

TO: Police Constable Ryan SIMPSON (8832)

YOU ARE ALLEGED TO HAVE COMMITTED MISCONDUCT IN THAT YOU DID WITHOUT GOOD AND SUFFICIENT CAUSE MAKE AN UNLAWFUL OR UNNECESSARY ARREST; contrary to Section 2(1)(g)(i) of the Schedule Code of Conduct of Ontario Regulation 123/98 and therefore, contrary to Section 80(1)(a) of the Police Services Act, R.S.O. 1990, as amended.

This hearing is concerned with the following allegation:

Being a member of the Toronto Police Service attached to number 52 Division, you were assigned to uniform duties.

On Sunday, June 27, 2010, you were on duty and assigned to the G20 Summit Detail.

You stopped N.W. who was riding his bicycle east on Bloor Street West near Spadina Avenue in the City of Toronto. You detained N.W. for Breach of the Peace; you handcuffed and searched him before placing him in the rear of a marked police vehicle.

N.W. was never advised of the reasons for the detention nor was there a disturbance or threat or tumultuous and riotous activity occurring at the time N.W. was placed under investigative detention.

After approximately twenty minutes, you released N.W. without charges.

In so doing, you have committed misconduct in that you did without good and sufficient cause make an unlawful or unnecessary arrest.

GENERAL OVERVIEW:

On Saturday, June 26, 2010 and Sunday, June 27, 2010, the City of Toronto was hosting the G20 meetings. As a result, there was an extensive police presence in downtown Toronto.

On Saturday, June 26, there was extensive rioting in the downtown area. Nicholas Wright in the Corbett Report (Exhibit #5) stated that he was there on Saturday together with “approximately 10,000 people” marching from the Provincial legislature down to the site of the summit and he witnessed police vehicles being burned and the breaking of windows. Police Officer Simpson was also on site and viewed the same damage.

On Sunday, June 27, Police Constable Simpson was assigned with Police Constable Crawford for patrol duty on Bloor Street West at or near Avenue Road. Bloor Street West at or near 151 Bloor Street West was under construction with Bloor Street reduced to two lanes for traffic going east and one lane for traffic going west. There was construction material on both the north and south sides of these two traffic lanes.

EVIDENCE

Nicholas Wright:

Nicholas Wright gave evidence that on Sunday June 27, 2010, he was cycling in an easterly direction with his girlfriend on Bloor Street West intending to go to his father’s birthday when at or near 151 Bloor Street West he saw a police officer who stepped out onto the roadway and

stopped him. At that time, Mr. Wright testified that he was wearing a bicycle helmet, a neck scarf around his neck, a red hooded t-shirt, running shoes, and a backpack. The police officer grabbed his shoulder and Mr. Wright was told that he was under arrest for wearing a disguise. Mr. Wright is a lawyer and stated that he knew his rights and knew that as a cyclist under the *Highway Traffic Act*, he would only have to identify himself by giving his name and address; which he did. Mr. Wright testified that he was handcuffed and led to the marked police vehicle (scout car) on the side of the road where the police officer began to search his backpack. The police officer continued to ask questions but Mr. Wright decided to remain silent. Mr. Wright advised the police officer that he was not consenting to the search. Mr. Wright was directed to another police vehicle while he was handcuffed and placed in the back of the vehicle. He was again advised by Police Constable Simpson that he would be arrested if he did not answer any of the questions. Mr. Wright remained silent. Police Constable Simpson entered the front of the scout car and conducted a CPIC check. Upon return of the CPIC search, wherein it was shown that there were no outstanding convictions or releases, Mr. Wright was asked what he wanted to do. Mr. Wright asked to be released and leave whereby Police Constable Crawford took off the handcuffs and Mr. Wright was released. Mr. Wright testified that he asked Police Constable Simpson twice for his name and badge number and was advised that it was "Steve Christopher". Mr. Wright testified that upon release he took some paper from his backpack and started to make notes of this incident. At a later time, he reduced his writings to a digital format and destroyed the original notes.

On cross-examination, Mr. Wright admitted that his girlfriend was not with him at the scene of the detention. He was in fact part of the "Critical Mass" cycle group and in fact was the lead

cyclist of approximately 100 cyclists immediately before his detention. In his meetings with the media, ie. Toronto Star and Corbett Report; his affidavit in the Small Claims Court application; his complaint to the OIPRD; and his *viva voce* evidence given at this hearing, he did not directly mention that he had a pair of swimming goggles around his neck. On being asked why he left out this important detail, he replied that it “could look bad for his story”.

