



Ontario Provincial Police
Culture and Strategy Services
Office of Professionalism, Respect, Inclusion, and Leadership
Professional Standards Unit

Public Complaint Investigation Report

Date of Incident: Wednesday, December 20, 2023

Date of Complaint: Tuesday, February 20, 2024

Date of Report: Friday, June 07, 2024

OPP File Number: 2531024-0063

OIPRD File Number: E-202401021457441473

Related RMS Number: E231665842

Respondent Officer: Karl BORGMANN
Provincial Constable #14029
Centre Wellington Operations
West Region

Investigator: Randy Martin
Civilian Investigator
Professional Standards Unit

Findings: Substantiated

Summary of Complaint

The complainant, Mr. Anthony SAXON, had alleged that PC BORGMANN while at the scene of a fatal pedestrian motor vehicle collision on December 20, 2023, unnecessarily/unlawfully detained a reporter, Mr. VIVIAN, who was lawfully engaged in his profession by obtaining photographs.

Officer Misconduct Allegation

PC Karl BORGMANN

Unlawful or Unnecessary Exercise of Authority – Sec. 2(1)(g) PSA Reg. 268/10
Discreditable Conduct - Sec. 2(1)(a) PSA Reg. 268/10 X 2

Summary of Witness Involvement (Civilian and Police)

Civilian Witnesses

Antony SAXON – Complainant

On the day of the incident, he was an editor with the GuelphToday.com online newspaper and received a phone call from Mr. VIVIAN who was at the scene of a fatal pedestrian / motor vehicle collision. The call was recorded and partially captured audio of an interaction of Mr. VIVIAN and PC BORGMANN. He alleged that PC BORGMANN unnecessarily/unlawfully detained Mr. VIVIAN and seized his camera. He provided an audio recorded statement to the Professional Standards Unit (PSU).

Lorne HOWLETT

On the date of the incident, he was a Maintenance Co-ordinator with the Ministry of Transportation (MTO). He attended the scene prior to 9:00 am, spoke with a male officer and requested to obtain photographs of the scene for his report. The officer was polite, but would not allow him to obtain scene photos. He was told to return later and believed the reason was due to the victim's family notification which had not been completed.

Dr. Ian MacPHEE

On the day of the incident, he was the Regional Supervising Coroner who attended the scene of the incident after being contacted by Dr. MENDONCA due to the seizure of Mr. VIVIAN's camera. He consulted with Dr. MENDONCA and provided direction to PC BORGMANN to retain Mr. VIVIAN's SD card. He was not interviewed by the PSU.

Dr Paul MENDONCA – Coroner

On the day of the incident, he was the coroner assigned to investigate the fatal pedestrian / motor vehicle collision, issued coroners warrants related to the seizure of Mr. VIVIAN's camera and retrieval of images from the memory card. He provided a written report to PSU.

Richard VIVIAN

On the day of the incident, he was a reporter with the GuelphToday.com online newspaper when he attended the scene of a fatal pedestrian / motor vehicle collision. While photographing the scene he was confronted by PC BORGMANN who briefly

detained him and seized the memory card from his camera. He provided an audio recorded statement to PSU.

Police Witnesses

Joseph JENNISON – Provincial Constable (PC)

He was a frontline officer assigned to the Wellington South (Rockwood) Detachment with approximately one year experience with the OPP at the time of the incident. He was at the scene of a fatal pedestrian / motor vehicle collision when he observed an interaction between PC BORGMANN and Mr. VIVIAN.

Melissa TUTIN – Provincial Constable (PC)

At the time of the incident, she was a traffic reconstructionist assigned to the Highway Safety Division (HSD), Traffic Investigation Management Enforcement (TIME) team. She assisted in the investigation of a pedestrian / motor vehicle fatality, however, was not at the scene during any interaction with Mr. VIVIAN and police. She was spoken to by PSU as a fact finding and was not required to provide a duty report.

Andrew WERLE – Provincial Constable (PC)

At the time of the incident, he was a traffic collision investigator (TCI) assigned to the HSD TIME team. He assisted in the investigation of a pedestrian / motor vehicle fatality and was present when the coroner, Dr. MENDONCA directed the retention of photographs seized by PC BORGMANN. He provided his notes and a duty report.

