

**BELLEVILLE POLICE SERVICE DISCIPLINE HEARING
IN THE MATTER OF ONTARIO REGULATION 268/10**

**MADE UNDER THE *POLICE SERVICES ACT*, RSO 1990,
AND AMENDMENTS THERETO;**

IN THE MATTER OF

BELLEVILLE POLICE SERVICE

AND

SERGEANT BRAD LENTINI, #71

NEGLECT OF DUTY

DECISION WITH REASONS

Before: Superintendent (Ret.) Greg Walton
Ontario Provincial Police

Counsel for the Prosecution: Ms. Jessica Barrow

Counsel for the Defence: Mr. Leo Kinahan

Hearing Date: October 23 & 24, 2021

Allegations of Misconduct (amended)

It is alleged that Sergeant Brad Lentini #71 committed the following act of misconduct contrary to section 80(1)(a) of the *Police Services Act*, R.S.O. 1990 P.15, as amended:

Neglect of Duty

Sergeant Lentini is alleged to have committed neglect of duty in that on or about August 6, 2019, he did without lawful excuse, neglect or omit to promptly and diligently perform a duty as a member of the Belleville Police Service in relation to a person in police custody constituting an offence against discipline as prescribed in section 2(1)(c)(i)(A) of the Code of Conduct, Ontario Regulation 268/10, as amended.

Particulars of Allegations:

On August 6, 2019, at 1:51 a.m., a prisoner AA¹ (38 years of age) was paraded before Sergeant Lentini for the offence of being intoxicated in a public place under the *Liquor Licence Act*. During the booking process, AA repeatedly claimed that his right arm was injured and stated it was broken.

AA was unable to place his right hand on the wall during the booking process. AA stated, “my fucking arm is screwed, really sore.” AA further stated, “I’m sorry, my arm is fucked, like really, when you guys slammed me against the fucking ground. I’m not resisting arrest, it really hurts.”

Sergeant Lentini asked AA, “what happened to your head?” AA replied, “you guys slammed me against the fucking ground.” Sergeant Lentini asked, “does it hurt?” AA responded, “yes, of course it hurts.” Sergeant Lentini responded, “don’t get slammed again.”

During the search on his right side, AA made wincing sounds and stated, “I’m sorry officer, I think I have a broken arm.” Sergeant Lentini responded, “Ah, you’re fine, trust me.” AA responded, “I’m fucked, I can barely move my arm.” Sergeant Lentini asked him which one, to which AA responded, “my right arm.” Sergeant Lentini responded, “ah, you’re alright.” AA responded, “my right arm, I can barely lift it.”

AA was compliant during the booking process. AA was unable to remove his belt, he was assisted by Constable Phillips. AA stood with his left arm across his chest and

¹ Initials used to anonymize this involved person

stated, "I can barely stand it." AA was wincing in pain and stated, "I can't feel my arm." AA appeared to be sobbing at this point.

AA was lodged in Cell #1 without any medical attention. The video recording in Cell #1 showed AA sitting up at 2:23 a.m. and cradling his right arm in obvious discomfort.

At 3:04 a.m. Constable Cooke spoke with AA in Cell #1 and offered him a blanket. AA stated that his arm was broken and that he needed to see a doctor. Constable Cooke relayed this concern to Sergeant Lentini.

At 3:21 a.m. Sergeant Lentini spoke with AA and confirmed that AA would be taken to the hospital for treatment.

At 3:31 a.m. Sergeant Lentini telephoned the Duty Officer, Staff Sergeant Patterson and notified her of the potential injury to the prisoner. Staff Sergeant Patterson voiced concern that AA was brought into custody at 1:46 a.m. and she was called at 3:41 a.m. Sergeant Lentini responded to this concern by stating that AA slept for two hours and that he complained going into the cell that his right side was sore, but it was "all mumbly."

Sergeant Lentini failed to fully account to Staff Sergeant Patterson as to what had occurred with AA in the booking process. Sergeant Lentini's statements were misleading in terms of his knowledge of AA's injury.

Sergeant Lentini advised Staff Sergeant Patterson that his plan was to have AA released on a provincial offences notice while at the hospital. On the direction of Staff Sergeant Patterson, Sergeant Lentini agreed that it was not the appropriate response and directed both transporting officers to stay with AA at the hospital.

At 3:55 a.m. AA was removed from the cells and transported to Belleville General Hospital. Once at the hospital, it was confirmed that AA had a broken right arm (humerus bone).

Belleville Police Service Prisoner Care and Control Procedure LE-016, section 4.21 states:

Persons in police custody who are suffering from a hurt or injury which interferes with the health or comfort of that person must be transported to the nearest appropriate medical facility, even if the person is refusing medical attention. The person in custody can then make his/her refusal to a qualified

medical doctor. The hurt or injury must be more than merely transient or trifling in nature.

Sergeant Lentini failed to undertake a proper assessment of the prisoner's injuries. He failed to ensure that the injuries were properly documented. The required standard of care was not met in this incident. Sergeant Lentini failed to comply with the Prisoner Care and Control Procedure. Sergeant Lentini's actions constitute neglect of duty.

Plea / Representation

Represented by Mr. Leo Kinahan, Sergeant Lentini entered a plea of not guilty to the allegation of neglect of duty; a two-day hearing ensued. Ms. Jessica Barrow represented the Belleville Police Service as prosecutor.

Finding

I find Sergeant Lentini guilty of neglect of duty based on the standard of clear and convincing evidence.

Evidence

The prosecution called four witnesses while the defence did not call evidence. The tribunal heard from Inspector Rene Aubertin. He was not involved at the onset of the investigation but was ultimately responsible for the internal investigation into Sergeant Lentini following the retirement of the initial investigator. Constable Stephen Cooke, the arresting officer, and Constables Philip and Laycoe who transported AA to the Belleville police station following his arrest, also testified.

Inspector Rene Aubertin

Inspector Aubertin was not involved in the initial investigation into the allegations, he became involved after the fact. He explained that the Belleville Police Service typically have two platoon sergeants assigned to each uniform shift. One sergeant is responsible for matters associated to being "on the road" while the other sergeant is responsible for all matters at the division. On the date in question, Sergeant Lentini was the only sergeant working. Therefore, his responsibilities included the cells and prisoner care.

Inspector Aubertin explained that an arrest report is created by “Niche,” a records management system. Exhibit #5 is the arrest report of AA dated August 6, 2019. The arrest booking report is a section imbedded within Niche which logs information related to an arrested person being lodged in the cells (prisoner). Inspector Aubertin explained an arrest report is completed by the arresting officer whereas an arrest booking report is the responsibility of the booking sergeant.

The arrest report of AA was completed by Constable Cooke. The arrest report indicates that AA was arrested at 1:41 a.m. for being intoxicated in a public place in contravention of section 31(4) of the *Liquor Licence Act*. The arrest report shows that force was used by Constable Cooke to effect the arrest. AA was transported to the Belleville Police station by Constable Laycoe and Constable Philip.

Exhibit #6 is the Arrest Booking Report of AA dated August 6, 2019. This report contains a section titled “Risk Assessment.” Inspector Aubertin stated that only the booking sergeant has access to this section of the Niche report, it cannot be completed by the arresting officer unless that officer had authorization. In this instance, this section was completed by Sergeant Lentini.

Inspector Aubertin stated that it is the responsibility of the booking sergeant to pose a series of questions to each prisoner being lodged at a police facility for the prisoner’s safety and for officer safety. The booking sergeant uses a template on printed paper to capture this information, it is later transferred onto Niche at a computer terminal by the booking sergeant.

