

**IN THE MATTER OF
ONTARIO REGULATION 123/9
MADE UNDER THE POLICE SERVICES ACT, R.S.O. 1990, C.P. 15
AND AMMENDMENTS THERETO
AND IN THE MATTER OF
SERGEANT JOSEPH TRUDEAU, BADGE NUMBER 216
AND
SAULT STE. MARIE POLICE SERVICE**

JUDGMENT

APPEARANCES:

Mr. Ian Johnstone

for the Sault Ste. Marie Police Service

Mr. Jeff Broadbent

for Sergeant Joseph Trudeau

BEFORE;

Deputy Chief Terence Kelly

York Regional Police (Ret)

Hearing Officer.

Judgment Date:

August 29th, 2013.

J U D G M E N T

SERGEANT JOSEPH TRUDEAU

BADGE NUMBER 216

SAULT STE. MARIE POLICE SERVICE

AUGUST 29, 2013

DEPUTY CHIEF TERENCE KELLY (RET.) Before commencing with Judgment in this matter, I wish to thank Mr. Wayne Chorney and Mr. Jeff Broadbent, Defence counsel and Mr. Ian Johnstone, the Service prosecutor, for their able arguments and exhibits tendered, all of which have assisted me in reaching my decision.

Sergeant Joseph Trudeau, Badge Number 216, has pleaded Not Guilty to one count of Discreditable Conduct laid under the *Police Services Act*. This charge has been adequately detailed in the Notice of Hearing.

In general, the rules of evidence will be followed. If there is an easing of the rules it is essentially in an attempt to arrive at the truth, while balancing the need for fairness towards the officer and also ensuring there is no denial of natural justice.

CHARGE NUMBER 1 – DISCREDITABLE CONDUCT alleges that on or between February 28 and March 1 of 2010, Sergeant Joseph Trudeau, without lawful excuse, failed to properly supervise a complex pedestrian fatal motor vehicle collision.

The first witness for the prosecution, Police Constable Joseph Poderys, testified he has been a member of the Sault Ste. Marie Police Service for the past ten (10) years. He also outlined his previous work experience.

When questioned by the Service prosecutor regarding his experience as a collision investigator, Constable Poderys stated he presently is a Level 4 Collision Investigator. These courses teach him the importance of conducting a thorough investigation at an accident scene and the need to locate and secure evidence which will assist him in reconstructing the collision.

When asked about his recollections of the night of February 28, 2010, Constable Poderys stated that he and Police Constable Lapish were called out to a motor vehicle collision at approximately 4:10 a.m. At this time they were both attached to the Traffic Unit. They met at the police station to secure the necessary equipment to help them conduct a reconstruction of the motor vehicle collision. Prior to leaving the station they were provided information as to what had occurred at the collision scene.

Upon arriving at the accident scene they were updated with regard to the

seriousness of the collision involving a pedestrian and a single motor vehicle, a blue Hyundai, which was parked on Queen Street facing west-bound.

At this time both he and Constable Lapish spoke to Sergeant Trudeau at the collision area. He, along with Lapish, walked the scene recording any pertinent information that would assist them in reconstructing the accident; looking for evidence pertaining to the location of the pedestrian and the vehicle at the point of impact, anything that could determine where each was on the roadway. As a result of this investigation they found several articles belonging to the pedestrian as well as parts of the vehicle. They were unable to determine the point of impact at this time.

At the conclusion of their initial investigation they assisted other officers present with the investigation.

After assisting the officers, Poderys stated it was becoming light and they again walked the scene to determine if they had missed any evidence when searching for it under the artificial light; that natural light provides a different aspect, or a different view, of the scene. Once they had completed this they started to break down their equipment, speak to Sergeant Trudeau, and start to focus on the vehicle which is another piece of evidence for them.

Constable Poderys stated that, upon speaking to Sergeant Trudeau about

the vehicle involved in the fatality, he was told by Sergeant Trudeau to drive it to the police station.

