

OTTAWA POLICE SERVICE DISCIPLINE HEARING

IN THE MATTER OF ONTARION REGULATION 268/10
MADE UNDER THE *POLICE SERVICES ACT*, RSO 1990,
AND THE AMENDMENTS THERETO;

THE OTTAWA POLICE SERVICE
AND
CONSTABLE JASON MALLETT, #1759

DECISION ON DISPOSTION

Before: Superintendent Don Sweet

Counsel for the Prosecution: Ms. Louise Morel

Counsel for the Defence: Mr. Mike Lamothe

Hearing Date: Tuesday December 15th, 2015

This decision consists of three parts: PART 1: OVERVIEW; PART II: SUMMARY OF MISCONDUCT AND, PART III: ANALYSIS and PART IV: DISPOSITION ON PENALTY

PART 1: OVERVIEW

Allegations and Particulars of Misconduct include the following:

It is alleged that Cst Jason Mallett committed Insubordination, in that on or about February 14, 2013 he, without lawful excuse, disobeyed a lawful order by failing to package, weigh, report and submit for destruction, the seized drugs. This failure constitutes non-compliance with Ottawa Police Policy #5.01 directing performance on Drug Investigations, thereby constituting an offence against discipline as prescribed in section 2(1)(b)(ii) of the Code of Conduct, Ontario Regulations 268/10, as amended, and therefore contrary to section 80(1) of the *Police Services Act of Ontario*.

And further;

It is alleged that Cst. Jason Mallett committed Unlawful or Unnecessary Exercise of Authority, in that on or about September 29, 2014 he, without good and sufficient cause, made an unlawful or unnecessary arrest of a young person D.G. thereby constituting an offence against discipline as prescribed in section 2(1)(g)(i) of the Code of Conduct, Ontario Regulations 268/10, as amended, and therefore contrary to section 80-(1) of the *Police Services Act of Ontario*.

And,

It is further alleged that Cst. Jason Mallett engaged in Discreditable Conduct, in that on or about September 29, 2014, he knowingly made a false statement, namely, he provided false and misleading information to Sergeant Robert Hagarty regarding the reasons he brought young person D.G. to the cell block, thereby constituting an offence against discipline as prescribed in section 2(1)(a) of the Code of Conduct, Ontario Regulation 268/10, as amended, and therefore contrary to section 80(1) of the *Police Services Act of Ontario*.

Plea

I first want to thank both prosecutor, Ms. Morel and Defence, Mr. Lamothe, for their input and ability to reach a joint plea on penalty.

I previously accepted the guilty plea for all three counts on December 15th, 2015. As a result of this plea, a joint submission of penalty was provided; whereas both parties agreed to and jointly submitted that the appropriate disposition of the findings of Insubordination, Unlawful or Unnecessary Exercise of Authority and Discreditable Conduct is as follows;

Demotion for a period of 1 year.

PART II: SUMMARY OF MISCONDUCT

Particulars of Counts

As the result of an agreed Statement of Facts (Exhibit #5) the following was read in at the December 15th appearance;

In regards to the first count – insubordination;

- On or about February 14, 2013 Cst. Jason Mallett (badge #1759) who, at all material time, was posted as a School Resource Office (SRO), was contacted by the principal to assist with a drug complaint.
- Two male students, age 13, were on school property and found to be in possession of a minimal amount of marijuana (a joint each). The students' parents were contacted by the principal and suspended for a few days (3 and 4 days respectively), and enrolled in drug counseling sessions.
- The principal reported that she turned over the cannabis to Cst. Jason Mallett who seized same and completed a General Occurrence Report of the incident. The Pre-charge diversion program was selected by Cst. Mallett as this incident was the first documented offence of drug possession; the young persons were apologetic and accountable and were suspended by the school.
- Cst. Mallett failed to complete the mandated drug seizure report detailing the seizure of the marijuana and he failed to deposit the seized marijuana in the divisional drug exhibit box thereby contravening the *OPS Drug Investigations Policy* (Policy No.:5.10.
- Further, an examination of Cst. Mallett's duty book for February 14, 2013 establishes that he failed to make any notes for the entire shift, thereby violating the *OPS Duty Book/Note Taking Policy* (Policy No.: 2.02) which mandates that officers shall "indicate the date, hours worked and area of responsibility at the beginning of each shift" (Procedures A.1.f.); "complete notes pertaining to the shift before leaving off duty (Procedures A.1.j.); ensure notes "are completed in accordance with their duties" (Procedures A.2.a); and, "are completed as events

occur or as soon after the events as reasonably possible and before reporting off-duty” (Procedures A.2.b.)