Durwyn VEENSTRA –Traffic Sergeant (T/Sgt)

On the date of the incident, he was a Traffic Sergeant assigned to the TIME team. He was at the scene of a pedestrian / motor vehicle fatality when he learned of an interaction PC BORGMANN had with Mr. VIVIAN and observed Dr. MENDONCA claim the images were to be retained for the death investigation. He provided his notes, a duty report, and subsequent correspondence.

Summary of Respondent Officer Involvement

Karl BORGMANN – Provincial Constable (PC)

On the date of the incident, he was assigned to Centre Wellington Operations Centre (Fergus) as an acting frontline supervisor and had nine years of policing experience. He was at the scene of a fatal pedestrian / motor vehicle collision when he observed Mr. VIVIAN within the inner perimeter of the scene photographing the deceased person who was laying on the road. He briefly detained Mr. VIVIAN, seized, then searched his camera prior to obtaining a Coroners warrant. He provided a duty report, his notes, and a follow up interview with the PSU.

Investigation

A chronological summary of the alleged incident under investigation.

Overview

On December 20, 2023, the OPP investigated a fatal motor vehicle collision involving a pedestrian on Hanlon Parkway in Guelph. The road was closed for the investigation; however, some pedestrians were escorted through the closure to attend a nearby

school. The coroner, Dr. MENDONCA attended to complete the death investigation. When Dr. MENDONCA was speaking with officers, he used language that was interpreted to mean that he required the images of anyone observed taking photographs for the purpose of his investigation.

Mr. VIVIAN attended as a member of the media to report on the collision, entered the scene and obtained photographs of police, vehicles, equipment, and the deceased pedestrian. He was approached by PC BORGMANN who questioned what he was doing, instructed Mr. VIVIAN to surrender his camera as evidence, and was briefly detained when he didn't immediately comply. PC BORGMANN brought the camera to Dr. MENDONCA who consulted with the Regional Supervising Coroner about the seizure. A Coroner's Warrant for the camera's memory (SD) card was issued and the images were downloaded. The camera was returned to Mr. VIVIAN at the scene, while the SD card was returned the next day.

On February 20, 2024, Mr. SAXON filed an OIPRD complaint on behalf of Mr. VIVIAN and contended that PC BORGMANN's seizure of the camera was unlawful. A complaint was also filed with the Office of the Chief Coroner.

Richard VIVIAN – Civilian Witness

Mr. VIVIAN provided an in-person audio recorded statement to the PSU on March 20, 2024, and a follow up email response on May 1, 2024, in which he stated:

He is employed by GuelphToday.com as an assistant editor and senior reporter/photographer. He had been a reporter for approximately twenty-three years. On December 20, 2023, at approximately 8:40 am he received a phone call from Mr. SAXON who said there was a road closure and police presence at College Heights Secondary School and requested he check it out. He attended, parked nearby, and walked to the scene on foot.

He carried his camera but was not wearing any outward identification that identified him as a member of the media. The scene was not clearly marked, and he noticed about four or five officers that looked busy. He walked past road closure signs, but denied being on the road when he took about six to eight photos of police officers, equipment, cruisers, and a tarp covering something on the road. PC BORGMANN yelled at him and told him to stop taking pictures and he froze as two police officers walked towards him.

He introduced himself and stated he was a member of the media. PC BORGMANN grabbed the left cuff of his jacket and had control of his arm. He said, "*Let me go.*" PC BORGMANN said, "*No you are being detained and I am seizing your camera.*" He hesitated and it took a moment to grasp the situation before he removed his camera and turned it over. PC BORGMANN told him the camera was being seized as evidence in an ongoing investigation and further said that if he had waited another second, he would have been arrested. PC BORGMANN told him to stand behind a police car on the north side of the road to wait for him. He did not believe he had an option. PC BORGMANN went to speak with other officers and a person he believed was the coroner.

He then called Mr. SAXON and let him know that he had been detained by police and that his equipment was seized. This call was recorded.

PC BORGMANN placed the camera in a police cruiser, and when he returned PC BORGMANN berated him, questioned his morals, and mentioned a previous incident where a family learned about the death of a relative through the media. PC BORGMANN

asked him several times why he was taking pictures of the deceased, and he replied that he wouldn't publish a photo of the body, and questioned PC BORGMANN's authority to seize his camera. PC BORGMANN told him it was seized under the Coroner's Act.