When questioned about receiving this direction from Sergeant Trudeau, Constable Poderys stated he found it very odd that they were to drive the vehicle. He tried to explain to Sergeant Trudeau that the vehicle was a piece of evidence and normally the vehicle is towed to the station. Both he and Lapish voiced their disagreement to Sergeant Trudeau regarding driving the vehicle and, again, reiterated that the vehicle was a piece of evidence and should be towed to the station by way of a flat-bed tow truck. Poderys stated they take photos of the condition of the vehicle, both exterior and interior, prior to leaving the scene; locate a flat-bed tow truck, load it then follow the tow truck to the station.

When questioned by the Service prosecutor about his concerns for driving the vehicle, Poderys stated that by driving the vehicle there is a concern for loss of evidence or something in the interior of the vehicle being moved. The purpose of towing is to ensure that the vehicle remains the way it was when it came into contact with the pedestrian. He stated that part of his examination of the vehicle is also to determine whether or not anything in the interior of the car obstructed the driver's view of the pedestrian, or something interfered with his ability to avoid the collision, which could assist them in determining the reason for the accident

The Service prosecutor then questioned Constable Poderys about the

possible problems that could occur by him driving the vehicle from the scene. Poderys stated that there is a possibility evidence could be lost; that there could be another collision with the vehicle involving himself and, possibly, liability issues.

When asked about all the courses he has taken with respect to accident reconstruction, if he had ever been instructed to drive a vehicle from the scene, Poderys responded that the only time it was mentioned was with regard to returning a vehicle to its owner.

When the Service prosecutor asked Poderys how he treats these types of investigations, he replied that he treats them very seriously, for him it's a fatality and very serious.

Under cross-examination by Defence counsel, Constable Poderys agreed that it is important to make detailed and accurate notes and witness statements.

Constable Poderys also agreed with counsel that photos had been taken at the scene by Constable Wright, a forensic identification officer, and the vehicle had been examined by himself and Constable Lapish. He stated that the front bumper of the vehicle had been removed and placed into the vehicle as it was hanging off. He agreed that the bumper was the only loose item on the vehicle at that time and, further, there was no hair or skin tissue that he could see in the area of impact on the vehicle.

When asked if he and Constable Lapish had given the exterior and interior of the vehicle a good look-over before moving it, Poderys stated they had given the exterior a good look-over and just looked into the interior as nothing could be removed from the vehicle as there were no open areas. He agreed that the vehicle appeared in good shape and was drivable.

When questioned if he had seen vehicles damaged when being towed from an accident scene, Constable Poderys stated that he has on occasion; a vehicle being towed out of a ditch. They tend to get caught on something and damage the underneath. When asked about tow operators handling vehicles being towed, he stated that in these situations they are only allowed to touch the vehicle where they hook up the tow chains front and rear. If something needs to be adjusted in the interior of the vehicle then the officer does it.

Defence counsel then asked Constable Poderys about any Service policy which directs an officer to drive a vehicle and/or tow a vehicle which has been involved in a fatality. Constable Poderys stated he is not aware of such a policy and agreed it was a discretionary call based on experience. He also agreed that a vehicle being towed and/or driven can just as easily become involved in an accident.

In reply, the Service prosecutor asked Constable Poderys how he would characterize Sergeant Trudeau's actions with regard to him driving the vehicle from the scene and Constable Poderys stated he doesn't believe it

was responsible; that he did not know how he made that decision or whether or not he had consulted with anyone.

The next witness for the prosecution was Mr. Glen Code, an investigator with the Special Investigations Unit (SIU), who advised the Tribunal about tools that are used in crash retrieval data, which is recorded prior to and shortly after impact, that may assist in the reconstruction of vehicle collisions.

When questioned by the Service prosecutor regarding the way vehicles involved in serious collisions and fatalities are handled by the investigators, Mr. Code stated that the police tow these vehicles and that, in his experience as a police officer, he has never known the vehicle not to be towed from the scene.

Mr. Code was then questioned why vehicles should be towed from an accident scene in serious collisions and he stated there are several reasons:

1. The liability of driving a vehicle that has been involved in a collision.
2. Optics – Public and parties involved. Officers removing vehicles may be driving/operating an unsafe vehicle. The impartiality of the investigation.
3. Protection of evidence to keep the vehicles involved in as pristine condition as possible for expert examination, which should be conducted in the best conditions.

