Facts.

Analysis of the Issues

- Did Sgt. Taylor's reasonable and probable grounds meet the objective reasonable person standard; would a reasonable person placed in the same position as the officer be able to conclude that there were reasonable and probable grounds for the arrest?

First, addressing the inconsistency of the reported distance of the TAG Tracking capabilities. Sgt. Taylor was adamant that Mr. Froment had advised his equipment was 100% accurate within a 100-meter radius. Sgt. Taylor further asserted that he had relayed 100-meters when providing his reasonable and probable grounds to CIB. Sgt. Taylor could not explain why the uniform and CIB officers had notations in their notebooks that the accuracy range was within a 100-foot radius. Further the Information to Obtain for the judicially authorized search warrant quoted a 100-foot radius as well.

There was no evidence put before this tribunal from TAG Tracking or Mr. Froment or any other source to address the discrepancy between 100 feet and 100 meters. Considering the location and positioning of the residence²⁸ and the evidence of Mr. Beatty that stated his driveway was 300 feet (91 meters) from the road, and the fact that Sgt. Taylor testified that a vehicle could clearly have been seen within a 100 foot radius, it is logical to deduce that the residence and detached garage were within the 100 meter distance confirming Mr. Froment's assertions that the stolen vehicle was in the garage.

The ASF²⁹ referenced a York Regional Police theft of vehicle report of a \$250,00.00 Mercedes. This occurred on August 5th, 2021. The vehicle had been rented from GTA Exotics using fraudulent identification. GTA Exotics employed TAG Tracking, a company that specializes in recovering stolen vehicles through the use of radio transmitter networks and qualified technicians.

This, coupled with the information Mr. Froment provided during his 911 call for service³⁰, the details he provided to Sgt. Taylor and the geographic location of _____ Road

²⁸ Exhibit 5 Map of _____ Road

²⁹ Exhibit 4 Agreed Statement of Fact

³⁰ Exhibit 8 911 call to YRP from Mr. Froment-transcript and recording

and surroundings, objectively, would lead a lay reasonable person to conclude that there were reasonable and probable grounds to believe that the stolen vehicle was inside the garage at _____ Road. Mr. Froment is employed by TAG Tracking and is a qualified technician. This is what he does for a living and it is reasonable to infer that this is an area he specializes in. Sgt. Taylor had no reason to discount the information provided by Mr. Froment. Mr. Froment stated on more than one occasion he believed the stolen vehicle was in the garage at _____ Rd. His beliefs were strong enough that he contacted 911 and was hiding so he wouldn't be "made". Further Mr. Beatty, a lay person, testified that he was aware there was an issue with high end vehicle thefts in the region at the time. I find all of these circumstances, collectively, to be a weighty factor in the finding that Sgt. Taylor's reasonable and probable grounds meet the objective reasonable person standard in that there was sufficient evidence for a reasonable person to conclude that there were reasonable and probable grounds to believe that the stolen Mercedes was in the garage located at _____ Road.

- Was the arrest necessary?

In *R. v. Boudreau*, 2021 ONCJ 283 (CanLII)³¹ para. 29 it states, "The law has long recognized the sanctity of one's home. The legal authority to enter a residence is neither new nor controversial and ought to be known by all police officers. When such well-established principles are ignored, the administration of justice may suffer if resulting evidence is admitted". This same principal is discussed in *R v. Michaud*, 2007 ONCJ 355 (CanLII)³². Addressing the issue of a consent search, the option of consent was determined through the discretion of the officer in this case. The consent search criteria set out in *R. v. Wills*, 1992 CanLII 2780 (ONCA)³³ in Sgt. Taylor's opinion was not an option for the following reasons: he had no knowledge of Mr. Beatty or his background, he did not want to provide an opportunity for Mr. Beatty to contact other potential occupants of the home to alert them of a search warrant facilitating destruction of evidence, escape and primarily officer safety. Mr. Beatty could not go back into the residence for those same reasons. I find this evidence to be weighty.

