

DURHAM REGIONAL POLICE SERVICE

Police Services Act Disciplinary Hearing

Reasons for Decision

Cst. Caroline Stenzel #909

Allegation of Unlawful or Unnecessary Exercise of Authority

Hearing Officer:

Inspector J. Bruce Townley
Durham Regional Police Service

Parties:

Complainant	Mr. Jerry Aman
Counsel for the Prosecution	Mr. Ian B. Johnstone
Counsel for Cst. Stenzel	Mr. William Mackenzie

Allegation

Cst. Stenzel is alleged to have committed misconduct in that on or about July 30, 2011, used unnecessary force against Jerry Aman in the execution of duty, thereby committing the offence of Unlawful or Unnecessary Exercise of Authority, contrary to Part V, clause 80 (1) (a) of the Act as amended, and clause 2 (1) (g) (ii) of the Schedule Code of Conduct, O. Reg. 268/10 as amended under the Act.

Background

On Saturday July 30, 2011, an anniversary backyard party took place at 106 Colston Ave in Brooklin, the residence of Vince and Vangie Gervais. There were approximately 50-60 people in attendance including young children, several teenage kids and 20 – 30 adults. There had been a bonfire fire, but was extinguished by the homeowner after Whitby Fire had attended. The patio area surrounding a pool was two tiered with upper level closer to the house. In the back of the yard was a pool house that contained a bar and a television.

Cst. Stenzel was dispatched to the mentioned address shortly before 11pm for a loud pool party and a backyard fire. Cst. Stenzel arrived on her own and after hearing loud music coming from the rear of the residence, she decided to enter the backyard through a secured side gate. The officer utilized her flashlight, which gained the attention of the some of the people at the party.

A number of females, one who was later identified as Vangie Gervais, approached Cst. Stenzel. The officer advised Ms. Gervais there had been complaints from neighbors and was asked to turn the music down. An argument ensued which gained the attention of Ms. Gervais' sister in law, Cathy Santiago. The discussion became more heated. A confrontation occurred between Ms. Santiago and the officer.

Mr. Jerry Aman, the brother of Ms. Santiago, became involved in the discussion. The argument became more heated and a physical confrontation ensued between Mr. Aman and Cst. Stenzel, which resulted in Mr. Aman being struck in the face by the officer. Mr. Aman sustained an injury to his mouth.

A short period of time later, additional officers arrived. Including A/Sgt. Romano who took control of the scene. By that time, people had calmed down. Discussions took place and officers subsequently cleared the scene.

On August 4, 2011, Mr. Jerry Aman filed a complaint with the Office of the Independent Police Review Director (OIPRD). The Durham Regional Police Professional Standards Branch conducted an investigation into the allegations, which resulted in Cst. Stenzel being charged with misconduct.

The Evidence

Testimony was received from four witnesses for the Prosecution and two witnesses for the defense. In addition, four exhibits were tendered as evidence during the two-day hearing.

Evidence of Prosecution Witnesses

Mr. Jerry Aman

Mr. Aman testified that he has been employed as a Plant Administrator for the City of Toronto for 23 years. He is 5'7" and weighs 175 lbs. He stated that the party at 106 Colston Ave was that of a celebration for his 22nd wedding anniversary and his sister (Vangie Gervais) 2nd anniversary. There were approximately 50 – 60 people in attendance ranging from a 6 month old baby, to mature adults in their 50s. There were also a number of teenagers present. Approximately 20-30 were adults.

Mr. Aman testified that he had consumed 4-5 alcoholic drinks that day. The drinks had been spaced out over a several hour period, as he had been entertaining and barbequing.

People were relaxing, sitting around the bar listening to music and watching sports on the television. The Fire Department attended and requested that the bonfire be extinguished. Approximately 15 minutes after Fire left, Police arrived. Mr. Aman noticed someone (Cst. Stenzel) come through the gate with a flashlight and heard the officer scream out "turn the music down, turn the music down."

Shortly after, Mr. Aman observed his sister Cathy Santiago speaking with the officer. He saw the officer grab his sister's wrist and heard the officer state to Santiago "get away from me".

Mr. Aman testified he took offence to seeing what the officer did to his sister and walked towards them and told the officer "relax, we're good people here. There's no need for this". He also stated, "As a private citizen, I pay for your salary". Mr. Aman felt the officer took offence to the comment. He indicated that his hands were at his shoulder level and his palms facing out. Cst. Stenzel stepped down off the upper level and proceeded to grab Mr. Aman by the shirt, ripped it and punched him in the mouth, causing a bloody lip. Aman stopped and stated, "What's the problem officer?"

When questioned by the Prosecution, Mr. Aman stated the officer grabbed him with her left hand and then punched him with a closed fist, striking him on the lip. Mr. Aman later required medical attention. The strike to his mouth resulted in him losing a tooth several months later. Mr. Aman advised that he had dental surgery three to four weeks prior to the incident on July 30.

Mr. Aman continued testifying that after receiving the punch, he backed off and was grabbed by his wife. He cursed the officer calling her a "fucking bitch." Mr. Aman's sister, Agnes Aman

intervened, getting in between the officer and Mr. Aman. Ms. Aman asked for the officers badge number.

