

**OTTAWA POLICE SERVICE 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**

**THE OTTAWA POLICE SERVICE**

**AND**

**CONSTABLE Emmanuel SVIDRAN, #1674**

**CHARGES:**

**Two Counts of Neglect of Duty**

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**DECISION WTH REASONS**

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**Before:** Superintendent Don Sweet  
Ottawa Police Service

**Appearances:**

**Counsel for the Prosecution:** A/Superintendent Steve Bell

**Counsel for the Defence:** Mark Wallace

**Hearing Dates:** December 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> 2015, and April 25<sup>th</sup>, 26<sup>th</sup>,  
27<sup>th</sup> and 28<sup>th</sup>, 2016.

This decision consists of four parts: PART I: OVERVIEW; PART II: THE HEARING; PART III: ANALYSIS AND FINDINGS FOR DISPOSITION; and, PART IV: DISPOSITION.

## **PART I: OVERVIEW**

### **Allegations of Misconduct**

Cst. Svidran is alleged to have committed Neglect of Duty, on or about July 7<sup>th</sup>, 2013, by failing to review the contents of the camera seized by the Ottawa Police Service at the scene of the incident involving B.K., and failing to have B.K.'s injuries photographed as per OPS Policy No. 5.39: Photographic Imaging, section D(1), thereby constituting an offence against discipline as prescribed in section 2(1)(c)(i)(a) of the Code of Conduct, Ontario Regulation 268/10, as amended, and therefore contrary to section 80(1) of the *Police Services Act*

Further,

Cst. Svidran is alleged to have committed Neglect of Duty, on or about July 7<sup>th</sup>, 2013, by failing to complete a return to justice, as per section 498.1(1) of the *Criminal Code of Canada*, for all the items that were seized at the scene of the criminal incident involving B.K., thereby constituting an offence against discipline as prescribed in section 2(1)(c)(i)(a) of the Code of Conduct, Ontario Regulation 268/10, as amended, and therefore contrary to section 80(1) of the *Police Services Act*

### **Particulars of Counts**

On July 6<sup>th</sup>, 2013, an altercation occurred involving Bruno Kraljevic, Branca Kraljevic at/near their property of [street name and number redacted] in Ottawa. This altercation involved Claude, Nicholas and Christian Paquette who were visiting at a nearby residence of friends on [street name redacted]. What started as an argument escalated into a series of assaults with injuries being suffered by some of the parties. At some point Branka Kraljevic exited the residence with a knife and assaulted Claude Paquette resulting in two puncture wounds that required stitches. Branka Kraljevic was charged with numerous Criminal Code Offences related to the assault and was eventually found guilty of aggravated assault resulting in a suspended sentence and a period of probation. The other charges were withdrawn. Bruno Kraljevic was charged with assault, a charge that was later dismissed. Integral to this event was the independent witness, Caitlin Armstrong, who provided evidence that led to the aforementioned charges. At some point during this event, Branka Kraljevic took photos of those involved and injuries sustained after the event of Bruno Kraljevic.

This camera was left at the scene after Branka had been arrested and Bruno departed for medical treatment for his abrasions and ultimately a broken ankle. The camera was collected jointly by Detectives Wilson and Plomp and left in the original bag it was taken in and placed on the desk of Detective Riddell. Riddell was the dayshift investigator working the following day. Plomp and Wilson collected it in an effort to alleviate duties Riddell would need to accomplish had it been left at the residence. Plomp further sent Riddell an email explaining the presence of the camera and a cell phone that was seized, indicating it was from the property owners and may contain evidence within it. Det. Svidran and Riddell began their shift that following morning and after their discussion Svidran became the lead investigator of the file and took possession of the camera. Svidran released the camera and cell phone with Branka Kraljevic the morning of July 7<sup>th</sup>, after he formally charged her for the assault. He did not make any attempts to view the contents of the camera.

Detective Svidran also further charged Bruno Kraljevic with assault and attended his residence to perform that function, releasing him at his residence. This was done on Thursday July 11<sup>th</sup>, 2013. He observed obvious injuries and noted same but did not have any photographs taken of the injuries. Flowing from this event was the complaint made by Bruno Kraljevic to OPS Professional Standards Section. Their review was conducted and no charges were laid as a result of that investigation. Bruno made a subsequent complaint to the Office of the Independent Police Review Directory (OIPRD), in which they conducted their investigation and ordered a directed hearing with the charges that are now before this Tribunal. It is as a result of the OIPRD investigation, led by Ms. Hema Nagar, that also resulted in the charge of Detective Svidran failing to ensure a return to Justice was done.

