

IN THE MATTER OF  
ONTARIO REGULATION 123/98  
MADE UNDER THE *POLICE SERVICES ACT*, R.S.O. 1990, C.P. 15  
AND AMMENDMENTS THERETO;  
AND IN THE MATTER OF  
POLICE CONSTABLE CHRISTIAN NUNGISA #2257  
AND THE  
OTTAWA POLICE SERVICE

**SENTENCE**

**APPEARANCES:**

Ms. Lara Malashenko  
Mr. Patrick Laflamme

for the Ottawa Police Service  
for Police Constable Christian Nungisa

**BEFORE:**

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

**SENTENCE DATE**

November 16<sup>th</sup>, 2018

## **SENTENCE**

Police Constable Christian Nungisa Badge Number #2257

November 16<sup>th</sup>, 2018

Deputy Chief Terence Kelly (Ret.) before commencing with sentence in this matter, I wish to thank Ms. Lara Malashenko, the Service prosecutor, and Mr. Patrick Laflamme, counsel for Police Constable Christian Nungisa, for their comments and exhibits entered, all of which have assisted me.

Police Constable Christian Nungisa, #2257 has pleaded guilty and been found guilty of two counts of discreditable conduct, and one count of insubordination laid under the *Police Services Act*.

*The guilty pleas were advanced with an Agreed Statement of Facts (Exhibit 7).*

### **Agreed Statement of Facts**

#### **Count 1 and 2 – Discreditable Conduct**

#### **Count 3 – Insubordination**

On May 5<sup>th</sup>, 2016, Constable Nungisa participated in a scheduled Emergency Services Unit (ESU) training at 245 Greenback Road, Nepean. As per direction from the Staff Sergeant, each member of ESU was to return to their respective stations to store their kit and weapons following the training.

Instead of returning his use of force equipment to his assigned locker at the police station located at 3343 St. Joseph Boulevard, Orleans, Constable Nungisa placed his unsecured firearm in the trunk of his personal vehicle and drove to Kingston to meet Constable Hafizi (badge #1930) and other friends for the weekend.

Constable Nungisa's firearm was stored in his duty holster, attached to his fully equipped duty belt, and was not secured in any other manner once in the trunk of his vehicle. Further, there was a bullet in the chamber, and a magazine in the magazine well.

Constable Nungisa arrived in Kingston and checked into a hotel. He parked his car in the hotel parking lot, with his use of force equipment in the trunk. Constable Nungisa then walked to a restaurant and had an alcoholic beverage. He walked back to his hotel room and continued consuming alcohol to the point of intoxication. Constable Nungisa then drove his personal vehicle, while intoxicated, to another restaurant and then drove himself back to the hotel. During this time, his use of force equipment remained loaded in the trunk of his vehicle.

On May 6<sup>th</sup>, 2016, Constable Nungisa walked to meet with Constable Hafizi and his friends. They began drinking alcohol in the late afternoon, and continued to drink.

Constable Nungisa became so intoxicated that a bouncer at the bar was going to remove him from the premises. Instead, two of his friends escorted him back to his hotel room at approximately 1:00 a.m., to ensure he returned safely.

At some point between 1:00 a.m. and 4:45 a.m., Constable Nungisa left his hotel while still intoxicated, drove his vehicle back to the area of the downtown bars, and parked in a grocery store parking lot. Constable Nungisa returned to the bars to continue drinking alcohol. Constable Nungisa stated that he has limited memory of what occurred after this.

On May 7<sup>th</sup>, 2016, Constable Nungisa woke up disoriented, resting against a fence. Constable Nungisa had no memory of what had happened the previous night, and had forgotten that he had driven his vehicle back to the bars. Constable Nungisa walked back to his hotel and realized that his vehicle was missing. Panicking about the whereabouts of his vehicle, he called the Kingston Police Service at approximately 7:00 a.m. to report his vehicle and his use of force equipment stolen.

In the meantime, Constable Nungisa elicited the assistance of his friends to search for his vehicle. After several hours, they located the vehicle, locked and undamaged, in the grocery store parking lot at which he had initially left it. Constable Nungisa immediately checked the trunk of his vehicle to verify his use of force equipment was still there.

At this point, Constable Hafizi decided to take Constable Nungisa's entire duty belt, including the firearm, and placed it in the trunk of his brother's vehicle which he had driven to Kingston. The firearm remained loaded and unsecured in Constable Hafizi's trunk. Constable Hafizi returned to his hotel, packed his belongings and began the trip back to Ottawa, accompanied by a friend who was not a member of the Ottawa Police Service.