The officer proceeded to grab something from her pocket area, concerning Mr. Aman that it might be a taser. At that point, Mr. Aman's cousin, Arthur Baradas stated to the officer, "Officer, please don't do this, please don't do this". Cst. Stenzel backed off as the homeowner, Vince Gervais (brother in law) intervened, telling the officer "Officer, there is no need for this."

At this point, Mr. Aman was removed by family members away from the officer. A short time later, a number of other officers arrived. Comments were made to Mr. Aman by the additional officers. The Sergeant then called the officers aside and had a private talk with them. Afterwards, the Sergeant came over with Cst. Stenzel and she motioned Mr. Aman to come with her. He refused stating, "I don't want anything to do with you. You've just assaulted me." Mr. Aman was approached by Sergeant Romano who apologized for what had transpired.

Cross Examination

Mr. McKenzie questioned Mr. Aman as to a collaborative discussion regarding the events that took place the next day with some of the other witnesses that will be testifying. Mr. McKenzie questioned Mr. Aman as to whether he or any other had written out an independent statement or separate statements prior to getting together to discuss the events. Mr. Aman agreed that the OIPRD complaint was a result of a group discussion. Mr. McKenzie went on to question Mr. Aman as to his ability to hear the conversation between his sister and the officer, with the music playing and he being 30-40 feet away from them. Mr. Aman stated that he could hear the conversation.

Mr. Aman admitted as he approached the officer and his sister, he had a beer in his hand. Mr. Mackenzie questioned Mr. Aman regarding his evidence that he was mad when he approached the officer and his sister. Mr. Aman clarified that he was not mad at the officer and agreed with Mr. Mackenzie that he misspoke when he stated he was mad.

When Mr. Mackenzie suggested to Mr. Aman that that the officer actually made contact with her hand on his shoulder and that Mr. Aman knocked her hand down with his right arm, Mr. Aman denied the suggestion. Mr. Aman stated as previous that the Officer grabbed his shirt and punched him the face with a closed fist.

When Mr. Mackenzie suggested that the tooth that fell out some 10 months later was a result of surgery prior to the incident, Mr. Aman stated that the surgery was on another tooth, not the one that fell out.

Mr. Mackenzie continued to cross-examine Mr. Aman about why his wife Geraldine had to pull him away and why he used profane language when his 9-year-old daughter was present. Mr. Aman agreed that his daughter was present and that after being punched he was heated. He

stated, "I was mad after getting punched." Mr. Aman again denied being mad prior approaching the officer.

Mr. Aman reaffirmed that he consumed 4-5 beers during the seven-hour period and stated, "Yeah, I always pace myself because I don't like getting drunk."

Mr. Mackenzie questioned Mr. Aman as to his interview with Sgt. Wilson of the Professional Standards Unit. In his statement to Sgt. Wilson, Mr. Aman stated that his wife grabbed and pulled him away as he was punched by Cst. Stenzel but now has stated that he was punched first and then pulled away. When asked, Mr. Aman agreed there was a little difference. Mr. Aman continued by saying, "I know she grabbed me because my wife's very protective." "And she grabbed me because she just didn't want me getting hurt."

Mr. Mackenzie continued by suggesting to Mr. Aman that he was being aggressive with the officer and that's why his wife pulled him away. Mr. Aman denied the suggestion. Mr. Aman continued by stating he never got in the officers face and kept approximately four feet back. When Mr. Mackenzie suggested the officer wouldn't have been able to reach him, Mr. Aman stated "Well, she, she came at me." "She was the one that came forward and got into my space. I didn't get into her space. I, I know better not to get into – we respect the police officers."

Re-examination

Mr. Johnstone asked Mr. Aman to clarify the distance between him and the Officer during the incident. Mr. Aman indicated it was approximately four feet. When asked if anyone else grabbed him after being punched, Mr. Aman stated "it was just my sister and then I think my might have been my brother in law that might have push, push us over. I'm not a hundred percent. I can't remember."

Mr. Vincent Gervais

Mr. Gervais testified that he lives at 106 Colston Ave in Brooklin. He is employed as a National Sales Manager for a Medical Corporation. He advised that on the evening in question, it was just before 11pm when he noticed a commotion. Mr. Gervais noticed a figure dressed in black flashing a flashlight which he thought was odd. He went over and realized it was a police officer. Mr. Gervais introduced himself.

Mr. Gervais indicated that maybe a minute afterwards, Jerry Aman joined him, and they were both trying to understand what the officer was doing. Mr. Gervais overheard Jerry say, "Take it easy, we're just having a family celebration. We're just good people. It's all family."

Mr. Gervais went on to state "From there, I saw Officer Stenzel essentially punch Jerry." Mr. Johnstone had Mr. Gervais clarify the description of the patio area. Mr. Gervais stated there were two levels, with there being a 12-inch step up to the upper level of the patio. Mr. Gervais stated the officer was on the upper level and Mr. Aman was on the lower level. They were approximately three feet apart.

Mr. Gervais recalls hearing the officer indicate she was there because of a noise complaint. He also heard his wife say to the officer “we were just about to turn the music down.” He also stated there were approximately 50 people at the party, all being family, approximately fifteen kids, the rest being adults.

