

IN THE MATTER OF
ONTARIO REGULATION 123/98
MADE UNDER THE POLICE SERVICES ACT, R.S.O. 1990, C.P. 15
AND AMENDMENTS THERETO;
AND IN THE MATTER OF
SERGEANT ALEX SAMITZ, 1125
POLICE CONSTABLE BRAD PLUMMER, 2137
AND THE
YORK REGIONAL POLICE SERVICE

SENTENCE

APPEARANCES:

Mr. Jason D. Fraser for York Regional Police
Legal Counsel

Mr. William R. MacKenzie for Sgt. Samitz and Cst. Plummer
Legal Counsel

BEFORE:

Deputy Chief Terence Kelly
York Regional Police (retired)
Hearing Officer.

SENTENCE DATE:

December 16th, 2015. (electronically)

SENTENCE

SERGEANT ALEX SAMITZ BADGE NUMBER #1127

POLICE CONSTABLE BRAD PLUMMER BADGE NUMBER #2137

DECEMBER 16TH, 20115.

DEPUTY CHIEF TERENCE KELLY (RET); before commencing with the sentence in this matter, I wish to thank the Public Complainant, Mr. Jason Fraser, the service prosecutor, and Mr. William MacKenzie, counsel for the officers, for their comments and exhibits entered, all of which have assisted me.

Sergeant Alex Samitz, Badge Number #1127, and Police Constable Brad Plummer, Badge Number #2137, have each pled guilty and been found guilty, of one count of Neglect of Duty, laid under the ***Police Services Act***.

The entry of the guilty plea was advanced with an Agreed Statement of Facts (**Exhibit #5**).

Agreed Statement of Facts.

Neglect of Duty.

On July 20th, 2013, at approximately 2:10 am D. W. attended at York Regional Police #4 District Headquarters to report that his estranged wife, the Public Complainant, had allegedly stolen some of his motorcycle helmets and damaged some of his surveillance equipment. While D.W. and the Public

Complainant were in the process of dissolving their marriage, they were both continuing to reside in the matrimonial home.

Police Constable Brad Plummer #2137 obtained a videotaped statement from D. W. According to D. W., the Public Complainant had moved a surveillance camera that was in D.W.'s bedroom, unplugged a camera that was in the garage and stole some of his motorcycle helmets from the garage while D.W. was out for the evening.

Constable Plummer consulted with Acting Sergeant Alex Samitz and advised him of the information provided by D.W. and the fact that D.W. would be returning to the residence. The officers formed their grounds to believe the Public Complainant had committed the criminal offences of Mischief Under \$5000 and Theft Under \$5000. A/Sgt Samitz directed Constable Plummer and P.C. Ryan Lynch #2106 to attend the home of D. W. and the Public Complainant to arrest the Public Complainant.

The three officers attended the residence to arrest the Public Complainant. D.W. allowed the officers into the house and advised them that the Public Complainant was upstairs. The officers did not obtain a *Feeney* warrant to arrest the Public Complainant in her dwelling.

The Public Complainant was asleep with her infant child when the officers knocked on her bedroom door. The Public Complainant was advised that she was to be placed under arrest. Her child was taken from her and given to her estranged husband. The Public Complainant was handcuffed and advised that she was under arrest for theft and mischief.

She was taken out of the house in her sleepwear and placed in a police car. Once in the back of the cruiser, the Public Complainant was read her rights to counsel but was not told the specifics of why she had been arrested.

In accordance with paragraph E.1. (e) Of LE-005, Processing the Offender-Arrest, Provincial Offences and release, an officer who arrests a person shall, among other things, tell the person the reason for the arrest and ensure that the person understands the reason for the arrest.

D.W. advised Sergeant Samitz that he needed the keys to the Public Complainant's vehicle to retrieve a car seat for the infant. Believing the vehicle to be "matrimonial property", Sgt. Samitz directed the Public Complainant to turn over the keys. The Public Complainant advised that she did not want her husband to have the keys since her car contained confidential documents. Sgt. Samitz insisted that she turn over the keys and she ultimately advised the officers that they were under her mattress.

The officers did not enter the garage at any time to confirm the alleged damage to the camera nor did they take any steps to confirm the alleged theft of the helmets.

The Public Complainant was transported to #4 District headquarters and was booked in at approximately 5:56am. She was interviewed by detective Constable Danielle Weick #1341 of the Criminal Investigations Bureau at approximately 7:30am. During the interview, the public complainant was advised for the first time her estranged husband had accused her of damaging the camera in the garage and taking some of his motorcycle helmets. She denied the allegations and advised she had moved some of the helmets that belonged to her. After determining that there was insufficient evidence the Public Complainant had committed any criminal offence, DC Weick released her unconditionally.

The above actions of Sergeant Alex Samitz and Police Constable Brad Plummer constitute Neglect of Duty in accordance with section 2(1)(c)(i) of the Code of Conduct, as set out in a Schedule to Ontario regulation 268/10 and therefore contrary to section 80 (1) Of the ***Police Services Act***.