PC BORGMANN asked him if he wanted to wait around and later provided him a copy of the Coroner's Warrant. He believed that he was detained at the time, but PC BORGMANN told him he was free to go. His camera was returned by PC BORGMANN at the scene, and the SD card was returned the following day.

PC BORGMANN explained that he should not have come past the road closure signs even though the sidewalks were open. Normally, he would ask an officer when they weren't busy what was going on and would expect to be told to speak with the media officer.

Antony SAXON - Complainant

Mr. SAXON provided an in-person audio recorded statement to the PSU in which he stated:

He filed the OIPRD complaint on behalf of Mr. VIVAN, and he is the editor for the GuelphToday.com online newspaper. He had held this position for approximately six years. On the date of the incident, he became aware of a public alert sent out on "X" which informed of a road closure at Hanlon Expressway and College Avenue in Guelph. He assigned Mr. VIVIAN, an experienced reporter to attend the location and determine what had occurred. The remainder of his evidence was consistent with the evidence of Mr. VIVIAN and their recorded conversation.

Respondent Officer: PC BORGMANN

The PSU Investigator reviewed PC BORGMANN's duty report and notes submitted on March 5, 2023, and completed a cautioned follow-up interview with him. From that, the PSU Investigator learned the following:

He was the acting shift supervisor and learned of a fatal motor vehicle collision involving a pedestrian. He requested through the Provincial Communications Centre (PCC) to have a traffic sergeant (T/Sgt.) attend. He arrived at the scene at 6:35 am and was told the identity of the deceased female pedestrian had been confirmed. She was laying on lane one of Hanlon Parkway just north of an intersection and was covered with a yellow blanket. The involved vehicle had remained on scene and was parked on the shoulder of the road just north of the deceased. Traffic services were contacted to set up road closure signs on Hanlon Parkway. A next of kin notification had not been completed.

At 6:47 am, he requested the coroner be notified, and Dr. MENDONCA attended to investigate the death.

Mr. HOWLETT, a supervisor with the MTO, approached him to advise the barricades were in place for the road closure and requested an opportunity to take photographs for a report. He told him he could not take photos prior to the body being removed. He then met with T/Sgt. VEENSTRA and Dr. MENDONCA who enquired who he had been talking with. He explained it was the MTO supervisor who wanted to take photos. Dr. MENDONCA asked if he had taken any photos, and he told the doctor he had not. Dr. MENDONCA said he did not want anyone taking photos of the scene and that he wanted any cameras that had taken any photos. He told Dr. MENDONCA he would contact the MTO supervisor and notify him when photos were allowed. Dr. MENDONCA said "good" and then said that it was his investigation and that he (PC BORGMANN) was to seize any camera used in contravention of his direction. Dr. MENDONCA then reiterated that if

they saw anyone with a camera, he wanted that camera. This direction to seize cameras stood out in his mind as unusual and believed T/Sgt. VEENSTRA could have heard the comments. He had been to numerous death scenes with coroners and had never heard a coroner ask for any cameras being used to be seized before.

He knew that he was required under the Coroners Act of Ontario to provide assistance to a coroner during their investigation, and that the coroner had the authority to direct police to seize anything at the scene that may provide material evidence. The police were required by law to carry out the coroners' directions.

At 9:01 am, he was standing next to PC JENNISON when he observed Mr. VIVIAN on the southeast corner of the intersection with a zoom lens camera pointed directly at the deceased female still under the yellow sheet. It was obvious to him Mr. VIVIAN had taken photos while within the investigation's inner perimeter. Mr. VIVIAN was approximately 2.5 meters from a traffic reconstruction device and would have accessed the area by going past traffic cones and a fully marked police cruiser.

As he and PC JENNISON approached Mr. VIVIAN the camera was pointed towards them, and photos were taken. He directed Mr. VIVIAN to surrender his camera as per the coroner's direction, which Mr. VIVIAN refused. He repeated the demand which was again refused. Mr. VIVIAN then stepped back and turned to his right toward the direction from which he had entered. He believed Mr. VIVIAN would not comply with the demand and placed two fingers and thumb from his right hand on the loose fold of Mr. VIVIAN's left hand sleeve jacket. Mr. VIVIAN looked down at his hand and said, "Let go." He said, "No you are being detained until you surrender the camera." Mr. VIVIAN then handed over the camera and was released. He told Mr. VIVIAN that the coroner would decide what to do with the camera.

