



IN THE MATTER OF
ONTARIO REGULATION 123.98
MADE UNDER THE *POLICE SERVICES ACT*. R.S.O. C.P. 15
AND AMENDMENTS THERETO
AND IN THE MATTER OF

DETECTIVE ANDREW COLE #1370
AND THE
YORK REGIONAL POLICE SERVICE

SENTENCE

APPEARANCES:

Mr. Jason Fraser	for the York Regional Police Service
Mr. William R. MacKenzie	for Detective Andrew Cole

BEFORE:

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

SENTENCE

Detective Andrew Cole Badge Number 1370

December 15, 2016.

Deputy Chief Terence Kelly (Ret.) before commencing with sentence in this matter, I wish to thank Mr. Jason Fraser, the Service prosecutor, and Mr. Bill MacKenzie, counsel for Detective Andrew Cole, along with the public complainant, Ms. Marian Booy, for their comments and exhibits entered, all of which have assisted me.

Detective Andrew Cole, #1370 has pled guilty and been found guilty of one count of discreditable conduct under section 2(1)(a)(xi) of the *Police Services Act*.

The guilty plea was advanced with an agreed statement of facts (*Exhibit #4*).

Agreed Statement of Facts

Discreditable Conduct

Detective Andrew Cole #1370 and other members of the No. 2 District Criminal Investigations Bureau were conducting an investigation into a series of residential break and enters, S. H., a young person, was one of the suspects under investigation.

Marian Booy was a probation officer and was, at all material times, assigned to supervise S.H. within the community.

During the course of the investigation, S.H. was arrested and detained in connection with unrelated matters. Investigators contacted the probation office and the correctional facility to confirm the young person's release and supervision plan. Upon his release, S.H. became the subject of police surveillance.

On the first day of surveillance, S.H. was observed with his mother but it soon became apparent to officers that S.H. was aware of their presence. On November 27th, 2015, search warrants were executed and a number of suspects were arrested including S.H.. During a subsequent interview, S.H. advised police that his probation officer had told him the police would be following him. He also indicated to police that his probation officer told him of the impending arrest of several of his friends.

Concerned that the investigation had been compromised, Det. Cole began investigating the conduct of Ms. Booy to determine whether she had obstructed police. After consulting with his supervisor and an assistant Crown Attorney, Det. Cole arranged to meet with Ms. Booy's two supervisors.

Det. Cole advised the probation supervisors of his belief that Ms. Booy had tipped off S.H. about the police investigation and impending arrests. He expressed concern that, as a result of Ms. Booy's alleged actions, evidence could have been compromised. In turn, the probation supervisors advised Det. Cole that Ms. Booy was an excellent probation officer with more than 30 years' experience. They did not believe that Ms. Booy would ever intentionally disclose sensitive police-related information to a client.

Det. Cole initially advised the probation supervisors that he had grounds to arrest Ms. Booy for obstructing justice and obstructing a peace officer. As such, they were under the impression that Det. Cole was trying to obtain information about Ms. Booy's background and work history before proceeding with criminal charges. However, by the end of the meeting, Det. Cole had indicated that it did not appear that Ms. Booy had intentionally tipped off her client. Det. Cole requested a meeting with Ms.

Booy to continue his investigation and if he determined that Ms. Booy lacked the requisite *mens rea*, to “educate” her on the intricacies of police investigations and the consequences of unintentional disclosure of sensitive information to probation clients.

On December 2nd, 2015, Ms. Booy received a call from her manager advising that the manager, assistant manager and Det. Cole would like to meet with her. She was not advised of the reason for the meeting during the telephone call. However, she assumed that the meeting was in regard to S.H. since she had discussed S.H. with Det. Cole in November. Approximately thirty (30) minutes later, Ms. Booy was asked to attend her manager’s office where she met with her manager, assistant manager and Det. Cole. She was observed by a number of her co-workers entering this closed door meeting with management and a police officer.

