



NOTICE TO ATTEND A HEARING

Pursuant to Part V of the *Police Services Act*,
R.S.O. 1990, Chapter P.15, as amended.

TO: Detective Constable Craig Willis #3047
Durham Regional Police Service

YOU ARE ALLEGED TO HAVE COMMITTED MISCONDUCT IN THAT YOU, on or between December 28, 2016 – February 20, 2017, acted in a disorderly manner or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the police force, thereby committing the offence of Discreditable Conduct, contrary to Part V, clause 80(1)(a) of the *Act* as amended, and section 30, clause 2(1)(a)(xi) of the Schedule “Code of Conduct”, O.Reg. 268/10, as amended under the *Act*.

STATEMENT OF PARTICULARS For Allegation #1:

On December 28, 2016, at 2:48 am, Mr. Dafonte Miller had an altercation with off duty Toronto Police Service (TPS) Constable Michael Theriault and his brother, Christian Theriault. Mr. Miller was pursued by the Theriault brothers to the side of a house in Whitby, where the Theriault brothers assaulted him. Durham Regional Police Service (DRPS) responded to the scene after numerous 911 calls.

As a result of the assault, Mr. Miller suffered a catastrophic injury resulting in the loss of his left eye. The SIU invoked their mandate on May 2, 2017, after being contacted by Mr. Millers lawyer. Ultimately the Theriault brothers were charged with aggravated assault and obstructing police.

On March 12, 2021, the OIPRD notified Durham Regional Police that they had completed their investigation and concluded that misconduct against Detective Constable Willis had been substantiated.

Detective Constable Willis was working in the Criminal Investigative Unit (CIB) and was assigned carriage of the investigation.

It is alleged that by demonstrating a pro-police bias, either by accepting and not questioning the evidence proffered by the Theriault brothers, did not interview witnesses and not accepting Mr. Millers evidence or investigate how he received his severe injury, Detective Constable Willis acted in a disorderly manner, and in a manner likely to bring discredit upon the reputation of the police force.

And further:

YOU ARE ALLEGED TO HAVE COMMITTED MISCONDUCT IN THAT YOU, on or between December 28, 2016 – February 20, 2017, without lawful excuse, neglects or omits promptly and diligently to perform a duty as a member of the police force, thereby committing the offence of Neglect of Duty, contrary to Part V, clause 80(1)(a) of the Act as amended, and section 30, clause 2(1)(c)(i) of the Schedule “Code of Conduct”, O.Reg. 268/10, as amended under the Act.

STATEMENT OF PARTICULARS For Allegation #2:

On December 28, 2016, at 2:48 am, Mr. Dafonte Miller had an altercation with off duty Toronto Police Service (TPS) Constable Michael Theriault and his brother, Christian Theriault. Mr. Miller was pursued by the Theriault brothers to the side of a house in Whitby, where the Theriault brothers assaulted him. Durham Regional Police Service (DRPS) responded to the scene after numerous 911 calls.

As a result of the assault, Mr. Miller suffered a catastrophic injury resulting in the loss of his left eye. The SIU invoked their mandate on May 2, 2017, after being contacted by Mr. Millers lawyer. Ultimately the Theriault brothers were charged with aggravated assault and obstructing police.

On March 12, 2021, the OIPRD notified Durham Regional Police that they had completed their investigation and concluded that misconduct against Detective Constable Willis had been substantiated.

Detective Constable Willis was working in the Criminal Investigative Unit (CIB) and was assigned carriage of the investigation. At approximately 6:30 a.m., he was briefed about the incident by officers who were in attendance at the scene. Detective Constable Willis indicated he spoke to Constable Grendon about Jim Silverthorn, (the homeowner where the incident occurred), and from that conversation decided not to interview him. It was determined through the OIPRD investigation that this conversation could not have happened as Constable Grendon booked off duty that morning at 5:45 a.m., and Detective Constable Willis’s notes indicated that he started work at 6:30 a.m.. Constable Grendon also advised the OIPRD that she never spoke to Detective Constable Willis about the incident.

Constable McQuoid stated in an interview with OIPRD that he advised Detective Constable Willis of his conversation with the homeowner of where the incident happened, specifically that the homeowner may have kept pipes at the side of his house to hold up his plants. Detective Constable Willis had no record of such information being provided to him. This information was important to determine if the pipe was a weapon of opportunity or had one of the parties involved been armed with it prior to the altercation.

Detective Constable Willis stated to the OIPRD that he could not be certain whether he spoke to a crime analyst about whether there was a pattern of vehicle entries in the area, as he made no notes about the conversation.

It is alleged that by failing to take adequate notes and maintain adequate records of the incident, Detective Constable Willis was neglectful and did not promptly and diligently to perform a duty as a member of the police force.

