

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 JASETH MASERUKA, #1997

DECISION ON DISPOSTION

Before: Superintendent Don Sweet

Counsel for the Prosecution: Ms. Meghan Gagnon

Counsel for the Defence: Mr. Pat LaFlamme

Hearing Date: Tuesday November 29th, 2016

This decision consists of four 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;

Unnecessary Exercise of Authority

You are alleged to have committed unlawful or unnecessary exercise of duty, namely, in that on or about the 19th of October 2015, you did use unnecessary force against S.J., while affecting his arrest, thereby constituting an offence against discipline as prescribed in section 2(1)(g)(ii) of the Code of Conduct, Ontario Regulation 268/10 of the Police Services Act, as amended, therefore contrary to section 80(1) of the Police Services Act.

Plea

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

I previously accepted the guilty plea on Tuesday October 25th, 2016. 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 Unnecessary Exercise of Authority is as follows; a forfeiture of 7 days (56 hours) in accordance with section 85(1)(f) and will attend while off duty the OPS Professional Development Centre (PDC) for 1 day of use of force training in accordance with section 85(7)(b) of the *Police Services Act*. This training is to be completed within three months of the decision.

PART II: SUMMARY OF MISCONDUCT

Particulars of Counts

As the result of an agreed Statement of Facts (Exhibit #6) the following was read in at the October 25th appearance;

- The subject officer, Constable Jafeth MASERUKA (cadre #1997) is a sworn member of the Ottawa Police Service. Cst. MASERUKA has been a police officer with the Ottawa Police Service since August 11, 2008.
- On October 19, 2015, Cst. MASERUKA was assigned to uniform patrol, in a marked Police cruiser. Cst. MASERUKA was dispatched to and attended the Salvation Army men's shelter at 171 George Street. The call for service related to a disturbance call involving a male that was said to be hitting a female in the face with an object.
- The female victim ran away prior to Cst. MASERUKA'S arrival. A second male victim, 20 years old who was also hit in the head. S.J. was very intoxicated, agitated and was causing problems at the shelter. Cst. MASERUKA formed the grounds to arrest S.J. for

causing a disturbance and mischief. S.J. was charged pursuant to the *Criminal Code* with one count each of *175(1)(a)(i)*, *175(1)(a)(ii)*, *430(1)(c)*, *129(a)* and *129(a)*. (*Amended to remove one count of s.129(a) and to read as a single count*)

- The arrest was captured on video. Specifically, this video shows Cst. MASERUKA approaching S.J. and advising him of his arrest. Cst. MASERUKA is seen throwing S.J. down two stairs onto the sidewalk with little control. Cst. MASERUKA is then seen standing over S.J., as residents of the shelter gather. It is at this time that Cst. MASERUKA would have struck S.J. After the strike, Cst. MASERUKA handcuffed S.J. This was the strike that was captured on video at a different angle by the member of the public and ultimately posted online.
- Additionally, Cst. MASERUKA is seen escorting S.J. to his cruiser nearby. S.J. appears to be uncooperative with Cst. MASERUKA, who is trying to search him. S.J. is handcuffed at this time and a paramedic is present to assist Cst. MASERUKA. Cst. MASERUKA is then seen grabbing the arm of S.J. and swinging him around, throwing him, with force, to the sidewalk. The grounding was uncontrolled and excessive, as S.J. was handcuffed.
- In addition, a bystander filmed a part of Cst. MASERUKA's arrest of S.J. The video shows the point in the arrest where Cst. MASERUKA struck S.J. in the face as he lay on the ground.
- The Crown Attorney was then given the opportunity to review the two videos showing the arrest by Cst. MASERUKA and as a result, withdrew the charges against S.J.
- Cst. MASERUKA was interviewed by Professional Standards Section and conceded that he could have been gentler when grounding S.J.
- Cst. MASERUKA does not have previous discipline on his record and has 5 commendations for community involvement and police related duties.

PART III: ANALYSIS

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

I would like to start my decision 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 and to do so, in a professional manner. Public interest requires that all individuals' interest must be protected: the officer, the public and the persons affects.

It was brought to my attention that Cst Maseruka's arrest of S.J. was lawful. However, the amount of force used, was beyond what was necessary and acceptable. Cst. Maseruka's standard of conduct in this matter fell well below the reasonable expectation that the public and the service has of its police officers. The public demands that officers have good judgment and conduct themselves with integrity, and in an honest and trustworthy manner, free from personal motivation, or gain. The public put their faith in police officers and it is imperative that officers demonstrate discipline and restraint when exercising their authority, no matter how extreme the circumstances are. The public must have confidence that officers will exercise appropriate force with members of the public and only in situations when it is warranted. This fact has never been more critical than it is today.