And in relation to the second count; Unlawful or Unnecessary Exercise of Authority

- On September 29, 2014, at approximately 12:30 hrs. Cst. Mallett received a telephone call from the vice-principal at the high school of the young person DG. The vice-principal informed Cst. Mallett that DG and his friends had not returned to school after lunch.
- Cst Mallett decided to attend DG’s grandmother’s home and, enroute, conducted a name query on DG; telephoned the young person DG’s grandmother (12:56) and telephoned GD’s mother (12:59) to inform them that DG was not at school and that he was proceeding to DG’s grandmother’s residence.
- Cst. Mallett attended DG’s grandmother’s residence at 13:00 hrs, rang the doorbell and despite having been asked by DG’s grandmother to await her arrival prior to entering her home, entered the premises, without making a radio announcement for an entry into a private dwelling, and proceeded upstairs to the young person DG’s bedroom. DG and several young persons were present.
- Cst. Mallett told the young persons to leave the bedroom and proceed to search same. Under the bed, Cst. Mallett located a bag containing approximately 3.35 grams of marijuana which he seized. In addition, he found and seized an e-cigarette, a small pipe, and an empty glass jar.
- Cst. Mallett arrested the young person DG for simple possession of 3.35 grams of marijuana, read him his rights to counsel, caution and 524 caution, proceeded to handcuff DG, escorted him outside of the home and placed him in the back seat of his police vehicle prior to transporting him to cells for booking. At that point in time, both DG’s mother and grandmother had arrived on scene.
- Instead of releasing DG to his mother with an Appearance Notice or Promise to Appear, Cst. Mallett was aware that all of the criteria of Section 495(2) of the *Criminal Code of Canada* were met. Specifically, by arresting DG and seizing the marijuana he had prevented the repetition and continuation of the offence; he

was satisfied with DG's identity from his numerous dealings with him; he was satisfied that DG had never failed to attend court; and finally, he was satisfied that he had seized the marijuana as evidence for the charge of possession.

- Cst Mallett proceeded to transport the young person DG to Central Cellblock for holding. A review of Constable Mallett's computer logs revealed that he queried the young person DG's name on CPIC at 12:30 hrs, 13:26 hrs and 13:27 hrs. These queries provided Cst Mallett with clear and irrefutable proof that the young person DG was not breaching any conditions of release and that there were no outstanding charges against DG. These CPIC queries were completed prior to Cst. Mallett's arrival at Central Cellblock at approximately 14:30 hrs.
- The young person DG was booked into cells at approximately 14:30 hrs and released in the custody of his father at approximately 16:35 hrs on a Promise to Appear and undertaking.
- The charge of Possession of a Schedule II Substance contrary to Section 4(1) of the *Controlled Drug and Substance Act* was withdrawn by the Federal Crown responsible for reviewing and determining the outcome of the charge.

And with regard to the last count; Discreditable Conduct

- On September 29, 2014 Cst. Mallett filled out the *Accused Information Sheet* for the young person DG indicating that DG was being arrested for "Breach/Drug Possession" despite received CPIC results indicating that DG had no conditions placed upon him and that he had no outstanding charges.
- Cst. Mallett's report and notes do not make any suggestion that he arrested the young person DG for breaching any conditions of release.
- Cst. Mallett advised the Duty Sergeant in the Cellblock, Sgt. Robert Hagarty, that DG was being brought into the Cellblock for a possible breach of conditions and possession of drugs. In his interview with the OPP PSS, Sgt. Hagarty advised that he would not admit a prisoner to the Cellblock for possession of marijuana unless the amount was substantial or there were other charges against the arrested individual. Sgt. Hagarty advised that he would not admit a prisoner into

the Cellblock for a simple possession of marijuana charge. Sgt. Hagarty confirmed that he would only admit the young person DG into the Cellblock for a breach of conditions charge.

- While parading the young person DG before the Cellblock Duty Sergeant Hagarty, Cst. Mallett advised the Sergeant that the young person DG was under arrest for possible breaches and possession of drugs
- After the young person DG was brought to the Cellblock, Cst. Mallett did not conduct any additional queries on CPIC to prove or disprove that the young person DG had been breaching any conditions of release.
- Cst. Mallett intentionally and knowingly mislead the Cellblock Duty Sergeant by telling him that the young person DG was brought to the Cellblock for a possible breach of conditions and indicating, on the *Accused Information Sheet*, the reason DG was being held was “Breach/Drug Possession”.

The young person DG was released into the care of his father on a Promise to Appear with an Undertaking shortly after being admitted into the Cellblock. The charges laid against DG were not pursued by the Crown, and were withdrawn on May 5, 2015.

PART III: ANALYSIS

In considering the joint submission I took into consideration multiple factors as identified by Prosecution and as it relates to proportionality.ⁱ

I would like to start my submissions on penalty by first outlining the objectives of discipline:

These objectives are to:

- Correct unacceptable behavior
- Deter others from similar behavior
- Assure the public that the police are under control

The first factor I took into consideration was:

Public Interest

It is imperative that the public have faith in the police service in order for the police to effectively carry out its function. Public interest requires that all persons' interests must be protected: the officer, the public and the persons affected.

It is submitted that Cst. Mallett's standard of conduct in this matter fell well below the reasonable expectation the public and the service has of its members.

The actions of Cst. Mallett seriously erode at the public's need to have confidence in their police service. They are looking to have that faith restored in this discipline process and in my role as applying the appropriate penalty in this case. There is little doubt that they would find the actions of the officer in regards to the events that transpired as shocking and disheartening.

