

BACKGROUND:

On Saturday, June 26, 2014, the City of Toronto was hosting the G20 meetings. There was widespread rioting during that day which resulted in an extensive police presence. The main area of activity was in the Queen's Park area at College Street and University Avenue [Exhibit 4-A].

Benjamin Yau was an employee of the Toronto Transit Commission (TTC) and was to be on duty in the evening of Saturday, June 26th. On that date, Police Constable Todd Storey was assigned to one of the Rapid Response Teams and ordered to assist the uniform officers at the scene when required.

EVIDENCE:

It was agreed at this hearing that the evidence of each witness would consist of the *viva voce* evidence and cross examination thereof, the statements given to the Office of the Independent Police Review Director (OIPRD) for:

Raymond YAU: Exhibit 6 – dated March 9, 2011
 Exhibit 8 – dated October 7, 2010

Todd STOREY: Exhibit 10 – dated April 20, 2011

Raymond Yau

On June 26th, 2010, Mr. Yau was an employee of the TTC. He was assigned to go to the College Park subway station (located Yonge and College Streets) to get his initial ticket taker's float. When he attended, he was informed that he had to go to the Queen's Park station – west on College Street to start his work day. At this time he was accompanied by a fellow co-worker, Herbert Li.

As they approached the Queen's Park station, they saw that there was a riotous crowd and a large police presence at the intersection of University Avenue and College Street. They decided to return to the College Park station by walking in an easterly direction along College Street. Upon reaching an area known as the MARS building; located on the south side of College Street approximately 200 yards east of University Avenue [Exhibit 4], Mr. Yau stated that he was knocked to the ground by a black male who was running past him in an easterly direction. As Mr. Yau was getting up, he was again knocked down by a second male who was eventually identified to be a plain-clothes police officer. While on the ground, Mr. Yau was resisting and at the hearing gave evidence that Police Constable Storey was this officer who kept saying, "stop resisting". He further gave evidence that Police Constable Storey was the person who handcuffed Mr. Yau and also "shackled" his legs with another pair of handcuffs. Police Constable Storey was joined by another officer who was also in plain clothes and described this officer as looking like a "homeless man". Both of these police officers then carried Mr. Yau back to the area shown as "A" in Exhibit 4 for further processing.

Police Constable Todd Storey

Police Constable Storey gave evidence that he was part of a Rapid Response Team on the evening of June 26, 2010 and was located at the Queen's Park area. Prior to his involvement with Mr. Yau, Police Constable Storey was involved with a previous action wherein he was acting as an Exhibits Officer and was taking a "Molotov Cocktail" to his officer-in-charge (OIC) for safe keeping at area "A" in Exhibit 4.

Police Constable Storey received information that members of a new group were arriving at the scene and were threatening to shoot police officers. He deposited his exhibit with his OIC and returned to the area of the MARS building [Exhibit 4]. As he approached the MARS building, he saw an officer in plainclothes who had a person on the ground. The officer was placing handcuffs upon the grounded person who turned out to be Mr. Yau. Mr. Yau was resisting and

Police Constable Storey advised Mr. Yau to stop resisting. The first officer, known to Police Constable Storey as “Willy”, advised Police Constable Storey that his prisoner was under arrest for obstructing police as he got in the way of the police officer trying to arrest a black male. At this time, Police Constable Loucks had white hair and a beard.

Police Constable Loucks asked for the assistance of Police Constable Storey to return Mr. Yau to area “A” in Exhibit 4 for further processing. Police Constable Storey testified that Mr. Yau was not shackled and was walked by himself and Police Constable Loucks the 200 yards to area “A”. As the “transport officer”, Police Constable Storey completed the first page of the “arrest sheet” [Exhibit 9] for further processing by Police Constable Loucks. Exhibit 9 is the earliest written record of evidence that was prepared as it was completed on the evening of the event.