Mr. Johnstone asked Mr. Gervais to state what happened prior to the confrontation with the officer and Mr. Aman. Mr. Gervais stated he remembers Mr. Aman saying to the officer “Just take it easy. We’re having a family celebration.” He also heard Mr. Aman state “By the way, I pay your wages”. After Mr. Aman was hit, Mr. Gervais heard him say, “Get the hell out of here you fucking bitch”.

Mr. Gervais was standing to Mr. Aman’s left at the time. He had a clear view of the officer and Mr. Aman. When asked how the punch was delivered, Mr. Gervais stated that it looked like a one handed motion. He stated ‘Again, I saw a hand movement in the face in the mouth’. Mr. Gervais also advised he never saw Mr. Aman swing at the officer, get into her personal space or move towards her.

Mr. Gervais continued stating that after being punched, Mr. Aman went to the back of the property. Mr. Gervais had a conversation with Cst. Stenzel stating, “There’s no need for this, you know. We’re just having a family celebration. There’s kids here. I’m not sure if I understand why you’re calling for, for backup.” Cst. Stenzel responded by telling Mr. Gervais his guests were out of control, that as a homeowner, he should be able to keep all the guests and things under control.

Mr. Gervais stated he had consumed six to seven beers that day.

Cross Examination

Mr. Mackenzie questioned Mr. Gervais as to his statement given to Sgt. Wilson three months after the incident. Mr. Gervais testified that he did no draft any written statement about the events that took place on July 30, 2011. He also advised that several family members, including some of the witnesses discussed the events of July 30 a day or two later. They got together as a family because they were concerned about how they would address the incident with their kids and other family members. He stated they had recollections of the event.

When asked about how much alcohol he had consumed, Mr. Gervais stated he had consumed seven beers and was “just slightly inebriated, feeling well, feeling good.” He stated he would not have driven a motor vehicle. Mr. Gervais also advised that he observed Mr. Aman drinking. He stated, “Jerry was fine”.

When questioned about his conversation with Cst. Stenzel, Mr. Gervais agreed the conversation was cordial and the officer was not aggressive. When asked if Mr. Aman was really upset, Mr. Gervais stated “No, I wouldn’t say really upset because he just said, you know, take it easy. We’re just having a good time.” When asked if he saw Cst. Stenzel put her left hand out to stop Mr. Aman from coming any closer, Mr. Gervais stated that he didn’t remember seeing that.

When Mr. Mackenzie asked about the strike by the officer, Mr. Gervais agreed that Cst. Stenzel used an open hand palm strike. He also stated he didn't remember seeing a closed fist. He stated he saw it go towards Mr. Aman's face. He also advised that Mr. Aman's wife was directly behind them. He also agreed that Mr. Aman used profanity.

Re-examination

Mr. Johnstone asked Mr. Gervais as to how much Mr. Aman had to drink that day. He stated he wasn't counting but that he typically has four beers in an evening. He stated "He's a moderate drinker".

Ms. Cathy Santiago

Ms. Santiago testified that she a manager for the Scotia Bank. She advised that she was at 106 Colston Ave for an anniversary function for Jerry Aman, Vangie, and Vincent Gervais. After the Fire Department left, family was gathered around the backyard and she was sitting near the pool. Ms. Santiago then heard someone yelling to turn the music down. She turned around and realized it was an officer as she was close.

Ms. Santiago started talking to the officer and said, "It's not 11 o'clock yet. We thought we had until 11 o'clock to turn the music down. She put her hand up and said "we, we were under the assumption we have until 11 o'clock." Ms. Santiago went on to state "At that time, she grabbed my wrist and she yanked it. And she said move away from me." She went on to say that she did not sustain any injury.

Ms. Santiago went on to advise that the officer came forward to her when she grabbed her wrist. She stated "At that time, my husband and my son pulled me away. I remember saying to her you can't do this. I, I became upset. Because I didn't know why she did that to me." "I wanted an explanation from her. My husband and son pulled me. Leave it. So they're telling me to leave it. They pulled me away."

Mr. Aman (Ms. Santiago's brother) walked towards them, saying to the officer "Relax, we're having a great time." She didn't hear the rest of the conversation. She saw the officer lean forward. Her brother had stopped. She then saw the officer punch her brother in the face with her right hand. Her brother became very upset. He then moved away to the other side of the pool. When asked if she saw her brother swing at the officer, her response was "no". When asked how much alcohol Ms. Santiago had consumed, she indicated that she drank one class of wine on arrival and nothing more.

Cross Examination

Mr. Mackenzie commenced his cross with asking Ms. Santiago if she had recorded her version of events and she advised that she had not written down anything after the incident.

When asked, Ms. Santiago advised at one point the officer and her were closer than 3 feet and that her hands were up. Ms. Santiago again stated that the officer moved towards her. At that point the officer grabbed her wrist and told her to move away.

Mr. Aman had approached and had his hands up as well. Ms. Santiago testified that she recalled her brother having a beer in her hand. When asked, Ms. Santiago stated her brother Jerry was not drunk. "He drank five beers, maybe that night." "He was probably a few feet away from her. He came up and said relax. We're just having a good time."

Mr. McKenzie reviewed her statement given to Sgt. Wilson. Specifically, wherein her statement she indicated that Mr. Aman may have been a foot away from the officer. Her response was "Now that I'm trying to play the, the – sorry, now that I'm trying to see what I really saw that night, he, he was probably about three feet, three feet away." She went on to state when asked if this was her recollection or because she discussed the events with everybody else, "no, no. My recollection." "The foot away was when they actually when she grabbed him."