Inspector Aubertin stated that the questionnaire includes medical questions, and the next step of the booking process is dependent on the answers given; follow-up questions could be necessary to determine if medical attention is required for example.

Inspector Aubertin testified that an intoxicated prisoner is not released from custody unless they are sober enough to care for themselves, the responsibility falls upon the booking sergeant to make this determination, or his replacement if his tour of duty had ended.

Inspector Aubertin explained that AA was transported to the police station which had video cameras in the sally port, the booking area, and the cell corridor. Camera monitors were located in various locations to allow for prisoner monitoring, in the sergeant’s office, the report room, and at the front desk.

Exhibit #7 is the Belleville Police Service Procedure LE-016, Prisoner Care and Control, effective December 6, 2018. Inspector Aubertin stated Procedures are communicated to all members via email or using an automated system causing members to review material when they log in to the Belleville Police Service computer system. Inspector Aubertin noted that members are required to keep updated on police procedures.

Inspector Aubertin stated the purpose of Procedure LE-016 is to ensure the safety of prisoners and the involved officers. He reviewed the definition of “Officer-in-Charge” and noted that Sergeant Lentini was the officer-in-charge at the time of the alleged incident involving AA on August 6, 2019. Inspector Aubertin reviewed section 4 of Procedure LE-016 relating to the care of prisoners. Inspector Aubertin stated it is essential that a detention log is completed in detail so that information can be passed along to the next platoon if prisoners are held in custody for longer periods of time. In this case, Sergeant Lentini was responsible for maintaining the detention log and to continually monitor AA by performing regular checks.

Inspector Aubertin reviewed Section 4.21 of Procedure LE-016 which directs officers to ensure prisoners who have been injured, more than merely transient or trifling in nature must be transported to hospital to receive medical attention. Inspector Aubertin explained that the involved officers must assess the injury to determine if it is more than transient or trifling in nature which requires medical attention. He added that in situations where the prisoner is intoxicated to the extent that they cannot care for themselves, it increases the obligations on the officers to ensure they are cared for even if medical attention is not specifically requested. Inspector Aubertin conceded that the Procedure does not include how quickly the officers must respond to prisoner care, but he opined that it would be as soon as practicable.

Inspector Aubertin testified that in this instance, Sergeant Lentini was responsible for the care of AA; as the booking officer, once he accepted AA into the facility, the prisoner became his responsibility.

Inspector Aubertin testified that Staff Sergeant Kristina Patterson was the on-call incident commander on August 6, 2019. Platoon sergeants are obligated to contact the on-call incident commander to make notification of a serious matter. Section 8.1 of Procedure LE-016 requires that incident commanders must be notified in all cases of serious injury requiring medical attention related to a person in custody. Inspector Aubertin testified that Sergeant Lentini was required to make notification to Staff Sergeant Patterson because of the injury sustained by AA.

Exhibit #8 is a flash drive containing video recordings of AA arriving at the police station, the booking, being lodged into cell #1 and a constant recording of his stay in the cell. They were played in part for the benefit of the tribunal, but the recordings were not played in full. Inspector Aubertin viewed the recordings and identified the officers involved. Exhibit #8 also contains an audio recording of a phone call made by Sergeant Lentini to Staff Sergeant Patterson capturing the notification of AA's injury. Inspector Aubertin noted that Staff Sergeant Patterson was responsible for making a subsequent notification to the Special Investigations Unit depending on the nature of the injury. That notification was made the following day.

In cross examination, Inspector Aubertin confirmed that "transient in nature" is not defined in Procedure LE-016, it is a subjective determination to be made by the officers involved. He also agreed that Procedure LE-016 does not indicate when notifications must be made, the words immediately or as soon as practical are not included.

Inspector Aubertin noted that the original internal investigator retired, consequently, he became involved months after the initial complaint had been filed. He agreed that AA had never been interviewed and the involved officers were interviewed approximately eight months following the arrest. No accusations were levied against the arresting or transporting officers for any reason including excessive use of force or failing to comply with Procedure LE-016 for failing to attend to AA's injury.

Inspector Aubertin reviewed the arrest report completed by Constable Cooke and agreed that there was no mention of AA's injury. He agreed that section 4.19 of Procedure LE-016 directs members involved in the arrest of a person to note injuries sustained to a prisoner on an occurrence report or supplementary report.

Inspector Aubertin confirmed that only Sergeant Lentini had access to the Risk Assessment section of the arrest booking report. Inspector Aubertin opined that the report did not contain inaccurate information, but it was lacking requisite information; the report noted a scrape on his head, but it made no mention of an injury to AA's arm.

Inspector Aubertin agreed that Sergeant Lentini ultimately made the required notification to Staff Sergeant Patterson and ensured AA received medical attention.

In reply, Inspector Aubertin testified that it is not possible to include every obligation and duty of a police officer in policy or procedures; officers are expected to use discretion and exercise their duty in a reasonable manner. Inspector Aubertin testified that the definition of transient or trifling has not been clarified in Procedure LE-016 and the timeliness of notifications has not been updated.

Constable Tyler Philip

Constable Philip commenced his employment with the Belleville Police Service in January 2018. He was working uniform patrol on August 6, 2019, reporting to Sergeant Lentini. Constable Philip responded to a possible domestic violence situation along with Constable Cooke and Constable Laycoe. Constable Philip testified about the nature of the call for service where ultimately, AA was arrested for being intoxicated in a public place. Constable Philip explained that AA was “grounded” by Constable Cooke at the time of his arrest because he was resisting and pulling away from Constable Cooke.

Constable Philip stated that he and Constable Laycoe assisted Constable Cooke with handcuffing AA. AA was placed in the rear of a cruiser and transported to the police station by Constable Philip and Constable Laycoe.

Constable Philip testified that AA did not complain about being injured at the time of his arrest or during his transport to the station. Constable Philip was shown the video recording of AA being booked. Constable Philip stated that initially, Sergeant Lentini was informed of the reasons for the arrest while AA waited in the cruiser because AA had been confrontational at the time of his arrest. Constable Philip agreed the video accurately depicted AA being searched by him in the booking area.

Constable Philip had asked AA to place his hands over his head and against the wall to facilitate the search. He said this was normal practice so he would be aware of the location of the prisoner’s hands during the search. Constable Philip noted AA complained that his arm hurt too much to be able to comply with the direction; he was unable to place his right hand against the wall or above his head. AA complained that his arm was very sore, and he was barely able to move it. Constable Philip testified that he was not aware of any steps taken to further assess or investigate AA’s injury. Constable Philip testified that it was during this search that he first became aware that AA may be injured. Immediately after AA was lodged in a cell, Constable Philip, and Constable Laycoe left the station to respond to outstanding calls for service. He had no further dealings with AA.

In cross-examination, Constable Philip testified that AA was very intoxicated and that he was arrested for his own safety. Constable Philip testified that he did not inform Sergeant Lentini that AA had been grounded, nor did Constable Laycoe or Constable Cooke. Constable Philip stated he did not converse with Sergeant Lentini about AA’s potential arm injury.

Constable Philip testified that he thought AA was in clear discomfort, he was complaining about being injured but that is not uncommon by arrested persons; they often seek a

reason to attend the hospital rather than being lodged in a cell. Constable Philip stated that at the time, he did not think AA had a broken arm. He said he was not surprised AA was in discomfort because he had been taken down, but he was not concerned about a broken bone.

