



**HEARING DECISION
JUDGEMENT**

Name: Vincent WONG AND Blair BEGBIE

Rank: Police Constable

Badge Number: 8456 and 8401

Case Number: 2012.09 and 2012.08

Hearing Date: 2013.12.13

Hearing Officer: The Hon. Judge W. GONET

Prosecutor: Mr. B. VAN NIEJENHUIS

**Defence Counsel:
Or Representative** Mr. A. GOLD AND Ms. M. WEBB

Notice of Hearing
Police Services Act, R.S.O. 1990, c.P.15, as amended

TO: Police Constable Vincent WONG (8456)
AND TO: Police Constable Blair Begbie (8401)

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

STATEMENT OF PARTICULARS:

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

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

At approximately 9:50 a.m., you were in the area of Yonge Street and Gerrard Street and had contact with the complainant, J.W.. You saw J.W. wearing a bandana and unlawfully arrested him for being disguised with intent and continued his detention.

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

HEARING DATES:

November 21 and 22, 2013.

COUNSEL:

Prosecution: B.J. Van Niejenhuis
 E. Marrocco

P.C. Vincent Wong: A.D. Gold

P.C. Blair Begbie: M. Webb

Jason Wall: K. Burke

BACKGROUND:

Police Constable Vincent Wong was part of a bike unit during the presence of the G20 meetings in the City of Toronto. There was an extensive police presence in downtown Toronto on Saturday, June 26, 2010 and Sunday, June 27, 2010.

There was wide spread rioting on Saturday, June 26, 2010. The results of this criminal activity is shown in Exhibit 13 which pictures participants in the Queen Street West area together with that occasioned on Yonge Street.

Police Constable Wong participated in the controlling of the mayhem in the Queen Street West area and was well aware of the composition of the mob and the resulting violence.

Jason Wall attended on Saturday, June 26, 2010 at the intersection of Queen Street West and John Street as what he described as a "peaceful protestor". He arranged to have photos taken of himself and police officers to show his presence, clothing and attitude prior to the rioting (Exhibits 8 and 12). There was no arrest of Mr. Wall on the Saturday and no evidence that he participated in any criminal conduct.

EVIDENCE:

Jason Wall

Mr. Wall testified that he attended the march on Saturday, June 26, 2010, which commenced at Queen's Park and then proceeded southerly on University Avenue and then went westerly on Queen Street West. His participation was during the period from noon to approximately 5 to 6 p.m.. His attendance ended at the intersection of Queen and John Streets as evidenced in Exhibits 8 and 12. After 5 p.m. he left for his girlfriend's residence in the Dundas and Jarvis Streets area where he had dinner and spent the night.

As shown in Exhibits 8 and 12, he was attired as follows:

- T-shirt, shorts, cap
- Bandana (Exhibit 8 – around his neck; Exhibit 12 – over his face)
- Green shoulder bag containing cell phone, water bottle and ear plugs

There was also on his left arm the black writing, "Is This Freedom?"

He testified that on arising Sunday, June 27, 2010, at approximately 9:45 a.m. to go home in the College and Bathurst Streets area, he walked his girlfriend to St. Michael's Cathedral located on Bond Street south of Dundas Street. Mr. Wall testified that he intended to proceed north on Bond Street to Dundas Street, then west on Dundas Street to Yonge Street, then north on Yonge Street to College Street, then west on College Street to Bathurst Street. His primary intention was to get home and change his clothes, as he was wearing the same clothes as shown in Exhibits 8 and 12. He then testified that he planned to go to church at Frassati House, 685 Finch Avenue West for 2 p.m. and subsequently at there for a BBQ and going away party (Exhibit 10).