He then placed the camera in PC JENNISON's cruiser and decided to see if there were unauthorized photos on it. He pressed the scroll button on the camera and saw there were closeup photos of the deceased under the blanket with her hand visible. He spoke with Dr. MENDONCA and informed him of the seizure and the content of the photos, but could not recall Dr. MENDONCA's exact response. He was aware there was no standalone authority to seize the camera for the police investigation. He had no vested interest in it, and denied the camera was seized as a moral decision to protect the dignity of the deceased.

He spoke with Mr. VIVIAN and learned he was a reporter with GuelphToday.com. He told Mr. VIVIAN the coroner had been made aware of his actions. They had a conversation regarding coroners' powers and usual procedures for media, respect for the deceased, notification of next of kin, police powers of arrest and other matters related to the situation. He observed that Mr. VIVIAN's eyes were darting, his right leg was shaking, and his voice was raised. He wanted to educate and calm Mr. VIVIAN.

He invited Mr. VIVIAN to wait if he wished, but to wait behind a police cruiser, and offered to ask the coroner to speak with him. Mr. VIVIAN said he would like that.

At 9:39 am, the coroner's supervisor, Dr. MacPHEE attended the scene and spoke with Dr. MENDONCA. Dr. MacPHEE then met with him and directed him to remove the SD card from the camera and return the camera to Mr. VIVIAN. He requested that any inquiries be directed to the Coroner's Office. At 9:54 am, Dr. MENDONCA signed a warrant for the seizure of the SD card.

He along with PC JENNISON brought the warrant and camera to Mr. VIVIAN at 9:56 am. He relayed the information from Dr. MacPHEE and had Mr. VIVIAN remove the SD card so as not to cause damage to the card or the camera. Mr. VIVIAN continued to protest and said he was just walking the scene. He told Mr. VIVIAN that it was difficult to believe a reporter with such experience was not aware that it was a fatality investigation and asked why he wouldn't have spoken to police. Mr. VIVIAN said that they looked "busy". He asked him why he couldn't wait, and Mr. VIVIAN responded "News, it's a big scene and causing traffic backup." He was aware that Mr. VIVIAN was recording at least part of the conversation with his phone. Mr. VIVIAN left with a copy of the warrant and his camera.

At 5:55 pm he spoke with PC JENNISON who informed him the Coroner's Office requested the photos from the SD card be copied and the SD card returned. He conferred with his staff sergeant who told him to have the coroner provide another warrant for the process of copying the images on the SD card. This was he relayed to PC JENNISON, and he was later made aware the SD card had been returned to Mr. VIVIAN.

It had not occurred to him a barrier was required on the east side of the road where Mr. VIVIAN had approached from, as the road was closed with barriers. He did not observe anyone other than Mr. VIVIAN approach from that direction.

Dr. Paul MENDONCA

The PSU contacted Dr. MENDONCA by phone and requested he provide a statement or written report to address the circumstances of the seizure of Mr. VIVIAN's camera. During an informal discussion, Dr. MENDONCA stated that he had made some comments during a conversation with officers, however, it was not meant to be a delegation of his authority and may have been taken out of context. Later, Dr. MENDONCA provided a written report to the PSU on Office of the Chief Coroner letterhead which provided the following information:

On the date of the incident, he responded to the scene of a pedestrian struck by a vehicle near the intersection of Hanlon Parkway and College Avenue. When he arrived, barriers had been set up and he parked outside of the scene where he was met by a police officer who briefed him on case details and a rough description of events. He waited with officers for the arrival of traffic reconstruction officers and a Scenes of Crime Officer (SOCO) to take photographs. He had informal general conversations with the officers, and he offered to buy coffees. There was a discussion about people that had gathered outside the scene, including students, and compared it to previous scenes they had attended. They noted that two neighbours on the corner and students had acted proper and that no one was taking pictures as that would not have been a nice thing. The students had gathered on a corner and were being lead across the road by police. He walked through the scene and was briefed by the lead officer. As they stood on the center north median an officer nudged him in the arm with a camera to get his attention. He jokingly asked the officer if he was to take his own pictures. The officer, (PC BORGMANN) said no, and that the camera was from a man on the south side of the intersection who stood beside a police car. PC BORGMANN further explained that the man had come into the scene and started taking photos of the scene and the deceased. He learned the man was a local reporter. He did not speak with the reporter or witness any interaction between the reporter and police.