Seriousness of the Misconduct

It is my opinion that Cst. Maseruka's unnecessary exercise of authority directed towards S.J. should be deemed as serious misconduct. The arrest was captured on video by a member of the public and as a result of the force used.

The public expects that officers will exercise their authority in a professional and ethical manner. The trust of the public will inevitably be eroded if officers abuse and exceed their authority by the inappropriate use of force on members of the public.

The conduct of Cst. Maseruka fell far short of what is expected from an officer by the Ottawa Police Service. Cst. Maseruka has been a member of the OPS since August 11, 2008. Therefore, he has been an officer with many years of service and he ought to have demonstrated better restraint under the circumstances.

The next area I wish to address is:

Employment History

As mentioned, Cst. Maseruka has been a police officer with the Ottawa Police Service since 2008 (8 years). Cst. Maseruka has no history of PSS complaints or discipline.

The next consideration to address is:

Specific and General Deterrence

It is well established that police officers are held to a higher standard. The Ottawa Police

Service does not condone behavior as exhibited by Cst. Maseruka.

The penalty in this case should send a clear message to the public and all officers in the 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 physical well-being will be safeguarded.

The penalty must also be tailored to Cst. Maseruka to address the issue of specific deterrence. Cst. Maseruka has acknowledged his misconduct, he is an experienced officer and there are no identified issues that indicate he would not continue to be a contributing member of the OPS.

In terms of general deterrence, the seriousness of Cst. Maseruka's misconduct must be met with serious consequences. The penalty for his act of misconduct must be serious enough to deter him from appearing before this Tribunal again while also deterring other officers from this type of conduct.

The next area I would like to address is:

Reputation of the Police Force and Effect of Publicity

The misconduct exhibited by Cst. Maseruka has come to the attention of the public and the other Ottawa Police Service members. My disciplinary decision will be posted on the Ottawa Police Service webpage for all members and the public to read. It has also drawn media attention and it can be expected that they will report on this portion of the hearing.

The behavior of Cst. Maseruka will no doubt tarnish the reputation of the Ottawa Police Service in the eyes of the public and our own service members who have been directly and indirectly involved. Cst Maseruka will suffer harm to his reputation which will cause stress to him and his family. He will be McNeil positive and consequently, may be questioned about this charge while testifying in criminal court.

Effect on the Police Officer and Family

The impact of the proposed disciplinary and corrective measures on a police officer and family must be considered. The penalty provided today will have an impact on the officer both professionally and financially. However it should be noted that the penalty is the result of deliberate behavior of Cst. Maseruka and the responsibility and consequences must fall on him.

Consistency of Disposition

The suggested penalty in this matter is forfeiture of 8 days (56 hours: broken down as 7 days forfeiture and 1 day off duty training on use of force). I have reviewed the cases provided to me in the book of authorities by the Prosecution. While those cases had some differences they were similar in nature and provided me a good sample of penalties imposed for these types of events.

Lastly, the penalty reflects the following mitigating and aggravating factors:

As to *mitigating* factors,

Cst. Maseruka has acknowledged and accepted responsibility for his actions. There is no suggestion of any handicap or management misconduct.

Cst. Maseruka has no previous misconduct and he has acknowledged this particular misconduct. He has pleaded guilty to the matter before me at the second appearance. His plea has eliminated the need for a trial that would have involved the complainant and fellow officers being called to testify. These mitigating factors speak further to a positive employment history, lack of previous similar misconduct and the recognition of such misconduct. Cst Maseruka has 5 commendations for community involvement and police related duties.

As to *aggravating* factors,

Cst Maseruka is an officer with 8 years of service. He has spent a large amount of his policing career in patrol operations and has done a secondment to the professional development center as a use of force instructor. Frankly he should have known better.

The misconduct to Cst. Maseruka was serious and not in keeping with the expectations of the Ottawa Police Service or members of the community.

The reputation of the police service has been tarnished in the mind of the public and other police officers. The aggravating factors speak to the damage to the reputation of the police service, the public interest and the seriousness of the misconduct.

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 Jafeth Maseruka, please stand, you will forfeit 7 days (56 hours) in accordance with section 85(1)(f) and will attend while off duty the OPS Professional Development Centre (PDC) for 1 day of use of force training in accordance with section 85(7)(b) of the *Police Services Act*. This training is to be completed within three months of the decision.

Dated at Ottawa this 29th day of November 2016.

Superintendent Don Sweet #817

Hearing Officer