I accept the guilty plea based on the facts in the case. The facts stated and agreed to, provide clear and convincing evidence of the alleged misconduct strongly supporting Sergeant Samitz and Police Constable Brad Plummer's plea of guilty. If not for the guilty plea, which I take into account as a mitigating factor and recognition of their conduct. I would consider a greater penalty.

Due to the circumstances surrounding the misconduct, notwithstanding the guilty plea and the agreed statement of facts. I believe the allegations when taken in the broader context of employee/employer relations it is prudent to provide written reasons for my findings.

Analysis and Decision.

The Service Prosecutor spoke to a number of relevant factors to be taken into account when assessing penalty. When assessing what might be the appropriate penalty for such behaviour, a hearing officer is obliged to take into account a number of factors. In *Williams and Ontario Provincial Police (1995) 2 O.P.R. 1047 O.C.C.P.S.*, the Commission identified three key elements. These include the nature and seriousness of the misconduct in question, the ability to reform or rehabilitate the officer; and the damage that would occur to the reputation of the police service. He noted other factors that can be relevant: either aggravating or mitigating the penalty depending on the misconduct in question. These include the officer's employment history and experience and recognition of the seriousness of the transgression.

Public Interest.

The police officer is the person most responsible for initially setting the wheels of the administration of justice in motion and, therefore, the public cannot be expected to respect the law if it does not respect, and believe in, the dedication and integrity of the Police Service.

Police Officers are held to a higher standard of conduct than members of the public by reason of the position and responsibilities with which the officers are entrusted. A police officer's conduct ought to set an example for the community to follow and thus any shortcomings in his or her conduct will colour the image of the Police Service in the eyes of the public.

When this does not occur and officers fail to meet the high standards, the public have a right to be concerned and discredit to the reputation of the service may result.

There is no doubt in my mind that if the public were aware of the conduct of Sergeant Samitz and Constable Plummer with regard to the investigation and subsequent arrest of the Public Complainant, it would bring discredit upon the reputation of the service.

In a general sense, obviously if a police officer is charged with a conduct offence, and any member of the public or the actual parties involved in the disciplinary hearing learn about it, then it logically could create some damage or disrepute to the reputation of the police service.

Seriousness of the Misconduct.

The seriousness of the offence is, of course, the primary consideration. In this particular case the actions of Sergeant Alex Samitz and Constable Plummer, were clearly inappropriate and an embarrassment to the York Regional Police Service.

It is clear from the impact statement made by the Public Complainant, she was clearly upset at what had taken place that morning and it is clear this situation caused her a great deal of anguish, anguish over what had occurred at her residence and her subsequent arrest by the officers.

The duties the police have to perform are varied and exacting; they are increasing and will probably still increase in variety and complexity, and a person cannot make a good police officer unless their general intelligence, memory and powers of observation are distinctly above average. Further, when they become police officers, they are entrusted with powers, which may gravely affect the liberty of the subject, and they must at all times be ready to act with tact and discretion and on their own initiative and responsibility in all sorts of contingencies.

Sergeant Samitz and Constable Plummer failed in this regard. They failed to properly investigate the allegation of D.W. with regard to the damage to the camera and the theft of the helmets, when evidence was available to them that the person taken into custody was clearly not involved in any criminal activity.

Specific and General Deterrence.

A strong consideration in determining penalty for the misconduct identified in this matter speaks to specific and general deterrence. After reviewing all the facts in this matter, I believe there should be more weight given to the area of specific deterrence. Sergeant Samitz and Constable Plummer's behaviour is in direct conflict with the principles and duties found in the Police Services Act.

Given all the information provided to me with regard to Sergeant Samitz and Constable Plummer's career profile, I am left with the impression they are fine, capable and decent officers. Their actions, although well intentioned, were nevertheless done without authority and in clear violation of the service's policies and procedures.

One can only hope that Sergeant Samitz and Police Constable Plummer will use this experience as an opportunity for learning and personal growth.

Sergeant Samitz and Police Constable Plummer's remorse is self-evident in their appearance today. They pled guilty at the first opportunity and are willing to accept whatever punishment is handed down. I hope they now understand while listening to the Public Complainants impact statement the consequences of this type of conduct.

To reflect the seriousness of this offence, it is the decision of this Tribunal that Sergeant Alex Samitz, Badge Number #1127 be assessed a penalty of a forfeiture of thirty (30) hours in accordance with Section 85 (1) (f) of the Police Services Act.

This disposition shall be administered at the discretion of Sergeant Samitz's

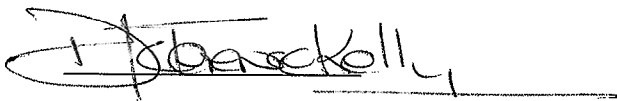
Division Commander.

Police Constable Brad Plummer will receive a Reprimand in this matter given that he was in part under the direction of his immediate supervisor.

Both officers will participate and successfully complete the following training at the discretion of the Chief of Police.

Investigation of Domestic Incidents and Family Violence Occurrences (LE 024).

Arrests in Dwellings and Feeney Warrants (LE 360).

A handwritten signature in black ink, appearing to read "Terence Kelly", written over a horizontal line.

Terence Kelly

Deputy Chief (retired)

York Regional Police

Hearing Officer.