Ms. Santiago went on to say that she did not see the officer put up her left hand to stop Mr. Aman in his tracks. She then stated she saw the officer, with a closed fist hit her brother. She didn't recall if her brother had anything in her hand at the time. She did recall her brother using profanity after being punched.

Re-examination

Mr. Johnstone asked Ms. Santiago if her brother was moving towards the officer or standing still when he was punched. She stated, "He was standing still."

Mr. Arthur Baradas

Mr. Baradas advised that he is the cousin of Vangie Gervais. He is employed by the City of Toronto in recycling operations. He attended 106 Colston Ave for the anniversary celebration of Vangie and Vince Gervais. He indicated that the Fire Department had been at the home and instructed them to put the fire out. Afterwards, Cst. Stenzel arrived. Mr. Baradas was sitting in a lounge chair on the raised portion of the patio at the time. He didn't recognize it was a police officer at first as it was dark. She was shining the flashlight on us and said, "turn the music down".

"Vangie (Gervais) went inside to turn the music down. For some reason, when she came out, the music went up again and that's how she gets mad." He indicated that the officer got upset when the music was turned back up.

Mr. Baradas recalled at some point people were arguing and didn't realize what was going on. "When Jerry (Aman) approached, tried to talk to the officer and they kind of started arguing and stuff like that and started yelling after that." Jerry was on the lower level and the officer on the raised patio.

He did not see Jerry (Aman) with his hands as the officer and Jerry were talking. "His hands were always down." "I didn't hear what Jerry said, but all of a sudden the officer pulls Jerry and then punch him." "She pulls him and they get close to it. Within two to four seconds, she threw a punch and that's when I get up." Mr. Baradas indicated the punch landed on the left side of Mr. Aman's upper lip.

"That's when the argument, yelling start." "Well, I just got up and tried to stop the situation." He stated that the officer then started to argue with Agnes (Aman). She was telling Agnes to stay away because she was about to pull the taser and she (Agnes) has a medical condition. Mr. Baradas apologized to the officer so to attempt to diffuse the situation. The officer calmed down and eventually two other officers show up. When asked, Mr. Baradas advised that he does not drink alcohol. He did not see if Mr. Aman was drinking that night. When asked about Mr. Aman's actions prior to being punched, Mr. Baradas indicated that he was standing still. He went on the say that Mr. Aman became loud after being punched.

Cross Examination

Mr. Mackenzie commenced his cross by questioning Mr. Baradas about his statement he provided to Professional Standards on October 24, 2011. He advised that he did not make any notes. Mr. McKenzie reviewed his evidence relating to Mr. Aman being punched. When asked if he thought the officer was reaching for her taser, Mr. Baradas responded "Just about, and then I apologized to her. So I grabbed my cousin, so he can stay away from the officer." He admitted he never saw a taser. He had stated earlier he saw a taser and a gun on the officer's duty belt.

Re-examination

Mr. Johnstone attempted to clarify what Mr. Baradas saw on the officer's duty belt. He advised that he saw "something on the belt." He was concerned it was a taser but wasn't sure.

Evidence of Defense Witnesses

Cst. Darryl LeFrance

Cst. LeFrance gave evidence that he is a member of the Durham Regional Police and has been a use of force instructor for the past five years. He instructs officers on self-defense and judgmental training. He advised that the training relating to personal space is "our training is that if somebody invades your personal space where you are feeling threatened in any matter, the

first thing we do, we teach, is an open hand strike to the face to get distance, to move back from that person.”

“The first strike we teach is to strike in the face because if the person is confrontational, in their mind they’ve made a decision to get up close and personal into the officer’s space, personal space, where they have all their use of force options. They have to protect their gun, their baton, all these use of force options. We, instead of pushing in the chest, we teach them to hit to the face. That way it disrupts that thought pattern, that thought process, to give them time to get back. Because if they just hit to that chest and they’ve already made that thought process to be assaultive, then it could only anger the other person and not give them that chance to gain position of advantage.”

Cst. LeFrance went on to advise what the officers are taught to protect their personal space and that each officer’s perception based on size, experience and abilities will be factors in decision making.

Cross Examination

Mr. Johnstone had the officer clarify his training background. Cst. LeFrance advised that he is a 9th degree black belt in ju-jitsu. The officer agreed with Mr. Johnstone's suggestion that although every officer interprets things differently, the level of force must be justified and reasonable. He also stated that personal space would be varied depending on the officer. LeFrance also agreed that one option would be to move back or disengage instead of striking the person.

Mr. Johnstone reviewed the use of force model and that the first component is communication. The first option is to use tactical communication by telling the person to step back. LeFrance also agreed that he teaches officers to step back or disengage. When asked if he teaches officers to use a palm strike while holding a flashlight in the hand, LeFrance advised that he does not teach that.

Re-examination

Mr. Mackenzie had Cst. LeFrance clarify that when confronted and the person is aggressive, “you may strike out first in self defense rather than saying – you know, depending on how threatened you feel.”