He considered the circumstances of the situation, and out of caution and protocol he contacted the Regional Supervising Coroner Dr. MacPHEE, who was in the area and attended the scene. Dr. MacPHEE viewed the reporters photographs with police and

suggested they could be of value to his investigation. He was directed to fill out an Authority to Seize the SD card. He told a police officer to return the camera and after the SD card was downloaded to return that as well. He learned later that contrary to his direction the SD card was not returned by police until the following day.

His authority for the seizure is found in the Coroners Act under section 16 which allows for the seizure of anything the coroner has reasonable grounds to believe is material to the purpose of the investigation. His intention was to fully investigate the circumstances surrounding the death.

The PSU Investigator asked Dr. MENDONCA, *“Do you recall stating any words to the effect that if anyone was taking photos that the photos would be yours?”* He replied, *“I do not recall saying that and certainly did not direct anyone to get a reporter’s camera.”*

PC JENNISON

The PSU reviewed PC JENNISON’s duty report and notes and learned the following:

He attended the scene of the fatal collision and arranged for City of Guelph and Wellington County Roads to set up road closure signs and pylons. He managed traffic and interacted with Guelph Police who were gathering information and obtaining witness statements. His evidence was consistent with the evidence provided by PC BORGMANN relating to the seizure of Mr. VIVIAN’s camera.

Mr. VIVIAN asked him if he had ever experienced a situation where a reporter’s camera had been seized. He responded that in his experience media would check in with officers when attending incidents. Mr. VIVIAN said that he had been to hundreds of scenes and never heard of a similar situation occurring and apologized to him for having to baby sit him. He responded that was not what he was doing and that he was just waiting for PC BORGMANN to return.

On December 21, 2023, he spoke with PC BORGMANN who detailed him to attend Dr. MENDONCA’s office to obtain a warrant to copy the relevant photos contained on VIVIAN’s seized SD card. He met with Dr. MENDONCA who provided another warrant which specified to only copy the photos from the collision scene, not to delete any photos and return the SD card. Dr. MENDONCA further said if the photos were published the Coroner’s Office would deal with the situation. He was then detailed to contact Dr. MENDONCA to obtain an email with instructions to return the SD card. Later he received two calls from Dr. MacPHEE who wanted the SD card returned to Mr. VIVIAN immediately. He was later informed by PC BORGMANN that two officers unrelated to the incident would return the SD card.

T/Sgt. VEENSTRA

The PSU reviewed T/Sgt. VEENSTRA’s duty report and notes and learned the following:

On the date of the incident while working day shift in the capacity as the TIME team traffic sergeant he spoke with PC BORGMANN about the fatal collision. He detailed a reconstructionist and a Traffic Collision Investigator (TCI) to attend the scene. His description of the collision scene was consistent with that of PC BORGMANN and PC JENNISON.

He and Dr. MENDONCA arrived at approximately the same time, and he walked Dr. MENDONCA through the collision scene identifying evidence. PC BORGMANN approached and said that Mr. VIVIAN had entered the scene and had taken photographs

of the deceased and evidence with a handheld camera. PC BORGMANN stated that he seized the camera as coroners' evidence and that Mr. VIVIAN had not checked in with any of the officers. According to PC BORGMANN, Mr. VIVIAN had walked past cruisers with lights activated and stood within the intersection next to police reconstruction equipment when he took the photographs. Dr. MENDONCA claimed that the photographs were his as part of his death investigation, although he does not remember Dr. MENDONCA's exact words. He was certain that Dr. MENDONCA stated that all related photographs/evidence at the scene were "his" as part of the death investigation.

Dr. MacPHEE attended the scene, met with Dr. MENDONCA and they discussed what direction to take regarding Mr. VIVIAN's camera. Dr. MENDONCA issued a Coroner's Warrant for the SD card from the camera and the camera was returned to the reporter. When PC BORGMANN presented the camera to Dr. MENDONCA, he did not recall any hesitation from Dr. MENDONCA as he appeared to be serious and passionate regarding the preservation of any evidence.