During this time, Constable Nungisa drove to advise Kingston Police that he had located his vehicle. On his way, he was stopped by an officer of the Kingston Police, as his vehicle was still on file as stolen. Constable Nungisa informed the officer that he found his vehicle, and that his firearm was on the way back to Ottawa with another Ottawa Police officer.

The Kingston Police Service notified the Ottawa Police Service of their interactions with Constable Nungisa.

Constable Nungisa arrived back in Ottawa and met with a friend in Kanata.

After meeting with his friend, Constable Nungisa noticed that he had received several missed calls and messages from Sergeant Salehe. Constable Nungisa called Sergeant Salehe who instructed Constable Nungisa to attend the East Division Station to discuss the reported stolen vehicle incident in Kingston.

Following his conversation with Sergeant Salehe, Constable Nungisa called Constable Hafizi to arrange picking up his use of force equipment. Constable Hafizi informed Constable Nungisa that he had left the use of force equipment at his civilian friend's residence.

Constable Nungisa contacted the civilian friend, who advised him that he would not be home for another hour. During the time that the civilian friend was not home, Constable Nungisa's firearm remained loaded and unsecured in the basement.

Constable Nungisa called Constable Hafizi again, who advised him not to attend the station without his firearm. Despite this, Constable Nungisa attended the station and met with Sergeant Salehe and Inspector Cartright

Upon learning that Constable Nungisa was not in possession of his use of force equipment, Inspector Cartright contacted the civilian friend and Sergeant Salehe and Sergeant Haggarty attended his residence and recovered Constable Nungisa's unsecured use of force equipment.

The Ottawa Police Service initiated a criminal investigation into the incident.

Between May 5<sup>th</sup>, 2016 and his criminal interviews, Constable Nungisa met with Constable Hafizi three times. The civilian friend was present at the first two of these meetings. At these meetings, Constable Nungisa, Constable Hafizi, and the civilian friend conspired to provide a false story to criminal investigators. They agreed to tell the investigators that Constable Hafizi never took possession of Constable Nungisa's firearm, nor did he transfer the firearm to the civilian friend.

During his criminal interview, Constable Nungisa did not recount the concocted version of events. Instead, he told investigators the truth about Constable Hafizi's involvement, admitting that Constable Hafizi took possession of Constable Nungisa's firearm and subsequently transferred Constable Nungisa's firearm to his civilian friend.

On April 21<sup>st</sup>, 2017, the criminal investigation for a series of firearm offences was completed, and Constable Nungisa was found guilty by the Honourable Justice A.G. Letourneau of contravening a regulation made under paragraph 117 (h) of the *Firearms Act* respecting the storage/handling/transportation/shipping of firearms and restricted weapons, contrary to section 83(3) of the *Criminal Code of Canada*. Constable Nungisa pled guilty, and received an absolute discharge.

Constable Nungisa indicated that he recognizes the seriousness of his misconduct, and has taken steps to ensure that such events will not happen again. At the time of this incident, Constable Nungisa was experiencing significant personal issues, and struggling with Post Traumatic Stress Disorder as a result of serving in the military, and his role as a first responder at the scene of a murder. Since this time, Constable Nungisa has taken positive steps to address these issues and now has support in place, both medical and personal, to minimize the risk of re-occurrence.

I accept the pleas based on the facts in this case. The facts stated and agreed to provide clear and convincing evidence of the alleged misconduct strongly supporting Police Constable Nungisa's pleas of guilt. If not for the pleas and the apology of Constable Nungisa to the community and the Ottawa Police Service for his behaviour, which I take into account as a mitigating factor and recognition of his misconduct, 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 text of employee/employer relations, it is prudent to provide written reasons for my findings.

### Analysis and Decision

There are a number of relevant factors to be taken into consideration 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***, the Ontario Civilian Police Commission (O.C.P.C.), 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 to the reputation of the Police Service. I also note the 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 transgressions.

Public interest must be considered in each case for the misconduct and the disposition for the misconduct of a police officer must give the public the assurance the officer has received the appropriate penalty. Public faith in the running of a police service would not be well served and undermined if this type of behaviour by a serving police officer was not treated seriously.

A police officer lives and works as a member of the community. They are essentially a civilian in uniform. They are expected to uphold standards higher than those of the many other sections of the community. Police Services are highly vulnerable to public opinion so their employees are, therefore, subject to a higher standard of conduct in both their personal and professional lives, and rightly so. Any involvement in the violation of the law, on duty or off, violates the public trust and undermines the respect the public has for law and order and those sworn to enforce it. They must not only be honest; they must establish in the community a reputation for uprightness and fair dealing that puts them beyond the reach of criticism and media attention that brings disrepute to the service.

