

Exh 4.

IN THE MATTER OF
CONSTABLE LEE DOUGLAS #3330
AND IN THE MATTER OF A HEARING INTO ALLEGATIONS OF
MISCONDUCT PURSUANT TO PART V OF THE
POLICE SERVICES ACT
AND IN THE MATTER OF A PROPOSED PLEA OF GUILTY AND A JOINT
SUBMISSION BETWEEN PROSECUTION, DEFENSE AND PUBLIC
COMPLAINANT REGARDING
PENALTY AND THE FACTS ON WHICH PENALTY IS TO BE BASED

AGREED FACTS

Background:

1. Constable Lee Douglas #3330 ("Cst. Douglas") has been a police officer for approximately 13 years.
2. At all material times he was acting in his capacity as police constable of the Durham Regional Police Service ("DRPS").

Agreed Statement of Facts:

3. For the purposes of a plea of guilty and joint submission on penalty, the prosecution, defense and public complainant agree to the following facts:

Discreditable Conduct:

- a. On April 21, 2015, at approximately 5:30 p.m., Cst. Douglas pulled over a vehicle driven by Mr. James Smith (the "Public Complainant"). Cst. Douglas stated that his reason for pulling over the Public Complainant's vehicle was because he observed the Public Complainant make an obscene hand gesture, specifically the middle finger. Cst. Douglas felt this gesture was directed towards him. The Public Complainant stated that the gesture was actually directed toward his passenger.

- b. Cst. Douglas lacked the grounds to pull over the Public Complainant. There is no legal authority to conduct a traffic stop on the basis of an obscene hand gesture.
- c. Cst. Douglas proceeded to issue the Public Complainant a Provincial Offence Notice ("PON") for an "Improper Arm Signal" pursuant to section 142(4) of the *Highway Traffic Act*, R.S.O. 1990. c. H. 8 (the "HTA"). Cst. Douglas lacked the proper grounds for issuing this PON.
- d. Cst. Douglas also issued the Public Complainant a PON for "Fail to Sign Ownership in Ink". This is no longer an offence prescribed by the HTA. Accordingly, there was no legal authority to issue this PON to the Public Complainant.
- e. Additionally, Cst. Douglas issued the Public Complainant a PON for "Drive Handheld Communication Device" pursuant to section 78.1 of the HTA. Cst. Douglas did not observe the Public Complainant driving while holding a cellphone. Rather, he observed a cellphone in the Public Complainant's lap only after he had pulled over the vehicle. Cst. Douglas therefore lacked sufficient grounds for issuing this PON.

JOINT SUBMISSION ON PENALTY

Plea:

4. Cst. Douglas pleads guilty to the following misconduct:
 - a. One count of Discreditable Conduct, contrary to section 2(1)(a)(xi) of the Code of Conduct, Ontario Regulation 268/10, and, therefore, contrary to section 80(1)(a) of the *Police Services Act* R.S.O. 1990, c. P.15.
5. The parties acknowledge the presence of the following aggravating and mitigating factors.

Aggravating Factors:

6. In particular, the parties recognize the presence of certain aggravating factors.

Public Interest

- a. The public has an interest in ensuring that members of the DRPS are engaged in the lawful execution of their duties.
- b. When members of the DRPS conduct traffic stops without the proper grounds, this undermines this public interest and offends *Charter* values.
- c. When members of the DRPS issue PON's without the proper grounds or the legal authority to do so, this conduct also undermines the public interest.

Damage to the Reputation of the Service

- d. Cst. Douglas' conduct reflects poorly on the DRPS. If reasonable members of the public were aware of Cst. Douglas' conduct this would bring the DRPS' reputation in to disrepute.
- e. It is vital that the public do not perceive DRPS members as exceeding their lawful authority or otherwise acting outside the law.

Specific and General Deterrence

- f. Cst. Douglas must be deterred from acting in a similar fashion going forward. The proposed penalty will serve as a warning to Cst. Douglas that similar misconduct will be met with serious consequences.
- g. DRPS members generally must be made aware that the conduct displayed by Cst. Douglas will not be tolerated. The proposed penalty will signal to the DRPS membership that this type of misconduct will not be tolerated and that significant penalties will result if such conduct is discovered.

Mitigating Factors:

7. In particular, the parties also recognize the presence of certain mitigating factors.

Remorse:

- a. Cst. Douglas has admitted his wrongdoing and cooperated in bringing this matter to a resolution.
- b. This guilty plea represents an acknowledgment of wrongdoing by Cst. Douglas and his remorse for such wrongdoing.

Rehabilitation Potential:

- c. While Cst. Douglas' record is not entirely free from formal discipline, there is no discipline on his record for similar misconduct. Cst. Douglas' above-noted cooperation demonstrates his recognition of the impropriety of his behavior and suggests that he is unlikely to commit similar misconduct in the future.

Meaningful Cooperation in the Discipline Process:

- d. Cst. Douglas' guilty plea has negated the need for a hearing in this matter and has saved the DRPS from having to call evidence to prove the misconduct. This cooperation in the discipline process should be considered a significant mitigating factor in the circumstances.

Proposed Penalty:

8. In light of the above, the parties jointly submit that Cst. Douglas be required to forfeit forty (40) hours without pay, pursuant to subsection 85(1)(f) of the Act. The forfeited time shall be worked at the discretion of the officer's unit commander during the officer's regularly scheduled time off and the officer shall not be entitled to any monetary compensation under the Uniform Collective Agreement while serving this penalty. This penalty provision must be completed prior to May 1, 2017

Agreed statement of facts and joint submission on penalty accepted and ordered by Hearing Officer Inspector Todd Rollauer on this 31st day of January 2017.

Constable Lee Douglas #3330

A handwritten signature in black ink, appearing to read "TR #14", is written above a horizontal line.

Inspector Todd Rollauer