Upon reaching the north east corner of Yonge and Dundas Streets, Mr. Wall testified that he met up with a friend, exchanged greetings and parted (Exhibit 9). The time of this meeting was 9:53 a.m.. During this photographed meeting, Mr. Wall was not wearing the bandana on his face. Mr. Wall crossed to the west side of Yonge Street and proceeded in a northerly direction. He was the only, or one of two or three, pedestrians on Yonge Street at this particular time. As he approached the south-east corner of the Delta Chelsea Hotel at the intersection of Yonge and Walton Streets, he testified he saw a number of police officers in a bike unit standing at the edge of the hotel building.

Mr. Wall testified that he was asked by Police Constable Wong where he was going and Mr. Wall replied that he was going home at College and Bathurst Streets. He identified himself as asked by Police Constable Wong. Mr. Wall further testified that he was going home to change

his clothes as he was going to church. He gave up his shoulder bag and advised Police Constable Wong that his phone had a camera with the pictures taken with the police officer on Saturday, June 26, 2010 (Exhibit 8). The further contents of the bag were a set of ear plugs, water bottle and a black marker. Mr. Wall admitted that he was wearing a bandana but this bandana was always around his neck and never covered any part of his face.

Mr. Wall testified that he was told that he was under arrest but was not told initially as to what particular offence. Subsequently, he was told that it was for wearing a disguise with intent to commit an indictable offence as he was wearing a bandana. He was handcuffed by Police Constable Wong and placed in the stairwell of the hotel to await the prisoners wagon.

During the arrest, Mr. Wall sustained an injury to his head. He was taken to a holding area, strip-searched and remained in custody for 24 ½ hours. He was released on Monday morning and was not formally charged with any offence.

Police Constable Wong

Police Constable Wong testified that he was on duty on Saturday, June 26, 2010, and was one of the officers that had to control the rioters' behaviour of the "Black Bloc". On Sunday, June 27, 2010, he attended at a briefing conducted by Sergeant Gibb at the Delta Chelsea Hotel. Police Constable Wong testified that Sergeant Gibb advised that he had received specific instructions from upper command with specific orders to the effect that anyone with bandanas, gas masks, and goggles were "arrestable" or were to be arrested for the offence of wearing a disguise with intent to commit an indictable offence.

After this briefing Police Constable Wong testified that he attended at the intersection of Yonge Street and Walton Street. It was at this time Police Constable Wong noticed Mr. Wall walking on the west side of Yonge Street approaching the group of police officers outside the hotel. Police Constable Wong was suspicious as Mr. Wall looked very odd. Upon reaching the site

where the police officers were standing, Police Constable Wong stopped Mr. Wall and engaged him in obtaining his identification and search of shoulder bag. He testified that Mr. Wall was cooperative at all material times.

Police Constable Wong detained and arrested Mr. Wall as he felt that from his investigation he had reasonable and probable grounds to do so. He testified that the disguise, ie. the bandana, was covering Mr. Wall's face from below the lower lip to his chin. Police Constable Wong also testified that he heard Mr. Wall say he was going to Queen's Park to continue to demonstrate but did not hear anything of Mr. Wall going home and then to church for a previously-arranged function.

During the period that Mr. Wall was in sight of Police Constable Wong, Mr. Wall did not take any evasive action to run away or did he cause any damage to any of the already damaged store fronts.

Police Constable Begbie

Police Constable Begbie was Police Constable Wong's escort and confirmed the evidence of Police Constable Wong. Police Constable Begbie testified that he thought it strange to see this solitary person walk up Yonge Street in the clothing he was wearing. He also testified that Mr. Wall was totally cooperative during his interchange with the police officers.

Police Constable Begbie did not detain, cuff, or take part in the arrest save and except for his presence with Police Constable Wong at the initial stopping of Mr. Wall.

As to the intentions of Mr. Wall for that afternoon, Police Constable Begbie stated that he did not hear the word "church" from Mr. Wall but found that Mr. Wall was proceeding in a

direction to Queen's Park. It should be judicially noted that it is also in a direction to Mr. Wall's home at College and Bathurst Streets.