Mr. Wright further complained as follows in the Corbett Report:

“I did indeed ah a way I was you know fortunate or perhaps unfortunate I know. But at every turn I seem to participate in in marches and rallies and then just by luck end up not being there when the police moved in and did mass arrests. But on the Sunday ah I did have a run in with the police. And this was by no means was unusual. This was happening to virtually everyone.”

[Exhibit #5, page 3, item 00:06:20]

Ryan Simpson:

Police Constable Simpson testified that he was part of the police presence during the G20 meeting in Toronto. He was witness to the damage caused by elements of the crowd on Saturday, June 26, and was assigned for patrol duty on Sunday, June 27, on Bloor Street West at or near 151 Bloor Street West. He was accompanied by Police Constable Jason Crawford. Police Constable Simpson was in a parked scout car on the south side of Bloor Street West. Immediately prior to this incident they were visited by superior officers and were instructed to be on watch for persons wearing goggles, gas masks, balaclavas and backpacks similar to the group that caused the fires and damage to property on Saturday June 26. Such persons were to be arrested for breach of the peace or wearing a disguise with intent to breach the peace.

While in the scout car, Police Constable Simpson testified that he saw a single lead cyclist travelling easterly at a high rate of speed between the single east and westbound lanes of traffic. Police Constable Simpson noted that the cyclist was wearing a red t-shirt and was being followed by hundreds of other cyclists riding through the traffic. Police Constable Simpson stepped out of the scout car and raised his hand and said “stop”. Mr. Wright stopped at which time Police Constable Simpson saw that the red t-shirt had a hood, the bandana was tied in a “vee” around the neck, there was a pair of swim goggles around the neck, and Mr. Wright was carrying a backpack. Mr. Wright shouted for the followers to go back and they so responded.

Police Constable Simpson testified that he asked Mr. Wright for some form of identification and was given a driver’s licence by Mr. Wright who had it in his right front shorts pocket. On Mr. Wright being asked further questions as to why he was at the site, Mr. Wright advised Police Constable Simpson that he was going to exercise his right to silence and would not give any more answers. Police Constable Simpson testified that he advised him that he would be detained for further investigation. Mr. Wright was advised that he had to get off his bike for his safety and the officer’s safety as they were in the middle of the road and that he had to come to the scout car.

When Mr. Wright removed his backpack, Police Constable Simpson testified that he felt a metal canister in the bag. On asking Mr. Wright what was in the bag, Mr. Wright advised the police officer that he would not answer any questions and would not consent to a search of the bag. Both Mr. Wright and Police Constable Simpson walked to the scout car which was parked on the south side of Bloor Street on some construction material.

At the vehicle, Mr. Wright was advised that he was not under arrest but was detained for purposes of investigation for possible breach of the peace depending on what was found in the bag and the metal container and could be charged with breach of the peace. Mr. Wright was further advised that he would be handcuffed and placed in the back of the vehicle for both the safety of Mr. Wright and the officer while the further investigation was completed. At that time Police Constable Simpson testified that he conducted a CPIC check and found that there was nothing of significance. CPIC also confirmed the information on the driver's licence. Police Constable Simpson testified that he also checked Mr. Wright's backpack in the trunk of the police vehicle and found that the metal container was in fact a water bottle containing water.

As a result of this investigation, he asked Mr. Wright what he wanted to do and Mr. Wright advised that he wanted to leave. Police Constable Simpson testified that he opened the scout car door and had his partner Police Constable Crawford remove the handcuffs. Upon releasing Mr. Wright, Police Constable Simpson testified that he saw Mr. Wright typing on his cellphone while twice asking for the officer's name and being told "P.C. Ryan Simpson" notwithstanding Police Constable Simpson's name being on a Velcro strip attached to his vest.

Police Constable Simpson testified that Mr. Wright was never under arrest either for "wearing a disguise with intent" or possible "breach of peace" upon completing his search of the contents of the backpack. The total time of detention was 20 minutes.

Credibility:

The burden of proof lies with the prosecutor to elicit evidence of a “clear and convincing” nature to satisfy this burden.

Mr. Wright in his evidence, before cross examination, would have this hearing believe that he and his girlfriend were on a Sunday bike ride going to his father’s birthday party. His clothing was appropriate for such activity. Upon cross-examination, it was ascertained that he was in fact a lead rider for a group known as “Critical Mass” and was in a demonstration along Bloor Street West.

Mr. Wright failed to inform that he had on his neck a pair of swim goggles to be used as protection in the event tear gas was used when he swore his complaint, and in post-event interviews and in his small claims court affidavit. He explained this failure “would look bad for his story”. Mr. Wright’s comments in the Corbett Report would tend to show that he was disappointed in not being previously arrested for demonstrating but such opportunity became available on Sunday, June 27, when he was stopped by Police Constable Simpson.

