

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

TO: Police Constable Benjamin ARDILES (8863)

YOU ARE ALLEGED TO HAVE COMMITTED MISCONDUCT IN THAT YOU DID WITHOUT GOOD AND SUFFICIENT CAUSE MAKE AN UNLAWFUL OR UNNECESSARY 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 a member of the Toronto Police Service attached to number 52 Division, you were assigned uniform duties.

On Sunday, June 27, 2010, you were on duty and assigned to the G20 summit detail. You came into contact with M.W. and effected an arrest without the requisite grounds to do so.

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

**HEARING DATES:**

April 8, 9 and 10, 2014

**COUNSEL:**

Prosecution:	B.J. Van Niejenhuis E. Marrocco
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P.C. Benjamin Ardiles:	H.G. Black, Q.C.
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Michael Williams:	Rebecca Studin
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### BACKGROUND:

The weekend of Saturday, June 26, 2010, during the presence of the G20 meetings in the City of Toronto was the scene of widespread rioting, violence, looting and the destruction of public and private property. As a result, the police were placed on alert as to a possible repeat of this criminal behaviour on Sunday June 27<sup>th</sup>. The violence and the aftermath of June 26<sup>th</sup> is shown in EXHIBIT 8(a) to (f).

### FACTS AND EVIDENCE:

#### Michael Williams

Mr. Williams is approximately 23 years of age and is employed as a transit operator. He had been working on Saturday, June 26, but away from the downtown area.

Around noon of Sunday, June 27<sup>th</sup>, Michael Williams and Kevin MacKay, who were living in the Mt. Pleasant Avenue and Jarvis Street area, decided to go to the Eaton Centre to do some shopping and attend the College Street and Yonge Street area to see what damage had been done to that area the day before.

As they arrived on foot at the intersection of College Street and Yonge Street, they noted damage to a number of premises and Mr. Williams commenced to take photographs of the damage and surrounding area on his cell phone.

EXHIBIT 6(a) – (c) and (i) are the results of his efforts. These photographs depict the west side of Yonge Street, south of College Street.

There are approximately 20-24 officers shown in these photographs and some of these officers are identified as having taken part in the matter before this tribunal. At this time, Mr. Williams was wearing the following:

- Brown running shoes
- Black socks
- Brown shorts above the knee
- Green tank top
- Leather wrist band
- Navy blue handkerchief about one foot square around his neck as a fashion accessory with the knot in front,
- Aviator glasses

Mr. Williams described the handkerchief as “protest chic” and was too small to conceal his identity. Mr. Williams had no backpack nor was he carrying any tool or object that could be considered a weapon.

As Mr. Williams and Mr. McKay continued in a southerly direction through the column of officers (EXHIBIT 8), they came near a police officer identified as Police Constable McFayden (EXHIBIT 6(c)). Mr. Williams and Mr. MacKay were asked, “what are you doing” and, “where are you going”? Mr. Williams replied, “shopping” and, “Eaton Centre”. Police Constable McFayden then asked about the handkerchief that Mr. Williams was wearing and Mr. Williams replied, “it is protest chic”.

Police Constable McFayden asked Mr. Williams to take it off and Mr. Williams laughed. Further requests for its removal were refused by Mr. Williams. Mr. Williams wanted to know if these requests were legal and under what authority. Police Constable McFayden advised Mr. Williams that after the Saturday events, the police were allowed increased powers of search if you were wearing black clothing, goggles, had backpacks or any head covering such as a bandana. If such articles were found, you could be arrested.

At this time, Police Constable Ardiles came upon the scene and advised Mr. Williams that if he did not remove the handkerchief/bandana, he would be arrested. When Mr. Williams did not remove it, Police Constable Ardiles undid the knot and removed it from the neck of Mr. Williams and gave it to another officer. Mr. Williams was handcuffed and told that he was under arrest for “potential to commit crime”.

There was a pat-down search and Police Constable Ardiles recovered a wallet, cellphone and keys. Police Constable Ardiles pulled Mr. Williams' shorts front out and nothing such as a tool or weapon was found.

Mr. Williams understood that the contents and information in the wallet were "checked out" and the articles were returned to Mr. Williams upon his release. The return of the handkerchief/bandana was requested a number of times but is now deemed to be lost. After his release, Mr. Williams and Mr. MacKay went into the Eaton Centre and did some shopping.

Throughout the confrontation with the police, Mr. Williams kept repeating, "I have done nothing wrong".

#### **Kevin MacKay**

Mr. MacKay was 40 years old on June 27, 2010, and was living with Mr. Williams at 11 Elm Avenue, Toronto. He is a professional engineer.