## **Plea**

On December 1<sup>st</sup>, 2015, Detective Emmanuel Svidran pleaded not guilty to both charges of neglect of duty.

## **PART II: THE HEARING**

### **Exhibits**

<b>Exhibit #</b>	<b>Date Received</b>	<b>Description</b>
1	12-Mar-15	My designation
2	12-Mar-15	Designation of Christiane Huneault
3	12-Mar-15	Notice of Hearing; Wilson
4	12-Mar-15	Notice of Hearing; Svidran
5	12-Mar-15	Notice of Hearing; Plomp
6	1-Dec-15	Designation of Bell

7	1-Dec-15	Designation of Beaton
8	1-Dec-15	Book of documents tendered by Bell
9a	1-Dec-15	group of 7 photos
9b	1-Dec-15	group of 5 photos
9c	1-Dec-15	group of 4 photos
10	1-Dec-15	Resume of Hema Nagar
11	1-Dec-15	copy of policy 6.03 - Court prep and proceedings
12	2-Dec-15	Copy of witness statement of Caitlin Armstrong
13a	2-Dec-15	photo of one male at end of driveway
13b	2-Dec-15	photo of three males at end of driveway
13c	2-Dec-15	photo of two males at end of driveway and back of Bruno
14	3-Dec-15	IA of Cst. Sebastien Lemay
15	3-Dec-15	case law excerpt Timms-Fryer
16	3-Dec-15	OIPRD Log notes
17	26-Apr-16	CV of Svidran
18	26-Apr-16	IA of Lohe
19	26-Apr-16	IA of Proulx
20	26-Apr-16	IA of Riddell
21	26-Apr	Transcript of interview with Branka
22	4/26/2016	portion of copy of notes of Svidran
23	27-Apr-16	response of Svidran re OPS PSS investigation
24	27-Apr-16	911 transcript of Bruno Kraljevic
25	27-Apr-16	911 transcript of unidentified female
26	27-Apr-16	IA of Det. Svidran
27	27-Apr-16	interview of Christian Paquette

## **Evidence called by Prosecutor**

### **Witness Branka Kraljevic**

I will limit my discussion of the testimony of Ms. Kraljevic as it pertains to the issue at hand in relation to the camera and her evidence. She provided evidence to support the fact she did at some point take a series of photographs that were tendered into evidence, details of which I will speak to later. It consisted of a series of three photos depicting the Paquette's at the end of the driveway and a series taken after the event depicting the injuries sustained by Bruno during the incident. She could not be certain if photos had been taken during the assault itself. She did recall having some discussion with Detective Svidran during the interview while in custody that photos did exist and that Detective Svidran indicated she could present them for her defence if she wanted.

### **Witness Hema NAGER**

Miss Nager provided evidence as to the manner in which she was trained and conducted the investigation. She spoke in relation to the camera that Bruno felt images had been taken proving he was the victim of the assault and that those photos had been deleted by police. This was proven not to be the case as Ms. Nager insured a forensic analysis of the camera was conducted and no deleted images existed showing the actual assault taking place. She indicated that the specific charge related to not viewing the camera was the complaint via Bruno while the charges related to the return to justice and photographing needs of prisoners were her charges as a result of her investigation and the fact the complainant would not be aware of these specific charges. She also provided evidence as it related to the role of Plomp and Wilson; to ensure all was gathered appropriately and determine if other steps were required before passing on information or items to dayshift investigators. The information of the camera was contained in an email (exhibit 8, book of documents) that provided Detective Svidran some information that evidence may exist on the camera depicting the assault.

She indicated that Svidran did not review the camera as he felt it was not relevant to the inquiry and was not sure why it was seized. Also that he would require a warrant to view the photos. She then provided further testimony in relation to the need to have injury photography conducted as per the policy governing this task. Detective Svidran did not feel the policy applied and only noted the injuries, he never had them photographed. A great deal of testimony centered on the evidence of the independent witness, Ms. Caitlin Armstrong. This was in an attempt to determine if Det. Svidran relied on all evidence before coming to conclusions he reached; similar to the fact he did not review the contents of the camera.