Sergeant Lou Gibb

Sergeant Gibb unfortunately lost his original notes but to his best recollection believed that he said if a person was found to be wearing a bandana, gas mask and carrying a backpack, that person was to be investigated for possible arrest for wearing a disguise with intent to commit an indictable offence.

Reasonable and Probable Grounds

All police witnesses agreed that to have a legal arrest the officer must have reasonable and probable grounds to make an arrest. The grounds do not have to prove the offence beyond a reasonable doubt but have to satisfy the subjective and objective requirements of making that belief. These requirements were discussed in *R. v. Storrey*, [1990] 1 S.C.R. 241 at para. 17:

In summary then, the Criminal Code requires that an arresting officer must subjectively have reasonable and probable grounds on which to base the arrest. Those grounds must, in addition, be justifiable from an objective point of view. That is to say, a reasonable person placed in the position of the officer must be able to conclude that there were indeed reasonable and probable grounds for the arrest. On the other hand, the police need not demonstrate anything more than reasonable and probable grounds. Specifically, they are not required to establish a prima facie case for conviction before making the arrest.

Reasonable and probable grounds will exist when the officer subjectively believes those grounds and those beliefs are justifiable from an objective point of view. The evidence before this hearing is that on Sunday, June 27, 2010, at or about 9:53 a.m., Mr. Wall was on a video tape (Exhibits 9 and 11) at the north east corner of Yonge Street and Dundas Street East

speaking to a female person. At that time he was wearing the clothing he was arrested in and his face was not covered with a bandana. He gave in evidence that it was his intention to go home to change his clothing and go to a church function (Exhibit 10). His place of residence was in the College and Bathurst Streets area. The function was to be held at 685 Finch Avenue West at 2 p.m.. Mr. Wall crossed the road to the west side of Yonge Street and proceeded north approximately ½ kilometer where he was met by 20 police officers in a bike unit.

Police Constable Wong stated that he saw Mr. Wall coming in a northerly direction on Yonge Street and perceived that he was wearing a bandana covering the his face from below Mr. Wall's lower lip to his chin. In accordance with the orders of the day, Police Constable Wong felt that this was a disguise and Mr. Wall was arrested.

The circumstances of this arrest offend common sense and there is no "air of reality" as to what occurred that morning between Mr. Wall and Police Constable Wong based on the following factors:

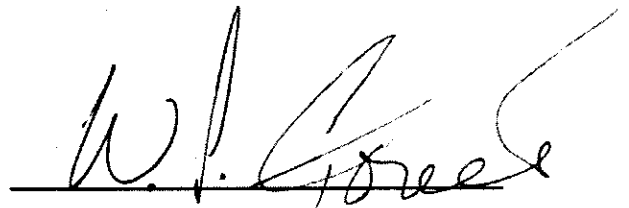
- Mr. Wall would have had to place the bandana over the lower part of his face in the ½ kilometer walk from Dundas Street notwithstanding that he knew and could see the police presence at the hotel
- Mr. Wall did not try to evade the police
- Mr. Wall was fully cooperative with the police
- Mr. Wall allowed the search of his shoulder bag
- Mr. Wall showed a photo of himself and a police officer taken on Saturday, June 26, 2010 (Exhibit 8) where he was wearing the same clothing
- Mr. Wall was proceeding in the same direction as Queen's Park and College and Bathurst Street

In assessing the "clear and convincing" evidence given by all witnesses in this matter, I find that Police Constable Wong has failed to satisfy the objective requirement in the formulation of his belief that he had reasonable and probable grounds to make the arrest.

DECISION:

I find that you, Police Constable Wong, did commit misconduct in that you did without good and sufficient cause make an unlawful or unnecessary arrest. In regards to Police Constable Blair Begbie, I find that there is no evidence of his part and therefore the complaint as against him will be dismissed.

DATED at Toronto this 13th day of December, 2013.

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

Walter S. Gonet

Hearing Officer