Mr. Code then stated that, in his opinion, all fatalities should be treated as a criminal investigation until proven otherwise

Under cross-examination by Defence counsel, Mr. Code stated the number of courses he has taken regarding collision reconstruction. When asked about the data the dealership retrieves, Mr. Code advised the Tribunal that he does not know what the dealership retrieves, however, he reiterated that the vehicle should be towed from the scene to the dealership in an attempt to keep it in pristine condition.

When questioned about Sault Ste. Marie Police Service policies with respect to towing vehicles, Mr. Code stated he is not familiar with any Sault Ste. Marie Police Service policy regarding the towing of vehicles. His experience was to always tow the vehicles rather than drive them. He agreed with Defence counsel that he was not aware of the condition of the vehicle involved in the fatality.

The first witness for the defence, Ontario Provincial Police Sergeant Bradley Muir, who testified he is currently a member of the Ontario Provincial Police and has been for the past twenty-three (23) years. He advised the Tribunal regarding his expertise in traffic reconstruction and his history of investigations involving collisions where there is a fatality and/or serious injury. He also advised the Tribunal regarding his expertise in data retrieval from vehicles involved in collisions.

When questioned by Defence counsel with respect to retrieving data from a 2009 Hyundai that was involved in a collision, Sergeant Muir stated it is highly unlikely there would be any data retrieved from this year and model of vehicle.

On being questioned further by Defence counsel with regard to having the vehicle driven from the accident scene rather than having it towed, Sergeant Muir stated he has investigated numerous serious accidents over the years and does have the majority of vehicles towed but, on occasion, he would allow officers to drive them if they have the key information and are satisfied with his investigation at the scene. He agreed with counsel that, on occasion, vehicles being towed can be damaged.

Under cross-examination by the Service prosecutor, Sergeant Muir agreed that he did not normally advise officers to drive vehicles away from a collision scene other than the removal to facilitate traffic congestion. He also agreed that if there was data to be retrieved from a 2009 Hyundai they would have required the assistance of the Hyundai company to retrieve same.

Sergeant Muir agreed he did not attend this particular scene and would be unable to speak to the condition of the vehicle other than the make and year of manufacture. He conceded there may have been reasons to hold the vehicle for further investigation, however, he could not speak to that.

In his experience if the examination had been completed at the scene he would not have trouble driving the vehicle away.

Sergeant Muir further stated that when he teaches Traffic Reconstruction he emphasizes the need to preserve evidence and that it is an officer's duty to gather all available evidence; that all traffic collisions involving a fatality should be treated as a serious investigation.

The next witness for the defence, Sergeant Joseph Trudeau, testified he is presently a member of the Sault Ste. Marie Police Service. He advised the Tribunal of his experience working in traffic and his knowledge of traffic reconstruction, which he said was limited.

Sergeant Trudeau stated that at the time of the collision he was at home and was advised that Police Constables Poderys and Lapish, who were trained in accident reconstruction, were enroute to the scene. These officers would be responsible for the on-scene investigation and that he was there in a supervisory role and did not conduct any physical examination of the vehicle involved. He returned to the scene at approximately 8:00 a.m. where he spoke to Constables Poderys and Lapish regarding their investigation; enquiring about the status and if they were done with the scene and the vehicle.

At this time Constable Lapish asked him about removing the vehicle from the scene to the police station. Sergeant Trudeau asked about any data

that may be retained in the vehicle being compromised if the vehicle was driving and was advised by Constable Lapish that it wouldn't be if the key strokes (ignition) were counted.

Sergeant Trudeau then stated he listened to the interview of the driver of the vehicle with regard to striking the pedestrian and was not concerned any evidence was actually on the vehicle, given Mr. Biocchi's explanation of the accident.

Sergeant Trudeau then testified he has little faith in tow companies advising the Tribunal of several situations where he was involved in investigating accidents where the vehicles had been towed and subsequently received further damage.

