

**OTTAWA POLICE SERVICE DISCIPLINE HEARING
IN THE MATTER OF ONTARIO REGULATION 268/10**

**MADE UNDER THE POLICE SERVICES ACT, RSO 1990,
AND AMENDMENTS THERETO;**

**IN THE MATTER OF
OTTAWA POLICE SERVICE**

AND

CONSTABLE SAMSON VO #2119

CHARGES:

**1. UNLAWFUL OR UNNECESSARY EXERCISE OF
AUTHORITY**

DECISION ON DISPOSITION AND PENALTY

Before: Superintendent (Retired) Chris Renwick

Counsel for the Prosecution: Ms. Angela Stewart
Ms. Vanessa Stewart

Counsel for the Defence: Sergeant Pat Laflamme

Disposition Hearing Dates: June 22, 2022

Allegations of Misconduct

Unlawful or unnecessary exercise of authority

Constable (Cst.) Samson Vo, #2119 is before this Tribunal accused to have committed misconduct contrary to the *Police Services Act*, R.S.O. 1990 P.15, as amended, in that on May 25, 2021, he used unnecessary force during the arrest of an adult male member of the public (referred to by his initials T.T.) thereby constituting an offence against discipline as prescribed in section 2(1)(g)(ii) of the Code of Conduct, Ontario Regulation 268/10, as amended.

Representation/Plea/Finding

Cst. Vo was represented at the June 22, 2022, videoconference hearing by Ottawa Police Association (OPA) non-legal representative Sgt. Patrick Laflamme while the Ottawa Police Service (OPS) was represented by legal counsel Ms. Angela Stewart. (Ms. Vanessa Stewart acted as Prosecutor prior to June 22, 2022).

It is relevant to document here that this hearing initially sat on May 9, 2022, with Superintendent Mark Patterson as the designated Hearing Officer, during which Cst. Vo entered a plea of guilty to unnecessary use of force and Supt. Patterson accepted his plea. An Agreed Statement of Facts was entered along with a Joint Submission on Penalty. However, due to the inability of Supt. Patterson to continue as Hearing Officer, all parties agreed to the designation of a replacement Hearing Officer to adjudicate this disciplinary hearing. I am satisfied that I have all the material before me to arrive at a fulsome and fair penalty and this was affirmed by the Respondent Officer, his non-legal counsel, and the Prosecution. (There is no public complaint involved in these proceedings).

At the June 22, 2022, hearing Cst. Vo affirmed before me that his plea of guilty stood. After reviewing the Agreed Statement of Facts (exhibit #9), viewing the video submissions (exhibit #10), and reading the transcription of the May 9, 2022, session presided over by Supt. Patterson (exhibit #14), I accepted Cst. Vo's guilty plea to using unnecessary force during the arrest of T.T., based on clear and convincing evidence. Finding no sound reasoning to not accept the Joint Submission on Penalty, Cst. Vo will be required to forfeit seven eight-hour days (56 hours).

Agreed Statement of Facts

Cst. Samson Vo is a sworn member of the Ottawa Police Service. He was hired by the Ottawa Police Service on August 17, 2009.

Cst. Vo is working for the Neighbourhood Resource Team (NRT) in Centertown. On May 22, 2021, Cst. Vo was partnered with Cst. Tucker-Peel. The two officers were conducting a proactive patrol around 475 Catherine Street, Ottawa.

At approximately 8:45 pm, Cst. Vo and Cst. Tucker-Peel attempted to arrest T.T. in a stolen vehicle for possession of a scheduled I substance. Cst. Vo placed his body inside the car in-between the steering wheel and T.T. and attempted to grab his right arm while Cst. Tucker-Peel stood outside the vehicle grabbing the left arm. Cst. Vo struck T.T. several times on the head to gain compliance. T.T. still did not comply. Cst. Vo noticed that T.T. reached for the gear shift and placed the vehicle in drive. The vehicle started driving away, throwing Cst. Tucker-Peel off the car and knocking Cst. Vo to the ground. No one was injured at the time.

After this incident, T.T. was wanted on numerous charges including assault police and reasonable and probable grounds existed for his arrest.

On May 25, 2021, Cst. Vo and Cst. Tucker-Peel attended 180 Lees Ave, Ottawa, T.T. last known address, to arrest him for the incident that happened on May 22, 2021. The officers monitored the live footage for the building with the authorization of the Property Manager and they observed a male resembling T.T. exiting the elevator on the 14th floor. Given the close resemblance, the officers proceeded to the 14th floor to locate the male.