Constable Philip testified he was a relatively new officer, had the least amount of experience among the involved officers, anything that he witnessed, was also witnessed by more experienced officers. Constable Philip stated that consequently, if AA required medical attention, he was not the person to make that decision.

Constable Ryan Laycoe

Constable Ryan Laycoe commenced his career with the Belleville Police Service on December 17, 2016. On August 6, 2019, he was working uniform patrol reporting to Sergeant Lentini. He responded to a call for service with Constable Philip and Constable Cooke. AA was arrested by Constable Cooke for being intoxicated in a public place. Constable Cooke used a use of force technique known as “grounding” because AA had pulled away at the time of his arrest. Constable Cooke landed on top of AA as they went to the ground, falling off the front landing of the residence. Constable Laycoe stated that he placed the handcuffs on AA, assisted by Constable Philip.

Constable Laycoe testified that AA was placed in the rear of his cruiser and transported to the police station by he and Constable Philip. AA did not complain about being injured at the time of the arrest or during the transport to the police station. Constable Laycoe viewed the video recordings of AA’s booking. He agreed that AA could be heard complaining about his right arm saying that it was “killing him.” AA complained that the injury occurred as a result of when he got slammed.

Constable Laycoe testified that he first became aware of a potential injury when AA was unable to place his right arm against the wall to be searched. He agreed that Sergeant Lentini did not assess the injury. He did not converse with Sergeant Lentini about AA’s injuries, but he did make a phone call to Constable Cooke to make him aware of the fact AA was complaining about a sore arm. Constable Cooke was not present for the booking, he was completing the arrest report. Immediately thereafter, Constable Laycoe and Constable Philip returned to the road to respond to calls for service.

In cross examination Constable Laycoe noted that it is entirely common for arrested persons to complain about being injured; he never thought that AA required medical attention.

Constable Stephen Cooke

Constable Stephen Cooke commenced his career with the Belleville Police Service in December 2014. On August 6, 2019, he responded to a domestic disturbance call along with Constable Philip and Constable Laycoe. They arrived at approximately 1:32 a.m. Constable Cook detailed the nature of the call for service. During this investigation, he informed AA he was under arrest for being intoxicated in a public place. AA resisted being arrested and Constable Cooke took him to the ground. Constable Cooke testified that he landed on top of AA as they fell to the ground together. He was assisted by Constable Philip and Constable Laycoe who placed AA in handcuffs. They also transported AA to the police station on his behalf because his cruiser did not have a cage to separate the back seats from the front seats.

Constable Cooke testified that AA did not complain of being injured in his presence. He first heard of a potential injury when he was informed by Constable Laycoe during a telephone conversation after AA was lodged in cells.

Constable Cooke testified that after he had concluded his paperwork, he attended the cell block to check on AA. AA had his shirt off and was confrontational, so he left the area. After viewing the video recording of the cell area, Constable Cooke agreed that he walked into the cell area at 2:27 a.m. At that time, he noticed AA's shirt was off, or his arm was hanging out of it the shirt.

Constable Cooke stated that at 3:03 a.m., he checked on AA again to get a better understanding of his injury, if any. AA complained that he had a broken arm then, so he informed Sergeant Lentini who called in other officers to transport AA to the hospital. Constable Cooke stated that based on Belleville Police Service Procedure, it falls on all the officers involved to ensue AA received medical attention.

In cross examination Constable Cooke stated that AA was very intoxicated, he was up and down emotionally, never calm. He noted that AA was handcuffed behind his back and at that time, he did not complain of being injured. He stated that he believed he had informed Sergeant Lentini that they had fallen off the front steps together at the same time he informed him AA was complaining of a broken arm. He said Sergeant Lentini acted immediately upon receiving that information.

Constable Cooke stated he was subject officer of a Special Investigations Unit investigation; he was interviewed, not charged. He conceded that he did not make a report of AA's injuries on the arrest report or in a supplemental report. He confirmed that he had not been the subject of an internal investigation as a result of this matter.

Video Evidence

Exhibit #8 is the flash drive containing the video recordings of AA's booking and lodging into cells on August 6, 2019. A portion of these recordings were played for the benefit of each of the witnesses who testified. Although the flash drive contains hours of recordings from the time AA was booked until his release, I viewed only the portions that involved AA interacting with the involved officers.

There was no transcript of the conversations captured on camera provided to the tribunal. The interpretations of the audio and video recordings in this section are mine, it is possible I have misconstrued several words, but I am satisfied that the gist of the conversations is accurately reflected in this decision.

The sally port camera indicates that the cruiser arrived at the police station at 1:46 a.m. The transport officers exited the car and entered the booking area where they briefed Sergeant Lentini. They returned to the sally port at 1:49 a.m. Constable Cooke entered the sally port at that time, conversed with the transporting officers and left the area having had no contact with AA. At 1:50 a.m., AA was removed from the back seat of the cruiser which was a large SUV style vehicle. AA was clearly handcuffed behind his back and walked to the booking area without incident. There is no audio recording in this area.

The booking area camera showed Sergeant Lentini entering at 1:47 a.m. This camera angle includes audio, but the quality is poor because of the nature of the surroundings, they are not favourable for meticulous audio recordings. The booking area has a desk with a computer monitor on it although at no time was the computer utilized during the booking process. Sergeant Lentini used the table to write on a clip board that held the necessary paperwork. Sergeant Lentini received requisite information from the transport officers and completed his paperwork accordingly.

Constable Cooke entered the booking area through the sally port indicating that he would start the paperwork while the other officers booked the prisoner. AA was escorted into the booking area at 1:50a.m. Constable Cooke was present momentarily as he appeared to be gathering AA's particulars from Sergeant Lentini's documents. AA could be heard complaining virtually immediately that his arm was very sore. This comment went unacknowledged by the officers, but Constable Cooke and Sergeant Lentini both raised their heads and looked at AA suggesting that they heard his comments. Constable Cooke left the booking area at that time.

As Constable Philip was removing the handcuffs, AA stated that he had sobered up and just wanted to go home. As the handcuffs were removed, Constable Philip directed AA to place his right hand against the wall. He held AA's right hand and placed it above his head against the wall. AA dropped his arm to his side immediately indicating that his arm was too sore to comply with this request. He indicated that his arm was hurt when they had thrown him to the ground.

Not all the conversation can be understood, but these comments were clear. Sergeant Lentini was present. I fully expect that he would have heard this utterance without difficulty. The officers did not acknowledge AA's complaint at that time.

Sergeant Lentini asked "what happened to your head?" I note that he did not approach AA to look at his facial/head injuries. The desk Sergeant Lentini stood behind, appeared to be approximately seven feet from where AA stood (based on my personal observation from the video footage, there was no additional evidence tendered on this issue). AA responded by saying "You guys slammed me against the fucking ground." Sergeant Lentini asked if it hurt. AA responded, "yeah, of course it hurts." Sergeant Lentini stated, "don't get slammed again."

Sergeant Lentini observed the subsequent search of AA conducted by Constable Philip. AA's right arm remained by his side; his left arm was against the wall as instructed. During the search, AA could be heard saying that he thought he had a broken arm. Sergeant Lentini responded, "oh you're fine, trust me." AA said, "I'm fine?" Sergeant Lentini said "ya." AA said, "I can barely move my arm." Sergeant Lentini asked which arm, and AA told him it was his right arm, he could barely lift it. Sergeant Lentini was observing him at this time and informed AA he was all right.