When asked by counsel if the officers had objected to driving the vehicle to the station, Sergeant Trudeau stated that if they had he would not have ordered them to drive it. He stated he felt comfortable having the vehicle driven as the officers had done a cursory examination at the scene, that it was a late model vehicle and, after listening to the driver's interview at the station, that there was nothing wrong with the vehicle.

Sergeant Trudeau was then questioned regarding any Service policy that was in effect about towing vehicles. He stated that the Sault Ste. Marie Police Service does not have a policy that speaks to towing from accident scenes and he has never been given any direction from the Service about

towing or driving vehicles from accident scenes.

Under cross-examination by the Service prosecutor, Sergeant Trudeau stated that the Sault Ste. Marie Police Service has no policy with regard to towing vehicles and he would have acted according to a policy if one had existed. He stated he was more comfortable with Constable Poderys driving the vehicle as he trusted him over any tow truck driver removing the vehicle.

When asked about his investigation at the accident scene, Sergeant Trudeau stated he walked through the scene and did a cursory examination of the vehicle involved; that he was not collecting evidence, he was relying on officers Poderys and Lapish to collect and preserve evidence.

When questioned about his concerns, if any, about the vehicle being unsafe to drive, Sergeant Trudeau stated that if he felt the vehicle was unsafe to drive he would not allow an officer to drive it. He agreed with the Service prosecutor that you could not determine by looking at the vehicle if it had any mechanical issues, although he did observe some damage to the front right corner of the vehicle.

In his submissions, Defence counsel argued that, in this matter, all the necessary evidence gathered with regard to the vehicle was done at the scene by Constables Poderys and Lapish; that Sergeant Trudeau, in good

faith, after consultation with Lapish and Poderys, had the vehicle moved from the scene and that the driving of the vehicle to the station for further examination did not compromise the investigation.

Counsel further argued that all evidence had been collected at the scene and photographed and that Sergeant Trudeau took all reasonable steps to ensure no evidence was compromised and was concerned about the vehicle being towed given his past concerns about tow truck drivers and, further, there is no Service policy with regard to the removal of vehicles from an accident scene and it was not unreasonable to have the officers drive the vehicle to the station under the circumstances.

The Service prosecutor argues that the evidence before the Tribunal is clear and convincing. Sergeant Trudeau, in his evidence, stated that he only gave the vehicle a cursory look-over and there is no evidence of any inspection of the vehicle prior to it being removed/driven from the scene by the officers.

Further, the Service prosecutor argues that neither Mr. Code or Sergeant Muir, in their expertise, would move a vehicle until they were satisfied that the investigation was complete. Mr. Code also outlined numerous concerns about having the vehicle driven by police officers. Utmost in his concerns was the safety of the officers as there was no evidence about the vehicle's mechanical condition and it was clear the vehicle had sustained damage to the front driver side and, as a result, may have had mechanical

issues. He was also concerned about the protection of any evidence that may or may not be contaminated by driving it, stating that it just made common sense to tow it for further expert examination.

In reaching my decision with respect to the Charge of Discreditable Conduct facing Sergeant Trudeau, I have listened carefully to the evidence presented on this charge and reviewed my notes and exhibits tendered.

I was impressed by the candour of the witnesses and I believe they laboured hard to present what they remember of what they saw, heard and felt approximately two-and-a-half years ago.

It is clear from the evidence-in-chief of Sergeant Trudeau that he has little experience in accident reconstruction. Constables Poderys and Lapish were called to the scene as they are the trained accident reconstructionists for the Sault Ste. Marie Police Service.

Sergeant Trudeau testified he had a great deal of trust in these officers and they would be responsible for the on-scene investigation.

When questioned if the officers had advised him of concerns they had about driving a vehicle that had been involved in a fatality back to the station, he stated he would not have them drive it.