Dr. Ian MacPHEE

He was the Regional Supervising Coroner that attended the scene of the incident after he received a call from Dr. MENDONCA regarding the seizure of Mr. VIVIAN's camera. He consulted with Dr. MENDONCA and provided direction to police to retain the SD card from Mr. VIVIAN's camera. He told PC BORGMANN to inform Mr. VIVIAN to contact the Chief Coroner's Office if he had any inquiries regarding the seizure of the SD card. On December 21, 2024, he contacted the police to hasten the return of Mr. VIVIAN's SD card. He was not interviewed by the PSU.

Witness Officers: PC WERLE

The PSU reviewed PC WERLE's duty report and notes and learned the following:

On the date of the incident, he attended the scene as a TCI with the HSD TIME unit. While he was engaged in obtaining photographs of the deceased, he was made aware that Mr. VIVIAN was present and had taken photographs of the scene and of the deceased body. At that time, Dr. MENDONCA was bent over and was assisting him by moving the covering on the body to allow photographs to be taken from different angles.

Dr. MENDONCA made a request to PC BORGMANN that the photos were to be retained. He could not recall Dr. MENDONCA's exact words.

PC TUTIN

On the date of the incident, she was a traffic reconstructionist who attended the scene of the collision. The PSU spoke to her by phone for a fact finding and learned that she was not involved with or had information about the seizure of Mr. VIVIAN's camera.

Lorne HOWLETT

On May 13, 2024, PSU spoke with Mr. HOWLETT by phone and learned the following:

On the date of the incident, he was the Maintenance Coordinator for the MTO and attended the scene of the collision to complete an internal mandatory Major Incident Report. He recalled that when he arrived he asked an OPP officer if it was ok to take photos, but was not allowed, as the next of kin notification had not yet been completed. No statement was obtained by the PSU.

Recorded Phone Conversation

Mr. VIVIAN provided the PSU Investigator with a nine minute and thirty second audio

recording captured on his phone and learned the following:

Mr. VIVIAN called Mr. SAXON just after his camera had been seized by PC BORGMANN. The content of the conversation is consistent with the evidence provided by Mr. VIVIAN and PC BORGMANN. PC BORGMANN made a comment about having a sense of decency and stated, *“The family does not know yet. And you're gonna come in here, take pictures and post your story before the family knows somebody's deceased. That's disgusting.”* PC BORGMANN and Mr. VIVIAN continued a discussion about Mr. VIVIAN being within a scene and the right to take photographs and for Mr. VIVIAN not to announce his presence with police first. Mr. SAXON told Mr. VIVIAN to calm down several times. PC BORGMANN suggested it would have been more professional of Mr. VIVIAN to have spoken to an officer before taking photographs. Mr. VIVIAN responded that the officers were busy and argued he had done nothing wrong.

Analysis

Detailed analysis of the key factors which led to the conclusion.

Allegation #1

An officer commits Unlawful or Unnecessary Exercise of Authority if he or she uses any unnecessary force against a prisoner or other person contacted in the execution of duty as per the Police Services Act Ontario Regulation 268/10, Code of Conduct, section 2(1)(g)(ii).

Allegation #2, #3

Any chief of police or any other police officer commits misconduct if he or she engages in Discreditable Conduct in that he or she, acts in a disorderly manner or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the police force as per the Police Services Act Ontario Regulation 268/10, Code of Conduct, section 2(1)(a)(xi).

Criminal Code Section 25(1) – Protection of persons acting under authority, states: “Everyone who is required or authorized by law to do anything in the administration or enforcement of the law, as a peace officer or public officer is, if he acts on reasonable grounds, justified in doing what he is required or authorized to do and in using as much force as is necessary for that purpose.”

The Canadian Charter of Rights and Freedoms section 8 states: “Everyone has the right to be secure against unreasonable search or seizure.”

The Canadian Charter of Rights and Freedoms section 9 states: “Everyone has the right not to be arbitrarily detained or imprisoned.”

Section 9(1) of The Coroners Act of Ontario states: “The police service having jurisdiction in the area in which a body is found shall make available to a coroner the assistance of such members of the police service as are necessary for the purpose of carrying out the coroner’s duties.”

Section 16(1) of the Coroners Act states in part: (2) A coroner that believes on reasonable and probable grounds to do so is necessary for the purposes of the investigation may, (c) seize anything that the coroner has reasonable grounds to believe is material to the purposes of his investigation. (3) A coroner may authorize a legally qualified medical practitioner or a police officer to exercise all or any of the coroners’ powers under

subsection 1. Idem: (4) A coroner may where in his or her opinion where it is necessary for the purposes of the investigation, authorize a legally qualified medical practitioner or a police officer to exercise all or any of the coroners powers under clauses 2(a),(b) and (c), but where such power is conditional on the belief of the coroner, the requisite belief shall be that of the coroner personally.”