Cst. Stenzel

Cst. Stenzel testified that she is in her 18th year with DRPS and that she one year experience with Windsor Police prior to coming to Durham. She was assigned to the Central Division in Whitby as a general patrol officer at the time of the incident. She was a single man unit and offered to take a noise complaint call at 106 Colston Ave in Brooklin. It was a noise complaint for a loud party and bonfire in the back yard. She was aware that Fire had been dispatched as well but

wasn't aware if they attended or not. The call had been sitting on the dispatch board for about 15 minutes.

The officer arrived at the home, sat in the car and observed large homes, which made her more comfortable being on her own. She opened her windows to if she could hear anything and where the noise was coming from. She proceeded to exit her cruiser and went to attend the area where the music was coming from. Based on her experience, the area, the officer decided she did not require another officer. She walked towards the backyard where the people were.

The officer opened the gate and proceeded. It was dark, and stated, "It's the police" and attempted to get people's attention with her flashlight. She saw a group of people on the raised portion of the patio. Her voice was raised to get people's attention. Eventually a few of the women (4-5) got up and came towards the officer. There was a brief discussion about turning the music down. It did get turned down and shortly after was turned back up. The officer saw Ms. Gervais come back out of the house and then was approached by Ms. Santiago. The officer put her hand up and told her to stay away. The officer stated "She came up and I – there was too many of them so I just said, stay back. And she ended up backing off, which was good, so I continued to talk to Ms. Gervais.

The officer testified: I didn't – listening to her, I didn't grab her. I may have connected with some part of her. It was a quick motion and she backed off."Discussions started getting louder. The officer was now on the raised portion of the patio. When asked, the officer stated that she recalled having a conversation but doesn't remember if it was Mr. Gervais.

The Officer's attention was now drawn to Mr. Aman. The officer gave the following evidence: He had a beer bottle in his left hand and his eyes were red and glossy. He was quick. He gave some threat cues. He wasn't fisted, he wasn't relaxed, but threat cues I've learned over the past 19 years of policing, is the hands are flinching and the shoulders are not relaxed, they're hunched. And he just had a mean look on his face and he was coming toward me."

The officer continued, "And he had a deep tone in his voice. It wasn't soft spoken. He wasn't saying, come on officer relax. It was like, relax officer. You know the type of stuff, very aggressive words. We're all having a good time here, and he's coming and – and as he was getting closer, I put my hand out and told him to stop. And I'm on the raised portion. I can't go anywhere. There's a drop-off there. And he walked right into my hand as I'm telling him to stop." The officer clarified it was her left hand.

The officer continued: "And he made contact with my shoulder, his right arm – because it was his right shoulder and my left hand. His arm came up in a swinging type or a round-about motion." "And my hand was caught up in his muscle shirt, And as he's coming forward, I'm getting tangled and it was a matter of reaction, second and a half, that I came up with a palm heel strike and caught him in the mouth area." "He continues forward and brings his shoulder up and around". "His right arm. And in doing that, as he comes over, I use my right hand as – as his arm comes over and forearm, basically the forearm or this area hits my arm as well, at the same time as I'm throwing the palm heel strike."

"I still had my flashlight in my hand, there was no time to react to anything. I wouldn't even have thought of dropping it. It was just that quick. My flashlight was in my hand this way as I was talking to people, and when I did the palm heel strike it was still in my hand, but I hit him with this part of my hand. Palm of my hand." "People were immediately pulling him back from me and he's calling me a fucking bitch over and over. But actually, as he's coming at me too he was saying that I pay your taxes, I pay your salary, that type of thing.

The officer proceeded to look around, got down off the step, and started to back off as Agnes Aman was coming towards her. The officer stated that they were all getting angry since the confrontation. The officer started retreating to the gate area where she came in. As the officer didn't have her microphone, she took her radio off her belt and called for backup.

The officer waited for back up and could hear Mr. Aman on the other side of the yard yelling. "Things started to calm down." When other officers arrived, they assisted Cst. Stenzel by identifying Mr. Aman. Cst. Stenzel in the company of Sgt Romano approached Mr. Aman to discuss the situation, but Mr. Aman refused. Cst. Stenzel advised him that she could be arresting him for assault police but she decided not to arrest him that night.

Cst. Stenzel went on to state "In my opinion, he made a bad decision. He wasn't falling down drunk but he appeared intoxicated. And I learned it was his anniversary. And also the fact that I hit him as he came forward at me in my discretion of using my discretion with you know what, enough's enough. We're going to leave it at a caution." The officer had a brief conversation with Mr. Gervais and Mr. Baradas who thanked the officer for her discretion. They shook hands and the officers left the scene.

The officer went on to say that she has never been the subject of an investigation for using excessive force and in her 19 years as an officer, she has never had to use a palm heel strike. The officer advised that proceeded to draft an occurrence report detailing the events surrounding the call. The officer concluded her evidence by advising she is 5'5" and weighs 120 lbs.

Cross Examination

Mr. Johnstone had the officer confirm that she had been with DRPS for 18 years and that she has known Sgt. Romano for 10 years. In addition, that there is no ill will between the two of them. Mr. Johnstone went on to ask the officer if she went to the front door of the home or directly to the backyard. The officer stated that she went to the backyard because that is where the noise was coming from. When asked "But when you go some place don't you normally knock on the front door before you enter into somebody's residence?" Cst. Stenzel responded "no." Cst. Stenzel advised that she decided to go into the backyard and opened the gate but did not recall how it was secured.