Sergeant Lentini asked AA other medical questions while documenting the responses in writing. During the process, AA stated that he could not feel his arm. His right arm could be seen dangling, he did not appear to be able to use it. AA did not request medical attention, he said he wanted to go to sleep.

Sergeant Lentini was present for all the above noted utterances and could have been expected to hear them more clearly than that of the recorded evidence. Another officer entered the booking area at 1:54 a.m. He engaged Sergeant Lentini in conversation for 30 seconds. During that time, I could expect his attention was drawn away from AA and he may not have noticed him wincing in pain. Sergeant Lentini lodged AA in a cell at 1:55 a.m. and left the booking area. Constables Philip and Laycoe left in their cruiser.

The next camera angle is of cell #1. It showed AA being placed in cell #1 at 1:55 a.m. by Constable Philip who held AA by his left arm. There is no audio from this camera. Sergeant Lentini locked the cell door, and the officers immediately left the area. AA used his left arm to remove his t-shirt. I did not view the remainder of this recording as neither counsel relied on the subsequent video footage.

The final camera angle is on the main cell corridor. This camera does have an audio recording, but the quality is very poor due to the conditions, concrete, and steel. This footage is consistent with the other recordings, showing AA being lodged at 1:55 a.m.

At 3:03 a.m. Constable Cooke entered the cell corridor and asked AA if he wanted a blanket. AA responded by saying “my arm is really sore; I think you guys broke it.” The ensuing conversation was difficult to understand because AA raised his voice, but it was clear that he was seeking medical attention for what he perceived to be a broken arm. Constable Cooke left the cell area at 3:04 a.m.

Sergeant Lentini attended the cells at 3:20 a.m. AA informed him that he needed to see a doctor because he thought his arm was broken. Sergeant Lentini asked how it happened and AA indicated it was when he was taken to the ground by police. Sergeant Lentini informed AA he would arrange to have him taken to the hospital and left the cells at 3:21 a.m.

Sergeant Lentini returned to the cells at 3:52 a.m. and released AA from the cells but not from police custody; AA was taken to hospital by other officers not involved in the arrest.

Audio Evidence

The flash drive marked as Exhibit #8 also includes a recording of the telephone call made by Sergeant Lentini to Staff Sergeant Patterson. A transcript of the call was provided to the tribunal but not relied upon. I found the audio recording clear and comprehensible.

Exhibit #9 is a copy of Sergeant Lentini’s duty-book notes. They indicate that at 3:12 a.m. Constable Cooke informed him that AA was complaining of a sore right arm. They indicate that at 3:20 a.m. he attended the cells and conversed with AA. They indicate that he called Staff Sergeant Patterson at 3:40 a.m. and attended the cells at 3:50 a.m. There is no time stamp of the telephone call, but because the times recorded in Sergeant Lentini’s notebook are generally consistent with the times that appear on the video recordings, I accept that he made the call to Staff Sergeant Patterson at approximately 3:40 a.m.

Sergeant Lentini provided an overview of the situation, that AA had been arrested for a *Liquor Licence Act* offence and during the arrest he was taken down to the ground onto his right side. He stated that AA complained 10 minutes prior to making this telephone call, that his right arm was broken, and he was seeking medical attention. Consequently, Sergeant Lentini was planning to have AA taken to the hospital for a medical examination.

Sergeant Lentini advised Staff Sergeant Patterson that AA had been lodged into the cells at 1:46 a.m. Sergeant Lentini informed Staff Sergeant Patterson that AA slept for two hours, and that AA complained initially that his right side was sore, but he was “all mumbly.”

Sergeant Lentini informed Staff Sergeant Patterson that AA appeared to be favouring his right arm or shoulder based on his recent observations of him in the cells. They discussed the plan moving forward on how to proceed with AA at the hospital and his ultimate release from custody.

Prosecution Submissions

Ms. Barrow submitted that Sergeant Lentini is an experienced officer and an experienced sergeant who would have booked hundreds of prisoners in that role. Consequently, Sergeant Lentini would have a full understanding of Procedure LE-016 and his responsibility to apply police policies accordingly.

Ms. Barrow reviewed Procedure LE-016 and noted that Sergeant Lentini was required to ensure the safety and wellbeing of AA which included ensuring he received medical assistance in a timely manner. Ms. Barrow conceded that Procedure LE-016 does not state specifically that medical attention must be provided immediately, but irrespective of the wording, it defies logic that it would be proper to defer medical attention when it was clearly warranted.

Ms. Barrow noted that Sergeant Lentini was aware of AA’s complaint of an arm injury at the time of his booking, and he failed to respond in a timely manner; AA waited over two hours before treatment was arranged. This was initiated by Constable Cooke who was not even present for the actual booking when AA made his injury known to Sergeant Lentini.

Ms. Barrow made lengthy submissions about the credibility and reliability of witnesses. I will not delve into those submissions or review them in my analysis as Mr. Kinahan conceded that he took no issue with the credibility or reliability of the witnesses.

Ms. Barrow submitted that the arresting and transporting officers were unaware of AA's arm injury until AA complained at his booking. Therefore, Sergeant Lentini was obligated to comply with Procedure LE-016. Instead, Sergeant Lentini did not question the officers about the details surrounding AA's arrest, and did not inquire further about AA's arm injury, he merely dismissed it. Ms. Barrow submitted Sergeant Lentini failed to comply with multiple sections of Procedure LE-016

Ms. Barrow noted that there is no definition of "transient" or "trifling" found in Procedure LE-016, it is up to the discretion of the officer involved. Ms. Barrow submitted the video evidence is clear, AA made numerous complaints about having a broken arm and he was in distress, unable to raise his arm. Sergeant Lentini failed to address the injury until it was brought to his attention by Constable Cooke hours later.

Ms. Barrow submitted that the video footage showed that Sergeant Lentini was aware of the injury and of AA's complaint. They were engaged in conversation about how the injury occurred and it was clear that AA was unable to raise his arm, he was demonstrably in pain. Sergeant Lentini did not take the injury seriously he did not document the injury in his notes or in the report.

Ms. Barrow submitted that Sergeant Lentini told Staff Sergeant Patterson that AA was "all mumbly" at the time of his booking was not accurate and was meant to distract from the delay in addressing the injury.

Ms. Barrow submitted that it is not relevant to these proceedings whether the involved constables were prosecuted under the *Police Services Act*, it was Sergeant Lentini's responsibility to comply with Procedure LE-016 and he did not do so.

Ms. Barrow made submissions related to the standard of proof in *Police Services Act* hearings and the test required to establish neglect of duty. The standard of proof is that of clear and convincing evidence. The evidence must show that Sergeant Lentini had a duty and failed to perform that duty promptly or in a diligent manner without a lawful excuse. The wilful conduct must cross the line from a performance issue to one of misconduct. This standard must be measured by that of a reasonable police officer in the circumstances.

Exhibit #10 is volume 1 of the prosecution's book of authorities, Exhibit #11 is volume 2. Ms. Barrow cited the matter of *Stirling and Hamilton-Wentworth Regional Police Service*, August 10, 1999 (OCCPS) in support of her position that an excessive period to complete a duty meets the definition of neglect of duty.

Ms. Barrow cited *Neild v. Ontario Provincial Police*, 2018 ONCPC 1 (CanLII) to support her position that mistaken belief or an ill-informed opinion is not sufficient to overcome an officer's obligation or duty; an element of willfulness must exist and does exist in this case.