CONFLICTS IN EVIDENCE:

(A) Arrest & Custody

Mr. Yau initially seemed confused as to what happened but settled on the fact that the officer who handcuffed him did not give him the reason for doing so and that this officer was Police Constable Storey [*viva voce* evidence and pages 6-8 Exhibit 6]. At pages 59-64 of Exhibit 6, Mr. Yau described two officers – officer A with a beard who looked like a “homeless guy” and officer B – wearing civilian clothes. Both of these officers are seen on YouTube [Exhibit 7]. The evidence of Police Constable Storey is that Police Constable Loucks is not shown in Exhibit 7 but the officer who is shown is Police Constable Duncan Aldridge who was not involved Mr. Yau’s arrest.

(B) Restraints

Mr. Yau gave evidence that he was both “handcuffed” and “shackled”. He was then carried bodily to area “A” for further processing. Mr. Yau stated [Exhibit 6, pages 12-13]:

They handcuffed me...they picked, they dragged me up, picked me up and walked me across Queen's Park...we walk right by the supervisor the TTC supervisor.

Police Constable Storey's evidence was that Mr. Yau was only handcuffed and then walked to area "A".

(C) Identification

- (i) Mr. Yau gave evidence that the officers that he was involved with were shown in Exhibit 7. These are photos captured on YouTube. The bearded officer is the one that is alleged to have arrested Mr. Yau or at least was involved with this incident. The evidence of Police Constable Storey was that the bearded officer that was involved and was the arresting officer was Police Constable Willy Loucks. On being shown Exhibit 7, Police Constable Storey gave evidence that Police Constable Loucks was not in any of the photos. The bearded officer in the photos was identified as Police Constable Duncan Aldridge.

- (ii) The first page of the arrest sheet [Exhibit 9] was completed by Police Constable Storey on the evening of the incident. It should be noted that the arrest detail was "obstruct"; arresting officer was badge numbers 5728 (Loucks) and 7457 (Storey); and chain of custody – officer surrendering custody was 7457 (Storey).

ANALYSIS:

It is regrettable that this matter has taken approximately 45 months to come to a hearing with statements taken approximately 15 months after the incident occurred. Memories do not improve over time and certain reconstructions of events seem to have taken place.

On the whole and in examining all of the circumstances, where there are conflicts in the evidence the more reasonable recollection of events are those of Police Constable Storey. I make this finding for the following reasons:

- (a) Mr. Yau admitted that he was knocked to the ground at least two times;
- (b) Was forced to the ground by at least two officers;
- (c) Was handcuffed and I question if he was shackled as claimed;
- (d) Was shown photos [Exhibit 7] of police officers and he picked out the bearded officer that was not involved as stated by Police Constable Storey; this detail being corroborated by the notation of Police Constable Loucks' badge number on the arrest sheet; and,
- (e) Conflicting versions of events by Mr. Yau in his *viva voce* evidence and the statement given to the OIPRD [Exhibit 6] as to who originally handcuffed him;

CONCLUSION:

In order for the prosecution to be successful in proving the misconduct of the defendant, it has been held in a number of similar matters that the standard of proof is "clear and convincing". The allegations must be proven by clear, convincing and cogent evidence (*Reference: Bernstein & College of Physicians and Surgeons of Ontario (1977), 15 O.R. (2d) 447 at pp. 470-71*).

I am not convinced as to the identity of the arresting officer of Mr. Yau and the part played by Police Constable Storey in the subject arrest. There is no clear evidence of any misconduct of Police Constable Storey other than his participation by acting as an assisting transport officer. As he stated in his evidence, he did not have any facts as to ascertain whether such arrest was lawful as he attended at the scene after the arrest and detention of Mr. Yau.

Therefore this complaint as against Police Constable Todd Storey will be dismissed.

DATED at Toronto, this 27th day of March, 2014.



A handwritten signature in black ink, appearing to read 'W. S. Gonet', is written above a solid horizontal line.

Walter S. Gonet
Hearing Officer