On June 27, 2010, he and Mr. Williams were going to the Eaton Centre to do some shopping. They were not aware of the extent of the G20 riots that occurred the previous day.

They arrived at the intersection of College Street and Yonge Street and noted a group of police officers on the west side of Yonge Street speaking to a "homeless man" (EXHIBIT 6(a) and (b)) and searching his backpack. As they passed this scene they came upon Police Constable McFayden who requested that Mr. Williams remove his bandana/handkerchief. Mr. Williams refused and asked why. Mr. Williams was told that he would be arrested for "intent to commit crime". They were also told that the police had additional powers to detain to insure no additional violence.

While this discussion was ongoing with Police Constable McFayden, Police Constable Ardiles entered the group and placed handcuffs on Mr. Williams and stated he was under arrest for "potential to commit a crime" with no specific crimes mentioned. Mr. MacKay and Mr. Williams were separated by 5 to 10 feet. Mr. MacKay was advised that he and Mr. Williams were stopped because of the attire of Mr. Williams and the numerous times that Mr. Williams refused to remove his handkerchief/bandana from his neck. Mr. MacKay described the handkerchief/bandana to be blue in colour and about 12 inches by 12 inches square.

Upon Mr. MacKay being asked for his identity, he produced his and was not searched. He saw Mr. Williams being patted down and the police removed his wallet. At that time, a Sergeant appeared, there was a conversation as between Police Constable Ardiles and the Sergeant. The wallets were returned and both Mr. Williams and Mr. MacKay were released. The handkerchief/bandana was never returned although the return was requested.

Mr. MacKay confirmed that throughout this incident Mr. Williams kept repeating, "I have done nothing wrong".

### **Benjamin Ardiles**

Benjamin Ardiles is 39 years old and was a police officer for approximately 6 years prior to June 27, 2010. Police Constable Ardiles was on duty on Saturday, June 26<sup>th</sup> and was part of the police presence to prevent the violence in downtown Toronto. His shift on Saturday was 9 a.m. to 7 p.m.. Upon returning to work on Sunday, June 27<sup>th</sup>, at the morning briefing he was instructed to look for persons in black clothing, wearing bandanas and gas masks as these persons were arrestable for indictable offences. Police Constable Ardiles agreed that he knew he needed reasonable and probable grounds to make a proper arrest.

Police Constable Ardiles was one of a team of 6 led by Sergeant Sova. This team arrived outside of 40 College Street at 12:45 p.m. and were on the west side of Yonge Street after stopping a lone male to search his backpack (EXHIBIT 6(a)).

Another team was coming north on Yonge Street with Police Constable McFayden (EXHIBIT 6(c)). Police Constable Ardiles noticed Police Constable McFayden approach Mr. Williams and Mr. MacKay and Mr. Williams and Police Constable McFayden began to get into an argument. Police Constable McFayden asked Mr. Williams to take off his bandana. Mr. Williams refused to take off his bandana and became very "confrontational". Police Constable Ardiles felt that Mr. Williams looked like the people in the "Black Bloc" (EXHIBIT 8(a) to (f)). Police Constable Ardiles decided to intervene as the confrontation was escalating. Police Constable Ardiles asked where Mr. Williams was going and was told that he was going to the Eaton Centre to shop. Police Constable Ardiles remembered that the Eaton Centre was closed when he passed it earlier and therefore Mr. Williams was lying and, as a result, he arrested Mr. Williams.

The reasons for the arrest were that Mr. Williams was loud, was not being cooperative, showed animus to the police, would not give his name, a group was forming to watch, and he looked like a Black Bloc member because of his clothing. Police Constable Ardiles confirmed that Mr. Williams kept repeating that he knew his rights and had done nothing wrong.

Notwithstanding these protests, Mr. Williams was arrested for "conspiracy to commit an indictable offence". Police Constable Ardiles removed the handkerchief/bandana from Mr. Williams' neck and gave it to an unknown officer. Police Constable Ardiles felt the cloth object could be used as a disguise. Mr. Williams was handcuffed and subjected to a pat-down search. Nothing was found except for a wallet and cellphone. From the information in the wallet, a check of identity was made and Mr. Williams had no previous legal involvement.

Police Constable Ardiles spoke to Sgt. Sova and it was decided that more evidence would be required to continue the conspiracy charge.

On July 5, 2010, Police Constable Ardiles prepared a record of arrest (EXHIBIT 4). In the synopsis, Police Constable Ardiles sets out his observations of Mr. Williams, his reason for the

arrest, and his findings. On further investigation of Mr. Williams together with his conclusion, "it was determined that the accused posed no real or immediate concern with regards to any crime involving the G20. The accused was released unconditionally". The charge on the record of arrest is noted as "conspiracy to commit indictable offence C.C. 465 (1)(c).