### **Witness Bruno KRALVEJIC**

Mr. Kraljevic provided his account of the events that transpired that date. He indicated that he was very much the victim of the assault that took place that evening. He provided contradictory testimony as to some of the events that took place, including the role of Caitlin Armstrong. He did assert that he felt Branka did take photos of the event but they could not be located. He felt that the presence of two partial deleted photographs that were discovered on the camera was indicative of the fact that the photos of the assault may have existed still at some point. He provided little in terms of the need to photograph his injuries other than in cross examination he indicated that he never asked that photos be taken of his injuries.

### **Evidence called by Defence**

#### **Witness Detective Emmanuel SVIDRAN**

Detective Svidran provided details as to his experience as an Officer with OPS and while a police officer in the U.K. This included his training that now saw him assigned as an investigator

with OPS GAS unit. Further testimony provided as to the camera and its contents and how Svidran came to have it in his possession and his decisions to not view the contents. This was related to his firm belief that a spouse would never photograph an assault actually occurring rather it would likely show events leading up to that assault. This he felt was confirmed in the interview of Caitlin Armstrong. He also felt he did not have grounds to obtain a warrant as he firmly did not believe it contained evidence of the assault. He outlined his reasoning why consent would not be an option; including the challenges in obtaining true consent of a charged person and that the camera ownership was in question as to belonging to Branka, Bruno or both, further complicating the matter.

He instructed Branka to have her lawyer use photos if they existed, and at no point in the interview did she indicate that photos of the assault were on the camera. He did attend Bruno's residence and noted his injury of his leg being in a cast. He alluded to the fact that after referencing reports and conducting interviews he viewed Bruno as a suspect and that interpretation never changed right up to the point he charged Bruno. Thus precluding his need to have the injuries photographed. In relation to his failure to submit a return to justice, Det. Svidran openly admitted it was a mistake. This fact did not play into the court hearings; the Crown did not realize it either.

#### **Witness A/S/Sgt Bart Gilligan**

A/S/Sgt Gilligan produced his C.V. outlining experience and expertise, including his writing of the specific policy before the Tribunal. This led into the testimony of the policy surrounding victim photograph, Section D, and his opinion on the fact it related only to victims of crime, from various crimes. He also discussed Section C; Prisoner Photography. That in his opinion the policy as written and in the spirit of the meaning did not apply to the situation involving Mr. Kraljevic. He was not formerly in police lock-up and the rationale for him to be photographed would not advance the investigation. Further testimony surrounded the discussion on the term lock up, and that he did in fact apply in the case of Mr. Kraljevic. The intent of the policy was not to necessarily photograph those persons arrested and released outside of the physical cell blocks located at 474 Elgin St.

#### **Submissions of Prosecutor**

Submissions consisted of the threshold of proof required in this case. He indicated that at that time, it was a balance of probabilities that must be demonstrated on clear and convincing evidence. Since these submissions it has since been ruled that the standard of proof is greater and consists of solely clear and convincing evidence; which brings it somewhere beyond a balance of probabilities and below the threshold used in criminal court proceedings. He presented the

quality needs of evidence and assessing the creditability of witnesses. He related these two concepts to the first charge of neglecting to view the contents of the camera. That many sources of information existed that informed Det. Svidran of the possible existence of photos of the event on the camera. He discussed the fact he should have considered gathering more advice on the possible ability to get a warrant and also that he should have explored the consent option further. Further, that these photographs would have provided certainty in an otherwise confusing investigation. He then focused on the policy concerns in regards to photographing the injuries of Mr. Kraljevic. His submission was that all injuries related to an incident are pertinent and should be photographed. He indicated that Mr. Kraljevic fit both criteria in relation to prisoner and victim photography. Little time was spent in relation to the failure to complete the Return to Justice, as Det. Svidran admitted to failing to complete that part of the investigation.

### **Submissions of Mr. Kraljevic**

He submitted that Det. Svidran failed to review all evidence that was available to him in order to conduct a complete investigation. This included the need to review the contents of the camera. He described what he thought were the factors that were either fabricated or misinterpreted by Det. Svidran and led to the wrong people being charged.

### **Submissions of Defence**

Mr. Wallace spoke to the process that public complainant went through to this point; which included the original complaints that were investigated by OPS PSS section and no charges were recommended. This led to this directed hearing as a result of Mr. Kraljevic's further appeal to OIPRD.