Cst. Vo and Cst. Tucker-Peel conducted static surveillance on the 14th floor by standing at each end of the corridor. Acting Sergeant (A/Sgt.) Archer arrived and accompanied Cst. Vo at his end.

At approximately 3:11 pm, T.T. exited the apartment 1403 and ran towards Cst. Tucker-Peel in an attempt to flee. T.T. was taken down by Cst. Tucker-Peel with a kick to the stomach and was placed in the prone position. Cst. Vo and A/Sgt. Archer ran over to assist with the arrest as T.T. was not releasing his arms from underneath him to be handcuffed. T.T. was on the ground, did not display aggression and was not attempting to flee at that moment.

Cst. Vo delivered a total of 15 closed fist punches to the head and shoulder area and four knee strikes to the rib area of T.T. while two other officers were trying to apply handcuffs. Cst. Vo delivered ten punches, stopping for one second to reassess for compliance. Cst. Vo then delivered three more punches and two knee strikes, followed by two more punches and two knee strikes (*Unnecessary Exercise of Authority Count 1*).

The full encounter can be seen on a video surveillance from 180 Lees Ave attached as Exhibit #6 to the Agreed Statement of Facts.

T.T. suffered minimal injuries to his face and head.

All three officers were interviewed by the Professional Standards Unit investigator. The officers stated that the force used on T.T. was justified by the behaviour he displayed. During his compelled interview Cst. Vo explained that not all punches made contact with T.T. and more strikes were required to gain compliance. Cst. Vo indicated that his assessment of the situation was based on observation and the knowledge of T.T. previous violent involvement with the police.

Cst. Vo minimized the force used during the arrest in his investigative action documenting it as: *"I delivered several strikes with my hand"* and did not explain why he did not document the actual force used against T.T. during the arrest and did not admit that the force used was unnecessary.

Summary of Evidence and Exhibits

The Prosecution presented the following exhibits and no witnesses:

- i) Exhibit #1. Hearing Officer Designation, Superintendent Mark Patterson.
- ii) Exhibit #2: Prosecutor Designation, Ms. Vanessa Stewart.
- iii) Exhibit #3: Prosecutor Designation, Mr. Shawn Cleroux.
- iv) Exhibit #4: Notice of Hearing.
- v) Exhibit #6: Non-legal Representation Designation, Sergeant Patrick Laflamme.
- vi) Exhibit #7: Prosecution Book of Authorities.
- vii) Exhibit #8: Prosecution Book of Exhibits.
- viii) Exhibit #9: Agreed Statement of Facts.
- ix) Exhibit #10: Video submission.
- x) Exhibit #11: Joint Submission on Penalty.
- xi) Exhibit #12: Hearing Officer Designation, Superintendent Chris Renwick (retired).
- xii) Exhibit #13: Prosecutor Designation, Ms. Angela Stewart.
- xiii) Exhibit #14: Transcript of May 9, 2022, hearing proceedings.

The Defence produced no exhibits and called no witnesses.

Analysis

It is helpful to start the decision on penalty by reaffirming the objectives of discipline which are:

- i) Correct unacceptable behaviour;
- ii) Deter others from similar behaviour;
- iii) Assure the public that the police are under control.

To achieve this, I will address seven of the 15 established disposition considerations that are relevant to this matter and have been spoken to by Ms. Vanessa Stewart, the Prosecutor, in her submissions on May 9, 2022. The relevant considerations are: Public interest; seriousness of the misconduct; employment history; deterrence; damage to the reputation of the police service; effects of publicity; and consistency of disposition.

Public Interest

The Prosecution led with the often-quoted case of Bright and Konkle (Board of Inquiry, Ontario *Police Services Act*, March 14, 1997) which states:

Good character in a police officer is essential to both the public's trust in the officer and to the police service's ability to utilize that officer. The public has the right to trust that its police officers are honest and truthful and absent extenuating circumstances, they will not be officers any longer if they breach this trust.

Ms. Vanessa Stewart submitted that it was clear from the corridor video (exhibit #10) that was played during the hearing, that the amount of force used was beyond what was necessary and acceptable, and that Cst. Vo's standard of conduct fell below the reasonable expectation the public and the Service has of its police officers. No matter how extreme the circumstances are, it is imperative that officers demonstrate discipline and restraint when exercising their authority.