Seriousness of Misconduct

It is my submission that Cst. Mallett's misconduct is serious in nature.

Police Officers will often be exposed to events that will test their honesty and integrity. Those instances can include exposure to money, drugs and other commodities that will test their resolve. While I am not insinuating that Cst. Mallett kept the narcotics in this event, the fact he did not follow the process to destroy them leaves their ultimate fate in doubt.

The Charter of Rights and Freedoms are the very backbone that our laws are prescribed. Within those rights is the right not to be arbitrarily detained or imprisoned. The initial reasons for arrest are not in question however the continued detention of the offender seriously infringes on those basic rights of freedom from arbitrary detention. This detention was further exasperated when the detention continued as a result of the misleading information provided to the cell block Sergeant at the time of booking. As a result of these circumstances and as indicated earlier I find the actions of Cst. Mallett to be serious in nature, more precisely at the high end on the spectrum of seriousness of misconduct. Should he find himself in front of another tribunal for a similar set of circumstances it would be highly probable that the penalty sought would be dismissal.

Recognition of the Seriousness of the Misconduct

Cst. Mallett has taken the first opportunity to plead guilty to these events and has agreed to a significant penalty thereby avoiding the need of a timely and expensive hearing. He has also been fully cooperative throughout the professional standards part of the investigation, these are factors I do not take lightly and consider them be highly mitigating.

Employment History

Cst. Mallett has been a member of OPS for over 10 years. In that time he has received several commendations and his reviews have always been above average. He has no previous history when it comes to the discipline process.

Potential to Reform or Rehabilitate

By his early plea and Cst. Mallett's recognition of the seriousness of the allegations, combined with a previous positive work history I feel quite strongly that Cst. Mallett has the ability to reform and put this event behind him.

Effect on Police Officer and Police Officer's Family

There is little doubt as a result of the public nature of this event in the media that it has brought embarrassment to Cst. Mallett and his family.

It should also be noted that the demotion will have an economic consequence for Cst. Mallett and his family.

However, it should be noted that these impacts are a direct result of the actions of Cst. Mallett and his actions alone.

Consistency of Disposition

When imposing a penalty, it is important to take into account prior disciplinary cases dealing with similar types of misconduct. This is to ensure consistency.

A review of the cases internal to the OPX and other Police Services within Ontario where Officers have been found guilty of similar misconduct has been conducted and provided to me for my consideration by the Prosecution. Defence did not provide and cases to consider.

I have considered all of these cases while coming to my decision as to penalty.

Specific and General Deterrence

Police officers are held to a higher standard. The OPS does not condone the type of behavior exhibited by Cst. Mallett. Chief Charles Bordeleau has consistently sought appropriate penalties in these types of cases.

The penalty in this case should send a clear message to the public and all Officers in this Service that this type of conduct is not acceptable and will not be tolerated. The public must be reassured that they will be dealt with by the police in a professional manner and that their freedoms and rights will be respected.

The penalty must also be tailored to address the issue of specific deterrence. Based on his guilty plea, the prosecution submits Cst. Mallett recognizes the seriousness of his misconduct and is unlikely to repeat his actions in the future. The penalty imposed needs to reinforce that this effect does in fact occur.

Damage to the Reputation of the Police Service

The misconduct exhibited by Cst. Mallett will come and has come to the attention of the public and OPS members. The media has reported at previous hearings. As well this decision will be posted on the Service's website for both members of the OPS and the public to read.

As a result the reputation of the Police Service has been tarnished in the eyes of the public and our own service members.

The trust gained by the police via all members of the community is critical to effective policing and events such as this diminishes that trust.

In order to arrive at a just disposition the penalty should reflect the following mitigating and aggravating factors:

The mitigating factors in this case are as follows;

- The positive previous work history
- Lack of previous similar discipline event
- The early plea to these matters, precluding the need for a lengthy hearing
- That the officer cooperated throughout the investigation and is remorseful for his actions

Regarding the aggravating factors;

- Cst. Mallett has been an Officer for over 10 years and thus should have known better to act as he did
- The misconduct was serious and not in keeping with the expectations of the OPS
- The reputation of the police service has been tarnished in the mind of the public and other police officers
- This event caused hardship in regards to our partnership with the Crown's Office due to the particulars surrounding the criminal component and the eventual withdrawal of the charges.

PART IV: DISPOSITION

Having regard to the aforementioned points, I agree with the joint submission concerning penalty in this matter. Misconduct has been proven on the balance of probabilities with clear and convincing evidence and the purpose of the discipline process can be met by imposition of the proposed penalty.

Cst. Jason Mallett, please stand, you will be demoted for a period of one year from first class constable to second class constable in accordance with section 85(1)(c) of the *Police Services Act*.

Dated at Ottawa this 18th day of January 2016.

Superintendent Don Sweet #817
Hearing Officer

ⁱ Ontario Police Services Act, *Ceysens and Childs*, p. 297