When asked the distance she walked from the gate to the backyard, the officer responded, "I don't recall how far. It was a good distance. Could be – I'm terrible with distance, so it could be about 40 feet or more." The officer went on to state that there were a few people standing there when she walked in. "It didn't get confrontational, It was – I just had to tell her to stay

back...because she was coming up on me and she was above me, yes.” The officer advised this woman was Cathy Santiago. She stated that Ms. Santiago was getting into her personal space.

Cst. Stenzel admitted she could have disengaged or backed up. She advised that the other women nearby were not a concern but were getting upset. The officer stated that at no time she felt unwelcome until after the confrontation with Mr. Aman.

When asked if Ms. Santiago was upset, Cst. Stenzel indicated that she was. She also agreed with Mr. Johnstone that others were upset too. She admitted that they were not happy that she was there but the officer still didn't feel unwelcome.

When asked by Mr. Johnstone, Cst. Stenzel denied getting upset when Mr. Aman said, “I pay your salary, I pay taxes. The officer stated that she has heard that many times before. Mr. Johnstone questioned the officer regarding using the flashlight to strike someone in the face. She advised that was not part of her training but admitted it was in her hand.

Mr. Johnstone went on to question the officer as to why there was nothing in her notes or in her statement to Professional Standards indicating that he told Mr. Aman to get back or step back. The officer advised that her notes were to refresh her memory. She also stated “As a matter of my general training, it's always, “stay back,” and that's what we do in training.”

The officer when questioned about how fast Mr. Aman was coming towards her advised “Very quickly” but wasn't running. “I believe I said he was doing a hammer step.” “A hammer step is if you – I don't know how to describelike very aggressive. Direct stomping, yeah, that would be a good description, stomping.”

When asked about her flashlight in her hand when she struck Mr. Aman, she admitted it was unfortunate. Mr. Johnston continued his cross asking the officer about her report and specifically page four of eleven. The report was entered by Mr. Johnstone as exhibit four. In Cst. Stenzel's report, she indicated prior to the confrontation with Mr. Aman that Ms. Gervais and others in attendance became very loud and abusive, yelling that it is the long weekend and a Saturday night and they had every right to party and celebrate. When the officer tried to explain why she was there, this made matters worse and tempers worsened. The officer insisted that she still felt like she was welcome because she was in conversation even though they were yelling.

End of cross-examination by Mr. Johnstone

Mr. Aman asked the officer the following questions...”If I committed a crime that day, why wasn't I arrested?

The officer responded.”Not every crime has to have an arrest. I have some discretion as a police officer to lay a charge. I didn't feel, as I said earlier, that arresting you and charging you with what happened would be in anyone's interests that night, I could have but I decided that what happened was enough, that you made a mistake.”

Second question...Is it possible the reason why you didn't arrest me is because you made a mistake?

The officer responded..No

Re-examination

Mr. Mackenzie asked the officer if at any time, did Vince or Vangie Gervais ever ask her to leave the property. The officer's response was "no they didn't." Mr. Mackenzie then asked the officer about her statement to Professional Standards. More specifically, that the officer in fact did say in her statement " I don't remember the exact words but probably like the last one, you know, "get back."

Findings

Cst. Stenzel is alleged to have committed misconduct in that on or about July 30, 2011, used unnecessary force against Jerry Aman in the execution of her duty, thereby committing the offence of Unlawful or Unnecessary Exercise of Authority, contrary to the schedule Code of Conduct of the Act.

The Tribunal heard from four witnesses for the prosecution and two for the defense. The first witness was Mr. Jerry Aman who testified that Cst. Stenzel assaulted him. He sustained a bloody lip and eventually lost a tooth. He stated that he approached the officer, with a beer in his hand but never got closer than 3-4 feet to her. He made comments to try to calm the situation down. He testified that he had consumed 4-5 beers over a 6-7 hour period during the celebrations, which was corroborated by other witnesses. I find that Mr. Aman, based on his testimony to be a creditable witness but take under consideration that he had consumed 4 -5 beers during the course of the day and evening.

The homeowner, Mr. Vince Gervais was the next witness. He advised that he had consumed 6-7 beers that evening and "was just slightly inebriated, feeling well, feeling good." He testified that he observed the officer punch Jerry Aman in the face. Prior to the confrontation, Mr. Gervais questioned the officer as to why she was on the property and she explained it was because of a noise complaint. The conversation was in his words "reasonable" and the officer was not aggressive. I found Mr. Gervais to be a creditable witness but take under consideration that he admitted that he was feeling "slightly inebriated."

The next witness was Cathy Santiago and is the brother of Mr. Jerry Aman. She advised the Tribunal she had consumed one glass of wine when she arrived and nothing for the rest of the celebration. She testified that when she approached and started a conversation, the officer reached out, grabbed her wrist, yanked it and told her to get back. She went on to state that her brother approached the officer. Words were exchanged. Ms. Santiago did not hear the entire conversation. He was standing still as the officer leaned forward and punched Mr. Aman with her right hand. I found Cathy Santiago to be a creditable witness.