Ms. Barrow submitted the matter of *Dykman and London Police Service*, 2012 ONCPC 4 (CanLII) where the Commission stated:

"Willful" is defined as intentional or deliberate in The Dictionary of English Law by Jowitt. It is also defined as asserting or disposed to assert one's own will against persuasion, instruction, or command, and done on purpose or willingly; purposed, deliberate, intentional – The Shorter Oxford English Dictionary.

Ms. Barrow submitted that nothing changed from the time of the booking until Sergeant Lentini complied with Procedure LE-016 other than Constable Cooke's notification. His inaction was not an oversight, it was a deliberate decision, this passes the threshold of a performance issue; the delay in arranging for medical attention was unreasonable.

Ms. Barrow submitted the matter of *Fright and Hamilton Police Service*, November 18, 2002 (OCCPS) wherein the Commission stated:

The Appellant urges us to find that the only individual responsible to ensure that the reports were filed were the officers who attended the scene. We cannot accept that proposition. Supervisors must supervise. The buck stops there. We find there is a clear and unequivocal policy in place with respect to this issue. Supervisors have a duty to ensure complete signed reports are filed.

Ms. Barrow submitted that Sergeant Lentini was the officer in charge responsible for prisoner care; the buck stopped with him. In *Hewlett*, the Commission stated:

Sergeant Hewlett was not a passive bystander or "backup." He was the senior officer on the scene. He was the immediate supervisor of all officers present. We agree with the Hearing Officer that Sergeant Hewlett was "responsible to ensure that the officers under his supervision satisfactorily perform their duties as assigned.: This is self-evident and does not require a specific policy or procedure.

Ms. Barrow noted that in this case, Sergeant Lentini was the supervisor of the involved officers and policy clearly outlined his duty as officer-in-charge of the station; at bare minimum, he was obligated to make further inquiries as to the extent of AA's injury. The video footage is clear, AA was injured, complained of his injury and it was dismissed by Sergeant Lentini as irrelevant. There is no lawful excuse to justify that response; his inaction crossed the line from performance issue to misconduct from the perspective of a reasonable police officer.

Defence Submissions

Mr. Kinahan submitted the Notice of Hearing is particularized, it sets out that Sergeant Lentini breached Procedure LE-016, section 4.21 which states:

Persons in police custody who are suffering from a hurt or injury which interferes with the health or comfort of that person must be transported to the nearest appropriate medical facility, even if the person is refusing medical attention. The person in custody can then make his/her refusal to a qualified medical doctor. The hurt or injury must be more than merely transient or trifling in nature.

Mr. Kinahan submitted this is not a situation where I can take one bullet point from the Notice of Hearing to determine it constitutes neglect of duty, the allegations are specific to breaching Procedure LE-016.

Mr. Kinahan submitted in the *Dykman* matter, there was specific policy in place which made the use of a low impact car forbidden for use in a police pursuit. He submitted that is not the case here, the difference is significant. The Belleville Police Service continually update policy and they had the ability to update this procedure but chose not to. Mr. Kinahan conceded that if the Procedure included the term forthwith or as soon as practicable for example, there may be some merit to the allegations. Mr. Kinahan submitted Procedure LE-016 does not specify when medical attention must be sought by the officer, therefore, Sergeant Lentini complied with the order. Mr. Kinahan submitted that the drafters of this policy cannot now rely on their own inadequacy to seek a finding of guilty because Sergeant Lentini complied with the detailed wording found in their policy.

Mr. Kinahan noted that Sergeant Lentini completed the necessary paperwork, secured medical attention for AA, and made the requisite notification to Staff Sergeant Patterson. Procedure LE-016 does not state when this had to be done, therefore he obeyed policy.

Mr. Kinahan cited the prosecution's case of *Dickenson v. Ontario Provincial Police, 2018 ONCPC 20* (CanLII) wherein the Commission noted:

The Hearing Officer began her analysis of the neglect of duty issue with a reference to the following quotation from *Mousseau and the Metropolitan Toronto Police Service, 1981 CanLII 3042* (ONCPC):

The reasonableness of the officer's conduct must be examined in light of the circumstances as they existed at a particular time. An officer is expected to use discretion and judgment in the course of his duties on many occasions. The police officer's' discretion or judgement ought not to be examined scrupulously by the benefit of hindsight, but it is essential to

examine the circumstances under which the officer exercised discretion or independent judgment to see what extent discretion was warranted.

Mr. Kinahan noted the standard is not one of perfection. He encouraged the tribunal to not view Sergeant Lentini's behaviour solely from the meticulous detail of the video recordings; he submitted I must consider officer discretion, and all the circumstances which existed at the time. Mr. Kinahan submitted that all witnesses were credible. Officers Philip and Laycoe handcuffed AA behind his back without issue and transported him to the police station without complaint of an injury. One of AA's last comments before being placed in the cells was that he simply wanted to sleep. The officers who testified admitted they did not believe AA's injury warranted medical attention. It was not until hours later that AA became passionate about requiring medical attention and Sergeant Lentini addressed it forthwith, in compliance with the directive.

Mr. Kinahan submitted that *Fright* is distinguishable from this matter because the allegation was based in policy which stated, "Supervisor's shall ensure reports are complete..." The officer was charged for failing to comply with a procedure that was directive in nature in that instance. Similarly, in *Moore*, the officer failed to adhere to policy, which was instructive, not discretionary. Sergeant Lentini had discretion and once he determined AA's injury was more than "transient or trifling in nature," he complied with the directive.

Mr. Kinahan submitted Sergeant Lentini's behaviour does not rise above that of a performance issue to one of wilful misconduct; it should have been dealt with in a manner other than reliance on the Code of Conduct.

Analysis

Sergeant Lentini is charged with neglect of duty, contrary to section 2(1)(c)(i)(A) alleging that without lawful excuse, he neglected, or omitted promptly and diligently to perform a duty as a member of the Belleville Police Service.

At tab 12 of Exhibit #11 is the matter of *Johnson v. Durham Regional Police Service, 2020 ONCPC 3 (CanLII)* wherein the Commission stated:

We do not accept the appellant's submission that the Hearing Officer applied the wrong standard of proof. At page 24 of his decision the Hearing Officer wrote: "The standard of proof for this Tribunal is clear and convincing evidence meaning there is weighty, cogent, reliable evidence upon which the trier of fact, acting with care and caution can come to a reasonable conclusion that the officer is guilty of misconduct."

I must adhere to the Commission's definition of clear and convincing evidence as noted in *Johnson*. To make a finding of guilty, the evidence must be clear and convincing; the evidence must be so clear, so reliable, and so convincing as to persuade me the allegations are true and the facts in issue satisfied.

In the matter of *Soley and Ontario Provincial Police*, May 27, 1996 (OCCPS) the Commission stated:

The charge of Neglect of Duty is a serious charge under the Code of Conduct. To be convicted of this charge, it must be shown that:

The member was required to perform a duty, and the member failed to perform this duty because of neglect or did not perform the duty in a prompt or diligent manner.

Once proven, the member, to avoid discipline, must then show that:

They had a lawful excuse for not performing the duty in the prescribed manner.

In this matter, I must determine whether Sergeant Lentini had a lawful duty. If so, did he neglect or fail to perform that duty in a prompt and diligent manner. If so, I must then consider whether he had a lawful excuse for failing to meet that requirement. This analysis must be based on the standard of a reasonable police officer.

To summarize the particulars of allegations, Sergeant Lentini knew or ought to have known that AA sustained an injury that required immediate medical attention and he failed to act fittingly, promptly, and diligently, in accordance with Procedure LE-016 constituting the offence of neglect of duty. Furthermore, Sergeant Lentini misled his immediate supervisor when he discussed his knowledge of AA's injury with Staff Sergeant Patterson.