In his testimony, Police Constable Poderys stated that both he and Constable Lapish spoke to Sergeant Trudeau at the accident scene. They then proceeded to walk the accident scene in an attempt to procure evidence and found several articles belonging to the pedestrian who was struck, along with parts of the vehicle. He stated that, as it was becoming light, they walked the scene again looking for any evidence they may have missed. He further stated that, after assisting other officers they were then turning their attention to the vehicle involved. Constable Poderys again spoke to Sergeant Trudeau about the vehicle involved in the fatality when he was told by Sergeant Trudeau to drive the vehicle to the police station. He found this directive very odd stating he tried to explain to the Sergeant that the vehicle was a piece of evidence and it would normally be towed to the station. Both he and Constable Lapish voiced their disagreement to Sergeant Trudeau.

When questioned by the Service prosecutor about his concerns, Constable Poderys stated that there was a concern about the loss of evidence, something being moved in the vehicle and also a concern that he could become involved in another accident with the vehicle involving himself and possible liability issues.

Under cross-examination Constable Poderys stated both he and Constable Lapish had photographed and given the exterior of the vehicle a good look-over, but had not entered the interior other than looking through the windows.

I closely observed the demeanour of Constable Poderys on the witness stand during his testimony-in-chief and cross-examination. I found him to be truthful and credible when recollecting the events of February 2010. The manner in which he gave his evidence was straightforward and there was no indication of embellishment. His testimony bore a sense of reason under the circumstances.

I accept the evidence of Mr. Code and Sergeant Muir. Both are qualified as experts in the accident reconstruction field with respect to their independent investigations of this matter. They were both quite clear that they would normally have a vehicle towed from a scene involving a fatality. Further, neither would have a vehicle removed from the scene until they were satisfied that their investigations were complete.

It is clear from the evidence of Sergeant Trudeau that he does not have a great deal of experience in accident reconstruction and was relying on his experts, Constables Poderys and Lapish, to conduct that portion of the investigation.

It is also clear that when ordering the officers to drive the vehicle he was more concerned with his past dealings with tow truck drivers and letting that cloud his better judgment rather than listen to the objections of the officers about the possible consequences of them driving the vehicle.

Having closely watched Sergeant Trudeau testify in this Tribunal I did not

find his evidence credible regarding his statement that had the officers objected to driving the vehicle he would not have ordered them to do so. It is abundantly clear that the officers did, in fact, have concerns on several issues about driving this vehicle and made these concerns clear to Sergeant Trudeau.

I accept that the Sault Ste. Marie Police Service does not have a policy with respect to towing vehicles in these types of situations, however, it is not practical for policing organizations to have policies for each and every matter in which they may become involved. Officers, especially senior officers with a great deal of policing experience, are quite familiar with the protocol of conducting investigations and securing the scene along with the evidence contained within until they have exhausted their investigation. Clearly officers Poderys and Lapish had not completed their investigation, especially the interior of the vehicle.

The actions, or rather the inaction, of Sergeant Trudeau in this investigation were obviously more about his concern regarding tow trucks rather than the preservation of evidence. He was content to let the officers remove a valuable piece of evidence from the scene rather than having it towed in an attempt to preserve evidence that may have assisted them in determining the cause of the accident. The gathering of evidence at a potential crime scene, sometimes a tedious process, emerges as a common and important job function for police officers at all levels of experience and training.

It is important for all officers to have a working knowledge of the evidentiary potential of a possible crime scene, if only to create an awareness of how to avoid contaminating available evidence. This part underscores the importance of continuity and the maintenance of careful records with respect to evidentiary exhibits, laying a foundation for attentiveness to the record-keeping tasks that protect evidence collected from legal challenges.

Sergeant Trudeau failed in this regard, ordering the vehicle involved in a fatality to be driven from the scene by the investigating officers prior to the completion of their investigation, which quite clearly had the potential to contaminate any evidence that may have been found within; the optics of which would clearly bring disrepute to the reputation of the Sault Ste. Marie Police Service, not to mention the safety of the officers.

After careful consideration of all the facts in this case, I find the prosecution has proved its case on clear and convincing evidence and I find Sergeant Joseph Trudeau, Badge Number 216, guilty on the charge of Discreditable Conduct.

A handwritten signature in black ink that reads "Terence Kelly (Ret.)". The signature is written in a cursive style with a large initial "T" and "K".

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