The next witness was Arthur Baradas and is the cousin of Vangie Gervais. He advised the Tribunal that he does not drink. He testified that he was sitting on the upper portion of the patio. He couldn't hear the conversation but saw the officer grab Jerry Aman, pulled him towards her and punch him the face. He stated that is when the arguing and yelling started. Mr. Baradas then approached the officer to calm the situation down because he believed the officer was reaching for a taser. I found Mr. Baradas to be a creditable witness.

In summary, all four witness for the prosecution testified that the officer punched Mr. Aman. Their evidence was consistent as to the fact that Mr. Aman was standing still, not closer than 3 feet and was not being physically aggressive with Cst. Stenzel. Their interpretation as what else they saw vary. Specifically, whether Mr. Aman's arms were up or at his side and if he had a beer bottle in his hand or not.

The next witness was Cst. Darryl LeFrance who is a qualified and experienced Use of Force Instructor for Durham Regional Police Service. He gave evidence as to the training Cst. Stenzel has received when someone gets into an officers personal space and the techniques used to gain space. He also gave evidence that every officer interprets a situation differently based on his or her size, experience and abilities. During cross-examination, Cst. LeFrance advised that other options to consider would include backing up or disengaging.

The next witness was Cst. Stenzel. She testified that she attended the noise complaint call. Based on the area and her experience, she decided to enter the backyard after confirming where the noise was coming from. She entered through a gate at the side of the home. She raised her voice and shined her flashlight to gain people's attention. She was then approached by 4 -5 women who discussed about the music being turned down. The music was turned down and then turned right back up. Cst. Stenzel stated she was then approached by Ms. Santiago and put her hand up and told Ms. Santiago to get back.

When asked if Ms. Santiago was upset, Cst. Stenzel indicated that she was. She also agreed with Mr. Johnstone that others were upset too. She admitted that they were not happy that she was there but the officer still didn't feel unwelcome. Cst. Stenzel was then approached by Mr. Aman in an aggressive manner . She described Mr. Aman as walking quickly, doing a hammer step.

Cst. Stenzel stated, "And he made contact with my shoulder, his right arm – because it was his right shoulder and my left hand. His arm came up in a swinging type or a round-about motion." "And my hand was caught up in his muscle shirt, And as he's coming forward, I'm getting tangled and it was a matter of reaction, second and a half, that I came up with a palm heel strike and caught him in the mouth area." "He continues forward and brings his shoulder up and around". "His right arm. And in doing that, as he comes over, I use my right hand as – as his arm comes over and forearm, basically the forearm or this area hits my arm as well, at the same time as I'm throwing the palm heel strike."

Cst. Stenzel stated that she didn't have time to react, as it was just that quick. She then looked around and backed off. She concluded her evidence by stating, "In my opinion, he made a bad decision. He wasn't falling down drunk but he appeared intoxicated. And I learned it was his

anniversary. And also the fact that I hit him in my discretion of using my discretion with you know what, enough's enough. We're going to leave it at a caution."

When questioned about her general occurrence report relating to page four where she wrote, *she and others in attendance became very loud and abusive yelling that is the long weekend and a Saturday night and they had every right to party and celebrate*, Cst. Stenzel advised "I felt like I was welcome because we were in conversation even though they were yelling."

Submissions

Mr. Johnstone provided the Tribunal with a tabbed binder containing case law. The first case, **King v Durham Regional Police** relates to whether an officer has the legal authority to be on a property of a private citizen. The Commission made conclusions with respect to revoking an invitation. A fundamental aspect (of this waiver) must be the consensual aspect of the communication or interaction. Mr. Johnstone argued that the comments made by several of the people at the party should have made it clear to Cst. Stenzel that she was not welcomed.

Mr. Johnstone went on to discuss **Pigeau v Ontario Provincial Police and Batista v Ottawa Police Service**. The Batista case involves an officer who used unnecessary force on a prisoner. The Commission's legal test for determining whether force is reasonable under the circumstances is as follows:

Unnecessary force against a prisoner occurs where physical contact is made with a member of the public without there first being legal grounds for the action taken. For there to be legal grounds to take such action, there must first be evidence that substantiate that grounds existed for an arrest prior to the touch by the officer.

Mr. Johnstone argued that real care must be taken by police officers prior to making physical contact with a member of the public. Police officers must have valid legal grounds for doing so, else that conduct is improper, as are the consequences which flow there from.

The next case Mr. Johnstone referred to was **Burgess v St Thomas Police**. In this case, the question was whether the application of force in an attempt to get a prisoner to his feet so he could be searched was unnecessary.

The Commission found that the word "unnecessary" as used in the section, does not mean "not absolutely essential" but rather means something closer to "unreasonable under the circumstances" considering the other options that were in fact available."

The final case presented by Mr. Johnstone was **Turpin v The Durham Regional Police**. In Turpin, the Commission stated the following:

On the facts presented, we accept the hearing officer's conclusion that Constable Turpin had no legal authority to leave the porch and enter the residence. We can find no pressing requirement that should have caused him to use force against Mr. Tamney. He had other

options. He could have disengaged, stepped back outside, called superior officer for advice, or returned later with a warrant if necessary.