Ms. Barrow and Mr. Kinahan both submitted that the witnesses provided credible and reliable evidence. I agree. I need not replicate their testimony in my analysis, I merely note that their evidence as mentioned in my overview is not in dispute. The same can be said for the overview of the video and audio evidence, I need not repeat it under this heading of "analysis," there is no disputing the authenticity and the accuracy of this evidence.

Inspector Aubertin noted that Sergeant Lentini was the only sergeant working at the time in question. I accept that assertion and find the evidence clearly established that Sergeant Lentini had a duty to care for AA as a prisoner in the custody of the Belleville Police Service. The Belleville Police Service Procedure LE-016, Prisoner Care and Control, is 12 pages long. I will not re-produce it in its entirety here, but it is important to understand

the pertinent sections of the document. Section 1.1 explains the purpose of this procedure:

It is the responsibility of members of the Belleville Police Service to ensure proper care and control of prisoners with a view to the safety of the prisoners...

Section 2.2 states:

Officer-in-Charge means a supervisor assigned to the station for the shift or any part thereof. A supervisor may be a confirmed Staff Sergeant, a confirmed Sergeant or anyone fulfilling an Acting Sergeant role.

There is no question that Sergeant Lentini was the officer-in-charge of the platoon which included prisoner care at the police station at the time of this incident. Section 4.1 and Section 4.4 of Procedure LE-016 state:

The following process is to be followed in relation to overall care of any person in custody at the Belleville Police Service and associated courts.

The supervisor shall ensure that a detention log is completed in as much detail as possible. All fields shall be completed as appropriate.

Section 4.19 reads as follows:

Any member who is directly involved in the arrest, detention or release of a person who has visible signs of or complains of an injury, shall note such injury or complaint in an occurrence report or supplementary report as the case may be and forthwith deliver the report to his/her supervisor.

As noted, I am satisfied that as the officer-in-charge, Sergeant Lentini had a duty for the overall care of AA as a person in custody, and to ensure that the detention log was completed in as much detail as possible. Sergeant Lentini was obligated to ensure AA received appropriate care if he was aware of injuries that required medical attention.

I find the evidence overwhelmingly convincing that at the time of AA's booking, Sergeant Lentini was aware AA was suffering from at minimum, two injuries. There was a mark on AA's forehead that must have been clearly visible because from a distance of approximately seven feet, Sergeant Lentini asked AA what happened to his head. Whether seven feet is an accurate distance between Sergeant Lentini and AA is not relevant, what matters is that Sergeant Lentini made no attempt to conduct a thorough examination of AA's injuries by approaching him for a closer look.

AA responded to Sergeant Lentini's inquiry by informing him that his head injury occurred when he was arrested and that it hurt. On the Arrest Booking Report, Sergeant Lentini

indicated that force had been used at the time of the arrest and noted that AA had an injury. He added the following explanation:

Scrape to the top of head while arrested // putting up a fight with police.

Question #11 on the Risk Assessment section of the Arrest Booking report asks, "Hospital treatment required?" The report is incomplete as this field has not been answered; it is the only question left unanswered in this section. It was Sergeant Lentini's responsibility to ensure this questionnaire was not only accurately completed, but to act accordingly; in this case, thoroughly investigate the nature and extent of AA's injuries. Sergeant Lentini failed to do so.

Exhibit #9 contains four pages from Sergeant Lentini's notebook with the first entry commencing at 1:46 a.m., the time he booked AA into custody. These notes have not been transcribed for the tribunal and Sergeant Lentini did not testify to qualify the notes and its content, but I find them reasonably legible. I may not have every word accurate, but I am satisfied this is a reliable interpretation of their content. The notes capture AA's particulars, and they indicate AA was arrested for breaching section 31(4) of the *Liquor Licence Act*. In part, the notes state:

- Arrest time 1:41
- Intoxicated by alcohol
- Scrape on forehead from wrestling with police upon arrest
- Cell #1 until sober

Sergeant Lentini's notebook entry at 3:12 a.m. states:

PC Cooke advises me that AA is now complaining of a sore right arm/shoulder that may have happened during the arrest on Pine St.

Sergeant Lentini then made very detailed and accurate notes about the conversation he had with AA in the cells. His notes show that he conversed with Staff Sergeant Patterson and advised her of the situation. At 5:35 a.m. Sergeant Lentini noted that AA suffered a broken humerus bone according to the officers who transported AA to hospital.

The video footage of the booking area is very helpful, it shows AA clearly favouring his right arm; it is irrefutable and powerful evidence. During the booking process, AA explained to Sergeant Lentini that his arm injury had occurred when he was taken to the ground and arrested by police just minutes earlier. I am troubled by the fact Sergeant Lentini wrote in his notebook, and on the arrest booking report, that AA had a scrape to the top of his head which occurred during his arrest but made no recording of the injury to his arm. I am puzzled as to why Sergeant Lentini found it appropriate to completely dismiss the more serious arm injury while documenting a minor head injury.

Sergeant Lentini was responsible for booking AA and consequently, he was present from start to finish. The booking process commenced when Sergeant Lentini was briefed by the transporting officers at 1:47 a.m. At 1:50 a.m. Constable Laycoe and Philip presented AA before Sergeant Lentini. Almost immediately, AA complained of having a sore right arm. Over the next five minutes AA complained about his arm at least four times, indicating that he thought it was broken and he was unable to raise it against the wall to accommodate the search. Of note, AA raised his left arm as directed. He was compliant and I am satisfied that he clearly would have raised his right arm if it was mobile, and he was able.

In response to AA's repeated complaints of injury, Sergeant Lentini indicated "you're fine, trust me" and "you're all right." Sergeant Lentini remained behind the desk, he made no attempt to converse with AA or the involved officers about the nature or extent of the injury; he chose to not assess AA's arm injury whatsoever or to document it.

The booking process lasted five minutes with AA being placed in cell #1 at 1:55 a.m. I accept that Sergeant Lentini was interrupted by another officer at one point during the booking process, he was standing at a table that had a large video monitor that could have obstructed his view of AA and his head was down taking notes on occasion. The interruption was 30 seconds in length, it did not prevent him from being able to conduct a suitable assessment of AA's injury. The fact that he had to look over a monitor and take notes, did not prevent Sergeant Lentini from conducting a proper assessment of AA. In fact, he was obligated to do so. If he was unable to conduct a proper assessment for any reason, he was required to take extra time and to whatever lengths necessary to do so.

There was no indication that Sergeant Lentini was pressed for time or that he was unable to conduct a more thorough assessment of AA's injury for any reason. I accept the testimony of the officers indicating that it is not unusual for arrested persons to falsely concoct complaints of a medical nature to seek medical attention at hospital to avoid being placed in a holding cell. This common occurrence does not obviate Sergeant Lentini of his obligation to ensure all prisoners receive appropriate medical attention as required.

I also accept the testimony of the involved officers indicating that AA did not make mention of his injured arm until the time of his booking. I am not impacted by this, nor am I impacted by the fact the constables may not have complied with section 4.19 of Procedure LE-016. According to the arrest report, AA was arrested at 1:41 a.m. The officers arrived at the station with AA at 1:49 a.m. The fact that he did not complain over this eight-minute period of time is irrelevant, it has no impact on whether Sergeant Lentini was obligated to fulfill his duty as officer in charge when he became aware of AA's injury moments later.