Allegation #1 – Unlawful or Unnecessary Exercise of Authority (detention)

The allegation of whether PC BORGMANN committed a PSA offence of Unlawful or Unnecessary Exercise of Authority is contingent on whether PC BORGMANN was in the lawful execution of his duties when he detained Mr. VIVIAN and seized his camera. If PC BORGMANN acted in good faith and with lawful authority, the brief detention is justified. If PC BORGMANN acted without legal justification, he committed an unlawful exercise of authority against Mr. VIVIAN, and jeopardized public confidence and the reputation of the OPP.

The pedestrian fatality had occurred at a normally busy multilane intersection within the City of Guelph in the early morning on December 20, 2023, near a residential area with a high school located on the northeast corner. The deceased pedestrian laid covered in a blanket on the north side of the multilane intersection. All roads leading to the intersection were closed with signage and traffic cones. Officers were positioned on either side of the intersection and traffic cones were in place to establish an inner and outer perimeter.

Mr. VIVIAN, a member of the media, asserted that he approached the scene on foot by way of an open sidewalk and stood in a public area close to other pedestrians and was obtaining scene photographs when he was confronted, detained, and had his camera seized by PC BORGMANN.

Dr. MENDONCA provided a voluntary written report and responded to the PSU follow up questions but was unable to recall that he made any comments to the police officers to seize any cameras. He said that at no time did he give direction to seize any reporter’s camera. His only recollection to any conversation related to persons taking photos was an earlier casual comment to police when he stated that it wouldn’t be nice if anyone was taking photos. The written report contrasts with informal comments made to the PSU Investigator by Dr. MENDONCA who stated he may have commented during a casual conversation with the officers that may have been taken out of context but were not meant as delegated authority.

PC BORGMANN stated that Dr. MENDONCA had made it clear more than once prior to Mr. VIVIAN’s attendance that if anyone was observed to be obtaining photographs of the scene, he wanted the devices used to obtain those photos. PC BORGMANN was aware of Dr. MENDONCA’s authorities under Section 16 of the Coroners Act.

According to PC BORGMANN, he observed Mr. VIVIAN within the inner perimeter taking photos of the scene, the body and the officers as they approached him. PC BORGMANN yelled at him to stop and told Mr. VIVIAN that he was seizing the camera by the coroner’s direction. The evidence is undisputed that PC BORGMANN demanded Mr. VIVIAN turn over the camera and when Mr. VIVIAN did not comply and started to turn away, PC BORGMANN briefly detained him by holding Mr. VIVIAN’s left sleeve until Mr. VIVIAN complied and turned over the camera. The detention then concluded. PC BORGMANN told Mr. VIVIAN if he wished to speak with the coroner he could wait outside of the scene.

Section 25 of the Criminal Code provides legal protection to police in the lawful execution of their duties if they act on reasonable grounds to use force.

ON SC 2000 22645 R V SANDERSON states in part: para 24 *“It is apparent that a seizure of a bodily substance, or other thing, without a warrant, by a police officer acting as an agent for a coroner pursuant to the Coroners Act, or the taking of possession of such a substance at the direction of the coroner for storage, or transportation to an analyst, are not violations of s. 8 of the Charter standing alone.”* Further in para 26: *“Consequently, so long as the evidence (or the information derived from the evidence) is in the possession of the state (i.e., the coroner or the criminal law enforcement branch), the following would hold true: (1) while the evidence is being used by the coroner for valid non-criminal purposes within the scope of the Coroners Act the seizure is reasonable and not caught by s. 8 of the Charter.”*

PC BORGMANN’s submitted that he had acted in good faith and lawfully executed his duties under Section 9 of the Coroners Act when he detained Mr. VIVIAN for the purpose of seizing his camera.

Dr. MENDONCA was concerned over the retention of a reporter’s camera and consulted with Dr. MacPHEE. The decision was made to retain the SD card as the images could assist in the death investigation. A Coroner’s Warrant was issued after the search and seizure of the camera and provided to Mr. VIVIAN.