Det. Cole advised Ms. Booy that he was conducting a criminal investigation and that she had obstructed justice by telling S.H. that police were coming to arrest him. Ms. Booy was shocked by the accusation and became visibly upset. Ms. Booy acknowledged that, because S.H. was the subject of a supervision order and multiple recognizances of bail, she cautioned the young person to stay out of trouble, not hang around with his criminal friends and be mindful that the police would be watching him. This was the type of advice she routinely provided to clients as their probation officer. At no time did Ms. Booy divulge confidential information to S.H..

Ms. Booy advised Det. Cole that S.H. and his mother attended her office on November 13th, 2015 and was advised by S.H. and his mother that S.H. was being followed by police. At a meeting on November 26th, 2015, S.H. again indicated that he was being followed by police. Ms. Booy cautioned the youth that he needed to behave. She also advised S.H. that she had been informed about S.H. posting a photo on Facebook of himself smoking a joint. She cautioned S.H. about posting such photos since anyone could access posted photos including prospective employers and the police. Det. Cole informed Ms. Booy that she should not say anything to her clients about Facebook since it was a source of police investigations. He further advised that, if he was a probation officer, he would look up these “scum” that Ms. Booy was dealing with and she would see that they are “worthless pieces of shit.” While discussing S.H.’s mother, Det. Cole declared that she was a “cunt”. At this point, the probation manager interjected and asked

Det. Cole to refrain from using such language. At various points, Det. Cole described S.H. and his mother as “worthless pieces of shit, scum and lowlifes.”

Det. Cole informed Ms. Booy that he began typing a search warrant for her office documents and that he had conferred with an Assistant Crown Attorney. Det. Cole went on to explain *mens rea* as if this was a new term to Ms. Booy. Considering her decades of experience as a probation officer, Ms. Booy found this approach to be condescending. While Det. Cole ultimately indicated that he was convinced that Ms. Booy had not intentionally obstructed justice, he nevertheless berated her for compromising the police investigation and wasting significant police resources.

Det. Cole asked Ms. Booy if she had any questions. However, by this point she was too emotional to ask questions. Det. Cole asked for her address and date of birth for his report but Ms. Booy questioned why this was necessary. Det. Cole then asked Ms. Booy for her driver’s licence and, when she asked why, the officer told her that she was a “person of interest” and that it was normal procedure. He also advised her that he would wait outside her workplace and follow her to her vehicle to get her information that way. Fearing that Det. Cole would be waiting for her in the parking lot, Ms. Booy gave him her address.

At the conclusion of the meeting, Ms. Booy left her manager’s office, returned to her office and slammed the door closed. A fellow probation officer went to see if she was alright and found that Ms. Booy was visibly upset. The co-worker then went toward the manager’s office and passed Det. Cole and the assistant manager in the hallway. She overheard Det. Cole say “occupational hazard” as he looked at Ms. Booy’s closed office door.

The manager and assistant manager checked on Ms. Booy after Det. Cole left. Colleagues then stayed with Ms. Booy to console her and ensure that she was okay.

LE 005 Processing the Offender – Arrest, Provincial Offences and Release (“LE 005”) defines investigative detention as:

"The assumption of control over the movements of a suspect by demand or direction when there are reasonable grounds to suspect that the individual is connected to a particular crime and that detention is reasonably necessary to further the investigation of that crime. Detention may occur physically or psychologically. Psychological detention occurs when a subject believes that he or she must comply with an officer's commands or where a reasonable person would believe that they are detained under the circumstances."

Ms. Booy believed that, under the circumstances, she was being detained by Det. Cole and was not free to leave the manager's office. She believed that Det. Cole was gathering further evidence from her, based on his accusations and questions, and she assumed that she was going to be arrested. Having regard to the shock of being accused, without warning, that she was being investigated for a criminal offence, Ms. Booy was unable to turn her mind to asking if she was going to be arrested or seeking legal advice until well after her interaction with Det. Cole had ended.