Section 4.19 stipulates that any officer directly involved with AA was obligated to make note of his reported injury and deliver him to their supervisor. They made no such notation, but AA made his initial complaint of injury in the very presence of their supervisor.

Sergeant Lentini is the officer in charge of the cells, he has the seniority and the supervisory responsibility to ensure a prisoner's injuries are not overlooked. Whether the constables involved believed AA required medical attention is also not relevant. Like their supervisor, the involved constables made no effort to investigate the nature or extent of AA's injury. How could they possibly make a determination that medical attention was not required without conducting a proper assessment? As noted, the purpose of this Procedure is to ensure proper care and control of prisoners, that is the responsibility of the officer in charge; the role held by Sergeant Lentini.

Mr. Kinahan suggested that I avoid armchair quarterbacking, that is to say I ought not to examine the evidence in hindsight, with the benefit of knowing all the particulars after the fact. I agree. I must consider the information that was available to Sergeant Lentini at the time he decided to dismiss AA's injury complaint. The actual video footage of the booking and cell area is of great assistance to avoid armchair quarterbacking; it provides evidence in real time confirming what Sergeant Lentini knew and when he knew it.

I agree with the testimony of Inspector Aubertin who explained officers engaged with an arrested party must assess that person's injury to determine if it is more than transient or trifling in nature which requires medical attention. I also agree with the Inspector when he noted that in situations where the prisoner is intoxicated to the extent that they cannot care for themselves, it increases the obligations on the officers involved to ensure the prisoner is cared for even if medical attention is not specifically requested.

AA was arrested for being intoxicated in a public place. To arrest an individual for this offence, the arresting officer must believe the individual is intoxicated and the arrest "is necessary for the safety of any person." Sergeant Lentini was aware that AA was arrested for being intoxicated in a public place. The fact that the prisoner is intoxicated increased Sergeant Lentini's obligation to determine whether AA's injury was serious; whether it was more than transient or trifling in nature which required medical attention. He did not conduct any assessment beyond his personal observation of AA's demeanour at a distance of approximately seven feet.

In *Moore and Ontario Provincial Police*, 2008 ONCPC 2 (CanLII), the Commission stated:
The fact that there were several; officers present at the time does not relieve Constable Moore as the officer in charge, of the responsibility for ensuring that all the appropriate investigative steps were taken...

...the Hearing Officer took into consideration that Constable Moore had over twelve years of experience...

...Constable More had an obligation to satisfy himself that all of the appropriate investigative steps had been completed in accordance with OPP policy. His failure to so satisfy himself was neither prudent nor reasonable and constituted the foundation of neglect of duty...

Attempting to minimize his omissions by claiming that relevant OPP policies were not sufficiently specific flies in the face of common sense and investigative prudence...

Ms. Barrow noted that in this case, and I agree, Sergeant Lentini was the supervisor of the involved officers and policy clearly outlined his duty as officer-in-charge of the station. In *Beniuk v. Edmonton Police Service*, 2017 ABLERB 2, the Board stated:

...The Chief dismissed the complaint because there was no request made by the appellant, and because injuries appeared minor. With all due respect, in the case of a blow to the head, administered by one of the respondents, and in light of the appellant's intoxication, the Board's view is that it was incumbent upon the respondents to at least inquire of the appellant if he required medical attention and perhaps even instigate a medical examination, after administering a blow to the head, it was unlikely that the appellant was in a position to assess his own medical condition. The Board notes that respondent Fox stated there was a visible injury to the head. It was unreasonable for the Chief to dismiss this aspect of the complaint.

AA was arrested for being intoxicated in a public place; the arresting officers determined AA was unable to care for himself. Sergeant Lentini was aware of the nature of the offence and ought to have known an intoxicated person may not be able to properly assess their own injury. Sergeant Lentini did the exact opposite of his duty; rather than examine the alleged injury, he dismissed it as being inconsequential and unworthy of documentation or further consideration.

Common sense and decency suggest Sergeant Lentini ought to have conducted a more thorough inquiry into the full nature and extent of AA's injuries. Furthermore, Sergeant Lentini was obligated to do so based on Procedure LE-016. Section 4.21 of Procedure LE-016 states:

Persons in police custody who are suffering from a hurt or injury which interfered with the health or comfort of that person must be transported to the nearest appropriate medical facility, even if the person is refusing medical attention. The

person in custody can then make his/her refusal to a qualified medical doctor. The hurt or injury must be more than merely transient or trifling in nature.

I understand Sergeant Lentini is not a medical practitioner. I am not suggesting that he ought to have known that AA's arm was broken, that would be considered armchair quarterbacking. I do find however that Sergeant Lentini was obligated to conduct a more thorough assessment of AA's alleged injury. I do not accept that in so doing two hours later, satisfied his duty; Sergeant Lentini was obligated to conduct an assessment of AA's injury the moment he became aware of it. Instead, he dismissed the complaint as frivolous or unfounded without any basis for coming to such a conclusion.

I do find it noteworthy that Constable Laycoe was impacted by AA's injury to such an extent that he telephoned Constable Cooke to inform him about AA's complaint. I find that making such a call is indicative of a certain level of concern. Constable Laycoe heard the same complaints from AA and made the same observations of AA's inability to comply with the search commands as Sergeant Lentini. Constable Laycoe testified that he did not believe AA required medical attention, but he also did not conduct any semblance of examination. It is clear from the video footage that all officers could have reasonably concluded that AA was suffering an injury to some extent. AA complained repeatedly of pain, and he was incapable of placing his right arm above as his head. If the extent of the injury was concerning to Constable Laycoe to this extent, it should have been clear and concerning to the officer in charge responsible for prisoner care.

Had Sergeant Lentini conducted a thorough assessment of AA's injured arm and decided that it did not warrant medical attention because in his opinion it did not meet the threshold of being more than merely transient or trifling in nature, he may have been in compliance with the Procedure. I do not accept however that not making any attempt to examine the injured area, completely dismissing AA's complaint by saying "don't get slammed again" or "you're alright, trust me," is effectively utilizing officer discretion; it is neglecting a duty.

Constable Cooke did not make mention of AA's injuries in his arrest report, and he testified that he did not submit a supplementary report to document AA's injuries. He did not comply with section 4.19 of Procedure LE-016. Sergeant Lentini is Constable Cooke's supervisor. Not to absolve Constable Cooke of his accountability, but Sergeant Lentini was obligated to ensure his subordinate complied with this section of Procedure LE-016.

Mr. Kinahan suggested the wording in Procedure LE-016 is flawed; transient or trifling in nature is not defined and the policy does not provide direction to the officer in charge as to when they must ensure an injured prisoner receives medical attention. The words forthwith or as soon as practicable are not included in the policy. Mr. Kinahan submitted

Sergeant Lentini complied with Procedure LE-016 because he ultimately ensured AA received the medical attention he required.

I accept that Sergeant Lentini did comply with the policy at approximately 3:40 a.m. when he notified Staff Sergeant Patterson and then made arrangements to have AA transported to hospital to receive medical attention. However, from the time of AA's booking at approximately 1:50 a.m. until this time, I find Sergeant Lentini intentionally failed to abide by the Procedure LE-016. Whether transient or trifling was defined in policy is not relevant because Sergeant Lentini took no steps to determine the extent of AA's arm injury.