The Commission went on to say:

We acknowledge that Constable Turpin was attempting to perform his duty. Further, it is evident that Mr. Tamney was rude, vulgar, offensive and uncooperative. Clearly, this must have been frustrating. However, that being said, none of this was justification for unlawful entry to a private dwelling or the application of any force.

In Mr. Mackenzie's submission, he spoke to Burgess, Pigeau and Batista and suggested they are some assistance to me as the hearing officer because they speak to the definition of what unnecessary force is. He continued by emphasizing that Cst. Stenzel is before the Tribunal charged with unnecessary exercise of authority, that being particularized that during her time at the residence, she used unnecessary force on Jerry Aman.

Mr. Mackenzie went on to suggest that the Wayne King and Glen Turpin decisions are not relevant for consideration as in those cases the homeowners clearly revoked consent to be on the property. He suggested in both cases officers were trespassing at the time they applied force, so the lawfulness of their conduct was problematic because they were trespassing.

In this case, Mr. Mackenzie suggested there was no indication or evidence from the homeowner, Mr. Gervais that he directed the officer to leave the property. He also suggested that the issue is not unlawful entry or trespassing. He continued by stating that this is an assessment of credibility to some degree. He suggested that because the family members acknowledge meeting the next day to discuss the matter, the Tribunal can find that they effectively tainted each other's evidence in many respects.

In making my decision in this matter, I must consider all the evidence from both sides and decide how much weight I can put on each witnesses evidence based on a number of factors including their credibility. I must consider the fact that all witnesses for the prosecution are family members, that three of the four met in the days following the incident to discuss what had happened, that none of the prosecution witnesses had independent notes and that they did not provide a statement to Professional Standards until months later. I must also consider my own training and experiences having been a police officer for the better part of 26 years. I must ask myself if Cst. Stenzel's evidence convinced me that she used the appropriate level of force based on the circumstances she faced that evening.

Cst. LeFrance testified there are other options that should be considered based on the situation the officer is faced with including disengaging or leaving. Were these options considered based on the situation?

I must also consider the Commission's decision in King and Turpin. As Mr. Mackenzie pointed out, there was no clear evidence to suggest the homeowners directed her to leave the property. To the contrary, does an officer have the legal authority to walk into someone's backyard through a secured gate? Is this any different from walking into someone's home without

invitation or with judicial authorization? In addition, I must consider the seriousness of the original offence in which Mr. Johnstone suggested this was a noise bylaw offence. Was what Cst. Stenzel did that evening essential?

Based on all the evidence presented to the Tribunal and all the relevant case law entered for consideration, I must consider two important issues. The first being did Cst. Stenzel enter into the backyard lawfully. If not, anything that happened subsequent including the strike to Mr. Aman would be considered unlawful. If I decide that Cst. Stenzel was lawfully on the property, was her strike to Mr. Aman's face lawful and justified under the circumstances?

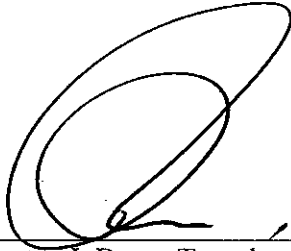
Cst. Stenzel attended the Gervais residence for a bylaw noise complaint. It is clear to me that the officer made a series of mistakes leading up to the confrontation with Jerry Aman. She made no effort to knock on the front door, which would have brought some validation to proceeding to the backyard. The officer went through a secured gate on a Saturday night without backup. Instead of finding the appropriate person and ask to speak to the homeowner, the officer asked in a raised voice to get someone's attention to turn the music down. This no doubt caused people to get upset. This is confirmed by the officer description of events in her general occurrence where she indicated, "this seemed to make matters worse and the tempers worsened."

From there, it did get worse and the officer ultimately got into a physical confrontation with Mr. Aman. It is very clear to me that Cst. Stenzel still had some options to consider prior to the physical confrontation. She made a conscious decision for unknown reasons not to consider disengaging or leaving the property. The officer testified that she has nineteen years experience and has qualified for use of force several times throughout her police career. Having attended the same training over the past several years, it is clear to me that Cst. Stenzel did not use all of the skills she should have based on her training. Cst. Stenzel referred to "threat cues" in her evidence that caused her to use physical force on Mr. Aman. It is clear to me based on her own evidence there was threat cues long before the confrontation with Mr. Aman that Cst. Stenzel should have acknowledged and utilized her training to deescalate the situation.

I am also concerned, based on Cst. Stenzel's evidence that Mr. Aman assaulted her, that she did not consider laying assault police charges. This could have been done at a later date. She presented the reasoning that a caution was appropriate based on the fact that it was Mr. Aman's anniversary. I also question her decision as to why she attempted to approach Mr. Aman after the fact knowing that he was extremely upset from being punched in the face. This would only escalate matters and obviously upset Mr. Aman and others even more.

Based on all the evidence in its entirety, it is clear to me that Cst. Stenzel did error in her decision making prior to and leading up to the strike to Mr. Aman's face. On the first issue, I find that Cst. Stenzel was not in the lawful execution of her duty having entered a secured backyard unlawfully. It is also clear to me the officer used unnecessary force on Mr. Jerry Aman the night of July 30, 2011. Accordingly, I find that Cst. Stenzel is guilty of the offence of Unlawful or Unnecessary Exercise of Authority.

Dated this 11th day of September, 2012



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Inspector J. Bruce Townley