Mr. Fraser asserted that Sgt. Taylor did not give any consideration to people inside the house or if anyone left; his only consideration was protecting the case. The resources requested and deployed by Sgt. Taylor; K9 in the event of a foot pursuit, the tire deflation device, direction to leave a safe passage and not engage in a suspect apprehension pursuit indicate that consideration was given to the possibility of occupants inside the residence. The fact that his operational plan did not provide specifics for every possibility, albeit person(s) that exited the residence and approached officers, did not make the arrest unnecessary. If that had been included in the operational plan, the prosecution did not

³¹ Exhibit 11 Book of Authorities Tab 5

³² Exhibit 11 Book of Authorities Tab 6

³³ Exhibit 11 Book of Authorities Tab 8

provide any evidence to suggest that the outcome would have been different.

In *Tomie-Gallant v. Board of Inquiry*, 1996 CanLII 12477 (ON SCDC)³⁴ para. 23, “In Re: Shaw McGuigan, [1979] O.P.R. 422, at p. 426 the Board expressed it very aptly: The degree of circumspection expected of the officers must be considered in light of the events as they occurred and not in the light of facts subsequently ascertained.” Sgt. Taylor’s decisions were based on what he knew at the time.

For the reasons laid out in the consent issue I find the same reasons can be applied to the arrest being necessary. I find the criteria articulated by Sgt. Taylor to be weighty.

- Was there good and sufficient cause?

In *R. v. Storrey*, 1990 CanLII 125 (SCC)³⁵ it is clear that the police do not have to establish more than reasonable and probable grounds for an arrest and they are not required to establish a *prima facie* case for conviction before doing so. Further at pg. 254, “The essential role of the police is to investigate crimes. That role and function can and should continue after they have made a lawful arrest. The continued investigation will benefit society as a whole and not infrequently the arrested person. It is in the interest of the innocent arrested person that the investigation continue so that he or she may be cleared of the charges as quickly as possible.”

Mr. Fraser conceded that Sgt. Taylor was acting in good faith. Good faith is a factor but good faith alone and subjective belief does not mean there was sufficient cause, it is not determinate as stated in *Wowchuk & Bernst v. Thunder Bay Police Service*, 2013 ONCPC 11 (CanLII)³⁶. Sgt. Taylor’s reasonable and probable grounds were subjective and in addition were justified from an objective point of view, further, it was not reasonable to assess Mr. Beatty’s credibility at the side of the road. Mr. Beatty was arrested then detained for public and officer safety and to preserve evidence, both factors to be considered under section 495(1) of Criminal Code when arresting without a warrant. Sgt. Taylor was not required to establish a *prima facie* case for conviction before articulating his reasonable and probable grounds to other officers involved in the investigation. Officers are entitled by law to continue an investigation after an arrest has been made, which is what occurred in this instance. The officers were in the process of seeking a search warrant. I find all of these factors to be weighty.

³⁴ Exhibit 11 Book of Authorities Tab 9

³⁵ Exhibit 11 Book of Authorities Tab 7

³⁶ Exhibit 11 Book of Authorities Tab 11

Mr. Beatty upon arrest, chose to exercise his rights and was taken to the police station to speak to a lawyer in private. Again, this could not be facilitated at the side of the road. Once the search warrant was executed and the vehicle was not found inside the garage at _____ Road, Sgt. Taylor did not hesitate or delay Mr. Beatty's release.

Mr. Beatty received explanations and apologies from several officers, Constables to Staff Sergeant. Mr. Froment apologized and remained to answer Mr. Beatty's questions. Sgt. Taylor answered Mr. Beatty at his first available opportunity.

The deprivation of Mr. Beatty's liberty resulted from a lawful arrest that was not arbitrary. The subsequent investigation resulted in a very unfortunate outcome.

Based on the forgoing reasons, it is my finding that the Prosecution has not met the standard of clear and convincing evidence to prove both allegations of Unlawful or Unnecessary Exercise of Authority.

Decision

After analyzing and weighing all of the evidence presented, as the Hearing Officer, I am not satisfied on clear and convincing evidence that the actions of Sergeant Ward Taylor amounted to Unlawful or Unnecessary Exercise of Authority. Therefore, I find the officer NOT GUILTY of misconduct and dismiss both charges.


Superintendent Rhonda Corsi #782
Investigative Services

**Rhonda Corsi #782
Superintendent
Hearing Officer
York Regional Police
18 November, 2022**

Date electronically delivered: 18 November, 2022