In the matter of *Kelly and Durham Regional Police Service*, August 26, 2003 (OCCPS), the Commission considered the duties of a police officer and noted:

They must be performed with impartiality. All police officers in Ontario are required to take an Oath of Office. It is set out in O. Reg. 144/91 as amended. It requires every police officer to swear or affirm that he or she will "to the best of my ability, preserve the peace, prevent offences and discharge my other duties...faithfully, impartially and according to the law."

As well, these duties must be performed with diligence. This specific term is not defined in the Act or Regulations, but has certainly been examined in previous Commission decisions. For example, *McGuire and Toronto Police service* (1971), 1 O.P.R. 53 (O.P.C.) at page 54 it was noted that:

Diligence is defined in the Oxford English Dictionary as being "the care and attention due from a person in a given situation." The Random House Dictionary defines diligence as "the constant and earnest effort to accomplish what is undertaken; persistent exertion of body and mind."

Sergeant Lentini had a duty to ensure prisoners in his care, AA in this instance, receive appropriate medical attention. Undoubtedly Section 4.21 of LE-016 should include a term to the effect of immediately or as soon as practicable, but common sense suggests this to be the case. It is my position that any person, let alone a police supervisor with nearly 30 years of experience would agree.

As I have noted, Mr. Kinahan submitted that because Procedure LE-016 does not specify terms such as forthwith or immediately, therefore, Sergeant Lentini complied with policy when he arranged for AA to receive medical attention several hours after his initial complaint. In *Dickinson*, the Commission noted:

In our view, the lack of a wellness check policy by the OPP is irrelevant. The Hearing Officer analyzed the appellant's investigation from the perspective of a police officer and the corresponding duty "to protect life and safety."

Similarly, I do not accept that a reasonable police officer would find it acceptable to ignore AA's verbal complaint of injury, supported by personal observation of obvious discomfort. The fact that the policy does not direct the officer in charge to respond immediately to a prisoner's injury is not relevant; Sergeant Lentini had a duty to thoroughly investigate the extent of AA's injury to determine whether the injury was more than merely transient or trifling in nature which required medical attention.

As noted in *Kelly*, police officer duties must be performed with diligence. Sergeant Lentini did not perform his duty in a diligent manner; he dismissed AA's complaint of a sore arm by telling him to not get slammed again. He made no effort whatsoever to assess AA's injuries. Sergeant Lentini could observe an injury to AA's forehead from a distance, AA told him that it hurt, but Sergeant Lentini did not examine it further to determine if it needed medical attention. He must have determined that injury was not more than transient or trifling in nature. This does not make up part of the NOH, but it is noteworthy because Sergeant Lentini's apathetic approach to AA's facial injury is consistent with him completely disregarding AA's complaint about an arm injury.

In the matter of *Hewlett v. Ontario Provincial Police*, 2007 ONCPC 7 (CanLII), the Commission noted:

In situations where there is a clear or explicit rule to be followed then it is relatively simply to determine the precise steps to be taken to diligently perform an obvious duty...

It cannot be said that Sergeant Lentini was unaware of his duty, because ultimately, he complied with Procedure LE-016 when he notified the incident commander and ensured AA received the necessary medical attention albeit, several hours after the initial complaint of injury. In, *Dykman*, the Commission stated:

We find that the Appellant knew or ought to have known from his training that he breached LPS policy and training in conducting an SAP in an unmarked cruiser. With that knowledge, the Appellant could only have been engaged in a deliberate or intentional breach of police, which accordingly, was willful. As such the Appellant is guilty of neglect of duty as charged.

Similarly, Sergeant Lentini knew he had a duty, he willfully chose to disregard that duty. He completed the arrest booking report but did not make mention of the arm injury. He did not make mention of AA's arm injury in his notebook and Sergeant Lentini did not assess AA's injuries to ensure he received immediate medical attention.

I must consider the actions of Sergeant Lentini from the perspective of a reasonable police officer. This is not about me playing the role of doctor and stating that because AA

had a broken arm and did not receive immediate medical attention, it amounts to neglect of duty. I am not suggesting Sergeant Lentini ought to have known AA's arm was broken, in fact, it was impossible for him to know the extent of the injury because he conducted no assessment whatsoever; that is where he failed his duty. It was not possible for him to determine whether AA's injury was transient or trifling in nature because he simply dismissed it, he conducted no examination as he was obligated to do. It is my position that a reasonable officer would not have ignored AA's complaint of injury. A reasonable officer would not only have documented the alleged injury in the arrest booking report and in their notebook, but they would expect Sergeant Lentini to take the matter seriously, to have posed questions to AA about the nature and extent of the injury and to examine the injured area to ensure his safety and to comply with policy.

I do not accept this could be considered a training or performance issue, to act accordingly given this situation is not only common sense, but clearly stated in policy; all officers must know that caring for injured persons in their custody is an unconditional requirement, it is a responsibility which cannot be overlooked. Had Sergeant Lentini included AA's arm injury in his notebook and in the arrest booking report and was completely forthcoming in his conversation with Staff Sergeant Patterson, perhaps an argument could be made for a performance issue but when the totality of Sergeant Lentini's behaviour is considered. Sergeant Lentini's blatant disregard for AA's injury crossed the line from a performance issue to one of misconduct.

Mr. Kinahan submitted the Notice of Hearing is specific to breaching section 4.21 of the Belleville Police Service Prisoner Care and Control Procedure LE-016 but the Notice of Hearing also alleges that Sergeant Lentini failed to fully account to Staff Sergeant Patterson as to what occurred during the booking process of AA. I find that Sergeant Lentini misled his supervisor by suggesting he had first learned about AA complaining about having a broken arm just 10 minutes prior to the telephone call and by suggesting AA was "all mumbly" and complaining only about a sore right side when he was lodged. The video footage clearly shows AA having difficulty moving his right arm and indicates AA complaining repeatedly about having a sore and possibly broken right arm at the time of the initial booking several hours earlier.

The Notice of Hearing also alleges Sergeant Lentini failed to undertake a proper assessment of the prisoner's injuries. He failed to ensure that the injuries were properly documented. I find this to be true. Subsequently, he was unable to comply with section 4.21 of Procedure LE-016; he was not able to determine whether the injuries were more than merely transient or trifling in nature because of his failure to undertake a proper assessment of AA's injuries. The required standard of care was not met.

Conclusion

I find Sergeant Lentini was required to perform the duty of caring for a prisoner in his care, which included conducting a proper assessment of injuries, ensuring medical attention was obtained where necessary and accurately documenting injuries in his notes and in the arrest booking report.

I find Sergeant Lentini failed to take AA's injury complaint seriously, he failed to consider that AA's injury complaint could have been authentic and took no steps to investigate the complaint. Sergeant Lentini dismissed AA's complaint which was accompanied by obvious physical discomfort. He then failed to document the injury in his notes and in the arrest booking report.

Every police officer including Sergeant Lentini is aware of these duties. Sergeant Lentini complied with Procedure LE-016 eventually but failing to do so in a prompt or diligent manner meets the threshold of misconduct and the definition of neglect of duty. Sergeant Lentini was aware of his duty; he chose not to adhere to it.

I have contemplated this from the perspective of a reasonable police officer, considering the circumstances as they existed at the time.

Sergeant Lentini did not offer a lawful excuse for his behaviour.

Decision

After carefully considering the testimony of the four witnesses, the exhibits tendered and the submissions of counsel prudently and judiciously, I find the evidence clear and convincing. I find Sergeant Lentini guilty of each of neglect of duty.



Greg Walton
Adjudicator
Superintendent (R),
Ontario Provincial Police

Date electronically delivered: January 11, 2022