I find that where Mr. Wright’s narrative conflicts with that of Police Constable Simpson, I accept the evidence of Police Constable Simpson who gave his evidence in a clear and convincing manner.

Analysis:

There still remains the matter of whether any rights owing to Mr. Wright were violated by the actions of Police Constable Simpson during the investigative detention. The *Canadian Charter of Rights and Freedoms* states:

8. Everyone has the right to be secure against unreasonable search or seizure.
9. Everyone has the right not to be arbitrarily detained or imprisoned.
10. Everyone has the right on arrest or detention
 - (a) to be informed promptly of the reasons therefor;
 - (b) to retain and instruct counsel without delay and to be informed of that right.

The relevant law as to investigative detention and incidental search powers thereto has been extensively reviewed in *R. v. Mann*, [2004] 3 S.C.R. 59 and *R. V. Simpson* (1993) 12 O.R. (3d) 182. The maxims therein will be incorporated in my judgment.

Investigative Detention

The Supreme Court of Canada found:

To summarize, as discussed above, police officers may detain an individual for investigative purposes if there are reasonable grounds to suspect in all the circumstances that the individual is connected to a particular crime and that such detention is necessary. In addition, where a police officer has reasonable grounds to believe that his or her safety or that of others is at risk, the officer may engage in a protective pat-down search of the detained individual. Both the detention and the pat-down search must be conducted in a reasonable manner. In this connection, I note that the investigative detention should be brief in duration and does not impose an obligation on the detained individual to answer questions posed by the police. The investigative detention and protective search power are to be distinguished from an arrest and the incidental power to search on arrest, which do not arise in this case.

Reference: R. V. Mann, supra, at para 45.

Police Constable Simpson saw Mr. Wright leading a large group of cyclists. Mr. Wright was wearing a red hoodie, backpack, and a bandana and swim goggles around his neck. The clothing and accessories were typical of the clothing and accessories worn by the group that caused all the damage to police vehicles and business premises the previous day. As a result of these objective observations, Mr. Wright was stopped and asked for identification. Police Constable Simpson received Mr. Wright's driver's licence and asked as to the contents of the backpack as he felt a metal canister in the pack. Mr. Wright advised that he was going to exercise his right to remain silent. Police Constable Simpson advised Mr. Wright that he would be detained for further investigation and a search of the backpack with the potential of being charged with breach of the peace. To this end, Mr. Wright was taken to the scout car under handcuffs to protect both the police officer and Mr. Wright as the contents of the backpack were still unknown.

Mr. Wright was placed in the scout car and his backpack was searched and it was found that the metal canister contained water. A CPIC check came back negative for any outstanding charges or releases. Upon satisfaction that there were no reasonable and probable grounds for arrest, Mr. Wright was allowed to leave the scene. The time of the detention was approximately 20 minutes.

Application to the Facts:

Did the detention and search of Mr. Wright in these particular circumstances meet the acceptable standards. Police Constable Simpson had reasonable grounds to detain Mr. Wright. He matched the description of the persons who had on the previous day caused fire damage and general window breakage in the city. His clothing and the bandana could have been used to provide a

disguise and the swim goggles could have been used to prevent injury in the event of tear gas. The fact that Mr. Wright was leading approximately 100 riders and upon further observation was carrying a metal container in his backpack would at the very least cause Police Constable Simpson to want to investigate further.

There were reasonable grounds for proceeding with a search of Mr. Wright and his backpack as there was the logical possibility that Mr. Wright could have had something in the metal container that could cause damage to private property as was occasioned by the rioters the previous day. The use of the handcuffs was reasonable in these circumstances as until the search of the backpack was completed, the safety of Mr. Wright and Police Constable Simpson was still in question.

Conclusion:

From the evidence accepted by this hearing, I find that Mr. Wright was never under arrest but was detained for investigation. In regards to investigative detention, I accept as the proper legal principles those set out in *R. v. Mann* and *R. v. Simpson*. I find that the prosecution has failed to prove the allegations as set out in the Notice of Hearing and all charges of misconduct on the part of Police Constable Ryan Simpson will be dismissed.

DATED at Toronto this 12th day of November, 2013.

**Walter S. Gonet
Hearing Officer**

DATED at Toronto this 12th day of November, 2013.

A handwritten signature in black ink, appearing to read "W. S. Gonet", written over a horizontal line.

**Walter S. Gonet
Hearing Officer**