He discussed the fact the Det. Svidran actually did not have a duty to photograph the injuries of Mr. Kraljevic as per the policy. Also that there was no clear and convincing evidence to show that this policy even applied. He characterized the failure to review the contents of the camera as a judgment call made by Det. Svidran, which should not be seen as neglect of duty. He did consider the contents of the camera but felt it would not advance his investigation. Also that he did not have grounds to obtain a warrant and at no time did Ms. Kraljevic provide a statement to Det. Svidran that the actual assault was captured on the camera. He explained the rationale for not seeking consent and the challenges it contained. Mr. Wallace then described the situation as presented was not neglect, it was not as though it was as simple that someone would have done this differently it is that the actions needed to be deficient and neglectful, and they were not. Lastly he characterized the failure to submit the return to justice as an honest mistake. That he did not cross from a performance issue to a matter of misconduct. He then discussed the challenges and steps that Det. Svidran took to investigate this event and indicated he had done a thorough investigation.

## **PART III: ANALYSIS AND FINDINGS FOR DECISION**

### **Issues before the Tribunal**

The issues before this tribunal are very adequately described in the charges before me. That Det. Svidran failed to review the contents of the camera that he failed to have the injuries of Bruno Kraljevic photographed and lastly that he did not complete a return to justice as was required of him.

### **Analysis and Findings**

#### **A. Issue 1 – Did Detective Svidran fail to review the contents of the camera?**

##### **a. Witness Testimony**

In analyzing the witness testimony I have considered both its reliability and credibility. Reliability relates to testimonial factors of perception, memory, and communication whereas credibility relates to sincerity or honesty.<sup>1</sup> As indicated in the testimony and from the exhibits tendered, Det. Svidran had several sources of information that photos may exist related to the assaults that took place. Those information sources included the email drafted by Det. Plomp, the statement of Cst. Lohe, the statement of Caitlin Armstrong and in his interview/interaction with Branka Kraljevic. I found that Branka provided forthright testimony but was severely affected by this event. She could not or was unable to provide evidence if she took photos of the assault itself. We now know that photos of the assault did not exist. What is pertinent is that Det. Svidran knew the camera was used in some capacity and there were likely photos of some sort related to this offence. Detective Svidran provided consistent and unwavering testimony in relation to these charges, he was forthright in conceding when he made a mistake and came across as a very reliable witness.

##### **b. Findings**

#### **Should Detective Svidran have viewed the contents of the camera?**

Investigators rely on several sources to determine the result of an investigation. The availability of independent witnesses, physical evidence and documentary evidence are some of those sources. Det. Svidran had for this case an independent witness, Caitlin Armstrong; it was her statement and other evidence that provided crucial information for Det. Svidran to use on his way to forming his grounds that Branka Kraljevic was responsible for an aggravated assault. Thus early in the investigation she became a suspect then a charged person for the events that

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<sup>1</sup> R v Thomas 2012 ONSC 6653 at para 13.

occurred in July of 2013. The scope of this hearing did not take into account the reasons that Branka became a charged person, what is important that was how she was classified that night. This factor is important in that it allows us to understand the frame of mind of Detective Svidran that day of the investigation, and that he saw Branka as a suspect. As she was a charged person he appropriately put to his mind the need for a warrant, and I accept his explanation that he would need a warrant to obtain the images fro

m this camera. He further indicated that he did not have a belief that images of the assault were going to present on this camera based on his experience and common sense that a loved one would not be taking pictures of an actual assault but rather would be assisting that loved one. This was his honest belief and I do not believe differently. This was a very complicated event with many potential witnesses and evidence. He formulated an honest belief that images of the assault would not be present which while unnecessary to these charges was proven to be the case. As such he could not swear to a warrant when he has no belief the information is true. In relation to the consent element, Svidran provided explanation of the difficulty that existed in getting informed consent of a charged person in particular when ownership was complicated. He did further explain to Branka that if she determined evidence existed she could bring it forward. He fully admitted that in retrospect he should have asked her directly if they existed, but he did not.