### Seriousness of the Misconduct

The seriousness of the offence is, of course, the primary consideration. In this particular case the actions of Police Constable Nungisa were clearly inappropriate and an embarrassment to the Ottawa Police Service.

The evidence presented to this Trier of Fact demonstrated the public interest was not first and foremost in the mind of Constable Nungisa. Professionalism and Integrity cannot be compromised. The public is entitled to have high expectations of a Police Service and its members. To retain this trust and confidence, they must be professional and ethical in everything they do. It is incumbent upon Police Services to ensure only those members who have exhibited self-discipline in adherences to the policies and procedures of the Service are entrusted to perform duties within their service.

It is clear from the Agreed Statement of Fact, Exhibit #7, Police Constable Nungisa was under the influence of alcohol upon driving his personal vehicle while leaving the licensed establishments. Constable Nungisa is extremely fortunate he was not involved in a serious accident.

Police services have dedicated many officers' time and effort into educating the public about drinking and driving. More than anyone, police officers are witness to the devastation and carnage caused by drinking and driving. This type of behaviour by a serving officer will have a serious impact on the credibility of the many drinking and driving programs, which are directed at the public.

Constable Nungisa's actions with regard to the placing of his use of force equipment containing an unsecured firearm with a bullet in the chamber, and a magazine in the magazine well in the trunk of his personal vehicle is a clear violation of the policies and procedures of the Ottawa Police Service with regard to the handling and safe storage of his use of force equipment. It is fortunate indeed that this unsecured/loaded forearm did not fall into the wrong hands.

The police officer is the person most responsible for initially setting the wheels 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.

Quite simply, if we are going to think of policing as a profession, then we must assume the level of responsibility that a professional life entails. The profession should require more from its members than we expect from the general community. Police Constable Nungisa's conduct with regard to the safe handling and storage of his firearm in the trunk of his personal vehicle was extremely unfortunate and an embarrassment to this profession and the Ottawa Police Service.

The service firearm is the ultimate symbol of the authority of a police officer. It is the police officer that bears the burden of privilege and onerous responsibility of securing/carrying this instrument, which can so easily take a life.

#### Specific and General Deterrence

Specific and general deterrence is a well-recognized principle in sentencing law, which is meant to discourage others from participating in similar conduct. It is particularly important where it is desirable to send a message to other police officers that certain conduct will not be tolerated. Members of the Service must know that the penalty for this type of misconduct will be significant personally, professionally, and financially.

#### Recognition of the Transgression

This is important for several reasons; it speaks to the acceptance of responsibility by the officer for his action and recognition of his accountability to society, notwithstanding he would be aware of his misconduct.

Clearly Constable Nungisa's plea of guilty at the first opportunity before this Tribunal, demonstrates he recognizes the mistakes he has made and accepts full responsibility.

In the Criminal Proceedings before the Honourable Justice A.G. Letourneau dated April 21<sup>st</sup>, 2017 on page 14 of the sentence he stated when addressing sentence, and I quote:

*"In my view, a fully informed member of the public would understand why the Criminal Code, in Section 730 dealing with discharges, provides for a sentence of a discharge. In particular in circumstances like the circumstance you are in at this point.*

*Layering on top of that is the fact that there can be little, if any, doubt that your prospects of rehabilitation are tremendous. In general, I say that, and in particular, I have virtually no doubt that you will not find yourself in this situation in the future or in any situation anywhere near the seriousness of this situation..."*

Unquote.

I believe this officer has learned a great deal from this entire process and must consider this in my disposition considerations.

#### Disposition

To reflect the seriousness of this offence, and as a general deterrent, it is the decision of this Tribunal bearing in mind all the evidence before me that **Police Constable Christian Nungisa, badge #2257 for the finding of guilt on two counts of Discreditable Conduct and one count of Insubordination he will be demoted from 1<sup>st</sup> Class Constable to 2<sup>nd</sup> Class Constable for a period of 9 months in accordance with section 85(1) (c) of the *Police Services Act***

**The above penalty is submitted pursuant to the following term/condition.**

- (a) Constable Nungisa will be expected to participate, and successfully complete the following training i. Firearm Storage Training.**

**Terence Kelly, Deputy Chief (Retired)**

**York Regional Police**

**Hearing Officer**

**November 16th 2018 (sent electronically)**