And further that;

YOU ARE ALLEGED TO HAVE COMMITTED MISCONDUCT IN THAT YOU, on or between December 28, 2016 – February 20, 2017, without lawful excuse, neglects or omits promptly and diligently to perform a duty as a member of the police force, thereby committing the offence of Neglect of Duty, contrary to Part V, clause 80(1)(a) of the Act as amended, and section 30, clause 2(1)(c)(i) of the Schedule “Code of Conduct”, O.Reg. 268/10, as amended under the Act.

STATEMENT OF PARTICULARS For Allegation #3:

On December 28, 2016, at 2:48 am, Mr. Dafonte Miller had an altercation with off duty Toronto Police Service (TPS) Constable Michael Theriault and his brother, Christian Theriault. Mr. Miller was pursued by the Theriault brothers to the side of a house in Whitby, where the Theriault brothers assaulted him. Durham Regional Police Service (DRPS) responded to the scene after numerous 911 calls.

As a result of the assault, Mr. Miller suffered a catastrophic injury resulting in the loss of his left eye. The SIU invoked their mandate on May 2, 2017, after being contacted by Mr. Millers lawyer. Ultimately the Theriault brothers were charged with aggravated assault and obstructing police.

On March 12, 2021, the OIPRD notified Durham Regional Police that they had completed their investigation and concluded that misconduct against Detective Constable Willis had been substantiated.

Detective Constable Willis was working in the Criminal Investigative Unit (CIB) and was assigned carriage of the investigation. At approximately 6:30 a.m., he was briefed about the incident by officers who were in attendance at the scene. Detective Constable Willis indicated he spoke to Constable Grendon about Jim Silverthorn, (the homeowner where the incident occurred), and from that conversation decided not to interview him. It was determined through the OIPRD investigation that this conversation could not have happened as Constable Grendon booked off duty that morning at 5:45 a.m., and Detective Constable Willis's notes indicated that he started work at 6:30 a.m.. Constable Grendon also advised the OIPRD that she never spoke to Detective Constable Willis about the incident.

Mr. Miller was charged with the theft under \$5000 for taking loose change from John Theriault's vehicle. Detective Constable Willis never took a formal or signed statement from John Theriault, and no-follow up was conducted to confirm the amount of money stolen or whether other items were stolen. This was an essential investigative step required to prove the charge. The OIPRD feel evidence gathered by Detective Constable Willis was insufficient for a Crown to proceed with the prosecution of the charge of theft under.

Mr. Miller was additionally charged with assaulting the Theriault brothers with a weapon. These charges were laid shortly after police arrived on the scene, prior to a full investigation being done. The responsibility for that full investigation fell to Detective Constable Willis, who had the obligation of identifying other potential witnesses and determining whether the evidence obtained matched the narrative provided by the Theriault brothers.

Detective Constable Willis was aware, as soon as he was assigned the file, that Mr. Miller had suffered a catastrophic eye injury. He saw the photographs taken by Constable Bowler, one of which was of Mr. Miller's very bloodied face, and others of the blood and other fluids found on the hood of the car at the scene.

Despite the lack of detail about how Mr. Miller came to sustain a serious eye injury, Detective Constable Willis never questioned the narrative provided by the Theriault brothers. Detective Constable Willis took the position that, without Mr. Miller's statement, he did not have sufficient evidence to refute what the Theriault brothers had told him. He did make some efforts to speak to Mr. Miller, both through Mr. Miller directly and then through his mother.

The OIPRD felt there was sufficient evidence available to Detective Constable Willis to potentially refute the narrative provided by the Theriault brothers. When Mr. Miller was caught in between the houses, Detective

Constable Willis failed to consider whether Mr. Miller might have wielded the pipe in self-defence, fearing that the Theriault's had chased him in order to assault him. Detective Constable Willis never appeared to consider whether the force that they used in defending themselves was proportionate to the threat that Mr. Miller posed or whether it was excessive.

There were significant discrepancies in injuries, yet Detective Constable Willis appeared not to question the narrative provided by the Theriault brothers. As noted earlier, the subsequent interview with Christian Theriault was initiated by John Theriault; there was no indication that Detective Constable Willis would have otherwise re-interviewed him at all, notwithstanding that Christian Theriault's original statement did not even address how Mr. Miller came to receive his injuries.

Although Detective Constable Willis listened to the 911 calls, it appears that he did not use them to assist in the investigation, as there were several pieces of valuable information contained in these calls that were not the subject of any further investigation. Detective Constable Willis failed to interview all the 911 callers.