When viewing the evidence in relation to the detention of Mr. VIVIAN and seizure of his camera, the evidence supported that PC BORGMANN executed his duties in good faith as he reasonably believed he had the lawful authority under the Coroners Act under the direction of Dr. MENDONCA and supported by Case Law to seize the camera. Although Mr. VIVIAN’s Section 8 Charter rights were breached, the purpose was lawful. The brief detention was not intrusive and only occurred due to Mr. VIVIAN’s resistance. Therefore, the allegation of Unlawful of Unnecessary Exercise of Authority is **unsubstantiated**.

Allegation #2 – Discreditable Conduct (search of camera)

After PC BORGMANN seized Mr. VIVIAN’s camera, he took it to a police vehicle and despite that he had reasonably concluded that the camera contained photographic images of evidence and prior to notifying Dr. MENDONCA, he viewed the contents of the camera to confirm photos had been obtained of the deceased. He then went to Dr. MENDONCA to inform him and seek further direction. PC BORGMANN admitted that the seizure and search of the camera was not to further any police investigation but did so strictly on the prior direction he had received from Dr. MENDONCA as authorized under the Coroners Act. Dr. MENDONCA did not directly provide authority for PC BORGMANN to search the device for images.

PC BORGMANN was unable to recall Dr. MENDONCA’s immediate reaction when he was presented with the seized camera, however T/Sgt. VEENSTRA and PC WERLE confirmed that when Dr. MENDONCA learned there were photos of the deceased, he claimed possession of the photographs and that they were to be retained for the death investigation. PC BORGMANN advised Dr. MENDONCA that Mr. VIVIAN wished to speak with him.

PC BORGMANN knew that he conducted a warrantless, nonconsensual search of Mr. VIVIAN’S camera, a digital storage device that contained images. Mr. VIVIAN had a

reasonable expectation of privacy and was entitled to the protection of Section 8 of the Charter of Rights and Freedoms for the images on his camera. The search although incident to detention and for the sole purpose to confirm evidence was unlawful, without a warrant and done without the coroner's direction. Therefore, the allegation of Discreditable Conduct is **substantiated**.

Allegation #3 – Discreditable Conduct - conversation

The allegation of Discreditable Conduct was not identified by the Complainant, however due to the content of the recorded conversation between Mr. VIVIAN, PC BORGMANN, and Mr. SAXON it was required to be addressed in this investigation. During the conversation PC BORGMANN berated Mr. VIVIAN, questioned his morals, and told him that his actions were "*disgusting*".

OPP Police Orders – Professionalism in the OPP states that; in carrying out duties, an employee is accountable for promoting a positive professional image; treating the public in an impartial manner and refraining from discrimination and harassment, including an offensive remark or any other action, during service delivery.

PC BORGMANN should not have allowed his judgement of Mr. VIVIAN's motives and actions to interfere in his obligation to maintain a positive professional image. PC BORGMANN caused Mr. VIVIAN to feel berated and questioned his morality as a professional journalist.

To substantiate the allegation, the evidence must support that PC BORGMANN willfully, knowingly, or deliberately committed Discreditable Conduct. It was apparent from PC BORGMANN's recorded conversation with Mr. VIVIAN that he believed Mr. VIVIAN's actions were morally wrong. His tone and words clearly showed he was upset with Mr. VIVIAN and said that taking photos of the body were disgusting and questioned Mr. VIVIAN's decision as a professional. During this conversation PC BORGMANN was upset, argued with Mr. VIVIAN, but did not use any profanities. PC BORGMANN's comments do not rise to the level of misconduct, but his interactions with Mr. VIVIAN should be addressed at the detachment level through the provisions of performance management. Therefore, the allegation of Discreditable Conduct is **unsubstantiated**.

Referenced Information

List of the material used for the investigation, analysis, and conclusion.

Police Services Act
Canadian Charter of Rights and Freedoms
Criminal Code
RMS incident E231665842
Coroners Act
OPP Police Orders, Section 6.10 – Professionalism in the OPP
Case Law ON SC 2000 22645 R V SANDERSON - CanLii

Conclusion

Unlawful or Unnecessary Exercise of Authority - Sec. 2(1)(g) PSA Reg. 268/10 –
Unsubstantiated

Discreditable Conduct – Sec 2(1)(a) PSA Reg. 268/10 - **Substantiated**

Discreditable Conduct – Sec 2(1)(a) PSA Reg. 268/10 - **Unsubstantiated**