LE 005 requires a police officer to note in detail in the officer's memo book the reason, duration, manner and circumstances of an investigative detention. The detention must be brief, necessary and no more intrusive than is required in the circumstances given consideration of the offence being investigated and information known about the individual suspect. The officer must remain aware of conduct which may give rise to a psychological detention. Upon detention, the officer must immediately inform the individual of her rights to counsel and make reasonable efforts to facilitate contact with counsel if the suspect indicates that they wish to exercise rights to counsel. In this circumstance, Det. Cole engaged in an investigation that caused Ms. Booy to believe she was detained and therefore experienced a psychological detention. His actions did not conform to LE 005, nor did he do anything to make Ms. Booy understand that she did not have to comply with his commands and that she was not being detained and was free to leave.

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 Det. Andrew Cole's pleas of guilt. If not for the guilty pleas and the apology of Det. Cole to Ms. Booy 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 pleas and the Agreed Statement of Facts, I believe the allegations when taken in the broader context of employee/employer relations it is prudent to provide written reasons for my findings.

The duties the police have to perform are varied and exacting; they are increasing and probably still increase in variety and complexity, and a person cannot make a good officer unless their general intelligence, memory and power of observations are distinctly above average.

Their character should be unblemished, they should be humane and courteous, and generally possess a combination of moral, mental and physical qualities not ordinarily required in other employments. Further, when they become police officers, they are entrusted with powers, which may gravely affect the liberty of a subject, and they must at all times be ready to act with tact and discretion and on their own initiative and responsibility in all sorts of contingencies. The burden of individual discretion and responsibility upon a police officer is much greater than that of any other public servant of subordinate rank. Det. Andrew Cole failed in this regard by failing to properly investigate the actions/directions of the probation officer, Ms. Booy, with her client S.H. Further, Det. Cole's use of profane and abusive language and, in particular, the language used to describe S.H.'s mother.

Det. Cole's investigation of Ms. Booy was wilfully neglectful and fell well below the performance expected from a police officer of any level of experience, notwithstanding a supervisor with his number of years of experience in policing.

The Victim Impact Statement made by Ms. Booy during the hearing process, particularly resonated with me. She wrote in part:

"The fact that I have not be able to challenge these accusations against me and clear my reputation is a huge factor in my inability to move forward with my life. It continues to haunt me. Even now almost a year later, I am overcome with anger and sadness that my reputation, my honour, the significance of my whole career as a probation officer has been so severely damaged by this cavalier abuse of power..."

The police officer is the person most responsible for initially setting the wheels of the administration 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 and its members.

With respect to penalty 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 that would occur to the reputation of the Police Service. I also note 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 transgression.

I have considered all of these principles and, in addition, have directed my mind to the principle that the primary purpose of the disciplinary process is to correct errant behaviour. The standards are high and rightly so, if respect from the community is to be obtained.

The repercussions of this officer's conduct in this instance not only affected the complainant Ms. Booy, but also sent a ripple effect throughout the probation office.

I can only hope that Det. Andrew Cole, together with all serving members of this Police Service, will take heed of the circumstances of this case and learn the consequences of such misconduct.

Detective Cole no doubt regrets his behaviour and I feel assured that should a similar situation arrive in the future, he will conduct himself in a manner of a sworn police officer.

To reflect the seriousness of this offence, and as a general deterrent, it is the decision of this tribunal that on this date November , 2016, **Detective Andrew Cole, Badge Number 1370 will forfeit 8 10-hour days (80 hours) to be served (worked) at the discretion of his unit commander. The above penalty is submitted in accordance with Section 85(1)(f) of the *Police Services Act* and will undergo specified training, particularly: a) Investigative detention training and; b) gender sensitivity training in accordance with section 85 (7)(b) of the *Police Services Act*.**

Terence Kelly

Deputy Chief

York Regional Police (Retired)

Hearing Officer

Sentence Date: December 15, 2016 (sent electronically)