There were several other investigative avenues that were not properly pursued. As one example, Constable McQuoid stated that he advised Detective Constable Willis of his conversation with the homeowner of where the incident happened, specifically that the homeowner may have kept pipes at the side of his house to hold up his plants. Detective Constable Willis had no record of such information being provided to him. This information was important to determine if the pipe was a weapon of opportunity or had one of the parties involved been armed with it prior to the altercation.

Detective Constable Willis appeared not to analyze the scene to see if the physical evidence was consistent with the narrative provided by the Theriault brothers. The SOCO photographs showed three or four areas with blood stains, but there was no effort to discern whether the nature of the blood staining was consistent with the Theriault brothers' version of events. Specifically, there was no blood staining between the houses shown in the photographs taken by Constable Bowler, but there was a significant amount of bloodstaining on the front porch of the 911 callers home, which is not where the Theriault brothers said the fight occurred.

He did not pursue obtaining a medical release from Mr. Miller and consequently never sought a medical opinion about whether the injuries sustained by Mr. Miller were consistent with the version of events provided by the Theriault brothers. The pipe that was seized, which appeared to have blood on it, was never submitted for analysis, nor were any other items from the scene

Detective Constable Willis was aware that the SIU would not be investigating how Mr. Miller came to sustain his injuries. Therefore, it fell to him to determine whether an offence had been committed. The investigation conducted by Detective Constable Willis was really limited to an investigation of a theft from a vehicle. Apart from some efforts to speak to Mr. Miller – who was accused and therefore had a right to remain silent, Detective Constable Willis did not take any meaningful steps to investigate his injuries or to determine if the force used to cause these injuries was justified and proportionate. He did not meaningfully attempt to obtain Mr. Miller's consent to release his medical records. He did not seek judicial authorization to do so once consent was not forthcoming, nor did he reach out to counsel to obtain the records. He only obtained an additional statement from Christian Theriault after this statement was initiated by John Theriault.

Detective Constable Willis accepted without question the version of events proffered by the Theriault brothers, notwithstanding that he knew the altercation was a two-on-one; that Constable Theriault had no injuries; and that Christian Theriault did not have any observable injuries.

It is alleged that by failing to properly investigate the incident, Detective Constable Willis was neglectful and did not promptly and diligently perform a duty as a member of the police force

THIS IS THEREFORE TO COMMAND YOU TO APPEAR BEFORE HEARING OFFICER

Superintendent Greg WALTON (Ret.)

On: Wednesday, July 21, 2021, 8:30 am via conference call (Telephone number 1-866-213-1666, Access Code 7713233)

A handwritten signature in black ink, appearing to be 'T. Rollauer', written over a horizontal line.

Chief of Police Todd Rollauer
Durham Regional Police Service

NOTICE

You are hereby on notice, in accordance with subsection 85(1) of the Act, the penalties of dismissal or demotion might be imposed if misconduct is proved on clear and convincing evidence.

NOTICE

In compliance with subsection 83(5) of the Act, you may examine any physical or documentary evidence that will be produced or any report whose contents will be given in evidence.

NOTICE

This hearing is held pursuant to the Act and the Statutory Powers Procedures Act. The Statutory Powers Procedures Act provides if any party notified does not attend at the hearing, the tribunal may proceed in their absence and they will not be entitled to any further notice of the proceedings

I certify a true copy of this Notice of Hearing was served on the named Officer

This 1st day of July, 2021

Sgt. J Bickle-Hearn #3025

Serving Officer's Signature

Name: Jenn Bickle-Hearn Rank: Sgt. Regimental #: 3025

I acknowledge receipt of a true copy of this Notice of Hearing.

C. Willis

Primary Officer's Signature



NOTICE OF PUBLIC PROCEEDING

Pursuant to Section 9 of the Statutory Powers Procedure Act,
R.S.O. 1990, Chapter S. 22, as amended.

TO: **Detective Constable Craig Willis #3047**
RE: **Police Service Act Hearing #17-09-PC059**

You are hereby given notice, in accordance with section 9 of the Statutory Powers Procedures Act and any other applicable laws in this regard, once this Police Service Act proceeding has begun it is a **matter of public record**.

Should any member of the public make an inquiry with Durham Regional Police Service concerning this matter, the following information will be disclosed to them **unless** an order to hold the hearing *in camera* has been made:

1. The name of the primary officer,
2. The date, time and location of the hearing, and
3. The allegation made against the officer under the Police Service Act.

I certify a true copy of this Notice was served on the Primary Officer.

This 15th day of July, 2021

Sgt. J Bickle-Hearn #3025
Serving Officer's Signature

Name: Jenn Bickle-Hearn Rank: Sgt. Regimental #: 3025

I acknowledge receipt of a true copy of this Notice.

C. Willis
Primary Officer's Signature