The only aspect I have difficulty in accepting in reference to the camera is that Det. Svidran was convinced that evidence would not exist on it in relation to this crime. I do not accept that. He had information that it may be present from the sources already described, and in my opinion even if it is remote that evidence of the assault would have existed on the camera more effort could have been made regarding the consent option. The presence of photographic evidence is very telling and often relied upon within an investigation. I feel that the images taken immediately prior to the assault may have been telling and could have been used to assist in determining the validity of statements made by witnesses. Is my finding sufficient to find Det. Svidran guilty of neglect of duty? No it is not, as articulated in the case law provided by Mr. Wallace in OCPC versus Constable Steven Mousseau;

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

Combine this with the following from Pollock vs. Hill;

*“A finding of breach of the Code of Offences is a serious finding against an individual officer which may result in major penalties under the police complaints legislation. Therefore, we will not find the Officers guilty of neglect of a duty to supervise unless there was some element of willfulness in their neglect or unless there was a degree of neglect which would make the matter cross the line from a mere performance consideration to a matter of misconduct.”*

Detective Svidran in my opinion should have put more consideration to accessing the photos, but, I do not feel his inaction extended into neglect as I do not feel this was willful.

**B. Issue 2- Should Detective Svidran have had injury photos of Bruno Kraljevic taken as per OPS Policy No. 5.39; Photographic Imaging, section D(1)?**

**a. Witness Testimony**

A/S/Sgt Bart Gilligan provided unfaltering testimony and presented as reliable and professional. As the creator of the testimony he elaborated on the spirit of that policy and how it did not apply to this charge.

**b. Findings**

Policy and the adherence to it are crucial in the day to day functioning of a police service. They are not merely a suggestion, they are the Chief's Orders and compliance is expected.

In relation to Policy No. 5.39, Section D(1) it is titled and referred to as “Victim Injury Photography.” Bruno Kraljevic was a charged person and as such despite the use of the word “Person” that commences this policy I am satisfied its intention, and as per the testimony of A/S/Sgt Gilligan, is to the photography of victims. I also find that the policy uses the words ‘may’ and ‘when possible’ which puts credibility to the testimony of Svidran that photos of injuries are needed when related to or of assistance to an investigation. There was lengthy testimony in relation to section #3, “Prisoner Photography”. As this was not part of the formal charges I will not make comment on it.

In considering the previously mentioned information, I do not find that Detective Svidran committed a breach to the policy as that policy did not apply to him in this situation.

**C. Issue 3- Did Detective Svidran fail to complete a return to justice, as per section 498.1(1) of the *Criminal Code of Canada*?**

**a. Witness Testimony**

In relation to this charge, Detective Svidran provided very truthful testimony and indicated he had not filed the return, he had made a mistake. He did correct that error when notified of it and his failure to file the return did not affect any of the proceedings linked to it.

## **b. Findings**

There is no dispute that Detective Svidran did not file the required return to justice. He did so once he was made aware of it and it had no effect on the criminal proceedings related to this event.

The question remains was it neglectful?

As previously mentioned neglect needs to be more than just a failure or a mistake as was this case. It needs to extend into misconduct and not mere performance.

This is further reinforced in OCPC versus Sergeant Dalton Brown;

*“... it is worth noting that neglect of duty is not an absolute liability offence. There must be either “willfulness” or a “degree of neglect which would make the matter cross the line from a mere performance consideration to a matter of misconduct.” In P.G. v. Attorney General of Ontario at para. 83. In other words, mere failure to comply is not enough. There must be some evidence of deliberateness or recklessness.”*

A file such as this requires a multitude of tasks, this one was forgotten, and I do not find it extended into the realm of misconduct.

In summary, Detective Svidran faced a complicated file on that July day in 2013. He performed many tasks including the interviewing of witnesses and the review of documentary and physical evidence. In relation to these specific charges he faces today I find fault only in his decisions related to the contents of the camera and his failure to submit the return to justice. However these two incidents do not extend into the realm of misconduct.

## **PART IV: DECISION**

Emmanuel Svidran please stand,

The allegations of neglect of duty have not been proven with clear and convincing evidence. To this end, I find Constable Emmanuel Svidran not guilty of the counts of misconduct pursuant to the sections 2(1)(c)(i)(a) of the Code of Conduct, Ontario Regulation 268/10, as amended, section 80(1) of the *Police Services Act*.

This concludes this hearing.

Superintendent Don Sweet  
PSA Hearing Officer

Date of decision: 11 July 2016