I fully concur and find that Cst. Vo's action in striking a prone suspect during the arrest with punches and knee strikes leads no other conclusion than the strikes were unnecessary in the circumstances, certainly excessive, and could be interpreted as nothing more than punitive. The public must have the confidence that the police will exercise the appropriate force that is necessary for the situation at hand and only when warranted.

Public interest is an aggravating factor and the sanction imposed must sufficiently and appropriately address this factor.

Seriousness of the Misconduct

Ms. Vanessa Stewart asked the Tribunal to consider the actions of Cst. Vo as serious misconduct and submitted that an aggravating factor was that Cst. Vo intentionally minimized the force applied when completing his duty book notes and his occurrence report. Being a member of a Neighbourhood Resource Team, made up of experienced officers who are well trained in crime prevention, dealing with emergencies, and problem solving, he ought to have exercised better restraint and judgement and certainly should have documented his actions accurately.

The seriousness of Cst. Vo's behavior is an aggravating factor and I find the joint penalty submission sufficiently addresses the seriousness of the misconduct.

Employment History

Sgt. Patrick Laflamme submitted that Cst. Vo has been a police officer since 2009 (13 years), has admirable performance reviews, received plenty of internal and public letters of commendation, and has established for himself a great overall reputation. This has

led him to being a member of the Neighbourhood Resource Team, a sought-after position, much to his work ethic, reputation, and leadership skills.

Of note, there has been no filing of any prior discipline for consideration for the purpose of increased penalty.

Employment history is a mitigating factor in my consideration.

Specific and General Deterrence

As to specific deterrence, Ms. Vanessa Stewart submitted that the penalty in this case does need to send a clear message to Cst. Vo that his use of unnecessary force is not acceptable, will not be tolerated, and will be appropriately sanctioned.

A mitigating factor submitted by Ms. Vanessa Stewart is the subsequent acknowledgement by Cst. Vo of his misconduct, at least once before the Tribunal. He is an experienced police officer and there is no indication that he will not continue to be a valued, contributing member of the Ottawa Police Service.

I agree with the Prosecution's perspective that specific deterrence is not necessarily one of the more significant factors for my consideration.

Turning to general deterrence, all members of the Ottawa Police Service must understand that instances of excessive and/or unnecessary use of force shall be taken seriously and, depending on the circumstances, some cases can ultimately lead to a penalty of dismissal from the Service.

Damage to the Reputation of the Ottawa Police Service and The Effect of Publicity

As submitted by the Prosecution, Cst. Vo's misconduct did come to the attention of the public in September 2021 when CBC Ottawa reported the incident and aired/posted the apartment corridor video of the arrest.

It can certainly be anticipated that the Ottawa media will report on the decision of this Tribunal and once again, unfortunately, the Ottawa Police Service and Cst. Vo will suffer reputational harm within our community. It is my sincere hope that the penalty imposed will serve to temper public sentiment and will help to restore confidence in both in our Service's commitment to the public and to Cst. Vo's value as a police officer.

Consistency of Disposition

A hallmark of a fulsome and fair hearing is to ensure that the sanction arrived upon is within the range of sanctions from previous disciplinary hearings for consistency of

disposition. Each case presents different sets of circumstances, different aggravating and mitigating factors, however, a close study of similar fact decisions does assist in arriving at the appropriate sanction.

Ms. Vanessa Stewart cited nine decisions in the Book of Authorities (exhibit #7) to support the proposed joint submission on penalty, that being a forfeiture of seven days' pay. Seven of the nine cases cited were internal Ottawa Police Service unlawful or unnecessary use of force decisions dating from 2007 to 2018, with penalty ranging from seven to 12 days forfeited.

Both counsels submitted that the forfeiture of seven days for Cst. Vo is a sanction that is consistent with the other cases involving unlawful or unnecessary use of force and I agree.

Decision

Cst. Vo pleaded guilty and was found guilty of unlawful or unnecessary exercise of authority based on clear and convincing evidence. The Joint Submission on Penalty serves to meet the goals of the discipline process, considering all aggravating and mitigating factors. I find it fair to Cst. Vo, the needs of the Ottawa Police Service, and, most importantly, addresses public expectations.

I order Cst. Vo to forfeit seven (7) eight-hour days (56 hours) in accordance with section 85(1)(f) of the *Police Services Act*.

Chris Renwick
Superintendent (Retired)

Dated July 8, 2022