#### Daniel Sova

On Sunday, June 27, 2010, Sgt. Daniel Sova was the supervisor attached to a foot patrol which included Police Constable Ardiles. At about 1 p.m. he noted an individual (Williams) in handcuffs and under arrest by Police Constable Ardiles for "conspiracy to commit mischief". He noted Mr. Williams was wearing a bandana around his neck and was being "aggressive in action" and "argumentative". Mr. Williams indicated that he was going to downtown but refused to remove the bandana and give any identification. After a search and finding of Mr. Williams' wallet, his identification was checked and there was nothing on file. Sgt. Sova ordered Mr. Williams release as there were no grounds to continue with the arrest.

#### Reasonable and Probable Grounds

The police witnesses in this matter 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.



This principle was further discussed by Mr. Justice Green in *R. v. Howser*, 2012 ONCJ 476 at paragraphs 115 and 116:

Technically, Hayward's touching of the defendant amounted to an assault justifying the defendant's physical rebuff. However, as I read the evidence, PC Cameron treated that rebuff as an affront to the police and immediately tackled the defendant on the pretence of arresting him. There is no evidence that the defendant at that point was perpetrating any offence: he was not engaged in any assaultive contact with those on the other side of the verbal argument; he had not raised his fist or uttered belligerent words; he was not causing a disturbance; and he had certainly not assaulted Hayward. Having not actually witnessed any criminal offences, there was no lawful basis, as afforded by s. 495(1)(a), for Cameron or the other officers to arrest the defendant as "a person who has committed an indictable offence": *R. v. Klimchuk* (1991), 67 C.C.C. (3d) 385 (B.C.C.A.). Nor was an arrest authorized under s. 495(1)(b) as the defendant was not "a person whom [the officers] finds committing a criminal offence".

Further, I see no "reasonable grounds", as required for the lawful exercise of the preventative detention power provided in s. 495(1)(a), for arresting the defendant on the basis that he was "about to commit an indictable offence". The defendant's inappropriate conduct to that point had consisted solely of heated words. His pulling away from Hayward was, as that officer explained, legally justified, and he had made no effort to pursue, threaten or otherwise challenge Hayward or, for that matter, any other person. While Cameron, and perhaps his colleagues, may well have *subjectively* apprehended an imminent physical confrontation and ancillary criminal conduct, I find that the evidentiary record simply does not support the requisite *objective* foundation for an arrest founded on this platform. As recently said by the Court of Appeal in *R. v. Brown*, 2012 ONCA 225, at para 14:

[T]here must be something in the conduct observed by the officer, placed in the context of the rest of the circumstances, that lends some objective justification or verification to the officer's belief. Section 495 of the Criminal Code and, more importantly, s. 9 of the Charter demand that the belief be "reasonable", meaning that a reasonable person standing in the shoes of the police officer be able to see the grounds for the arrest. Without this objective component, the scope of the police power to arrest would be defined entirely by the police officer's perception of the relevant circumstances. The individual's constitutional right to be left alone by the state cannot depend exclusively on the officer's subjective perception of events regardless of how accurate that perception might be. The issue is not the correctness of the officer's belief, but the need to impose discernable objectively measurable limits on police powers.

See, also, *R. v. Storrey* (1990), 53 C.C.C. (3d) 316, esp. at 324 (S.C.C.).



The case law states that “common sense” must prevail in assessing the objective qualities and weight must be given to the immediate circumstances at the time of arrest.

### Analysis

On Sunday, June 27, 2010, Michael Williams and Kevin MacKay were walking in a southerly direction on the westerly side of Yonge Street when they came upon a group of police officers (EXHIBITS 6 (a) – (d)). These photographs taken by Mr. Williams truly reflect the time and place of the sites of the arrest. At this time, Mr. Williams was dressed as outlined above. The contentious piece of clothing was a blue handkerchief as described by Mr. Williams (bandana as described by police officers). This object was 12 inches square. On being asked by Police Constable McFayden to remove the object, Mr. Williams refused and described it as a “fashion piece” and “protest chic”. He was uncooperative and argumentative with Police Constable McFayden. This scene was viewed by Police Constable Ardiles and he joined the argument. Mr. Williams further refused to take the object from around his neck. The object was removed from Mr. Williams’ neck and Mr. Williams was handcuffed and arrested by Police Constable Ardiles for “conspiracy to commit an indictable offence C>C. 465(1)(c).”

Both Poilice Constables McFayden and Ardiles suggested that at that time thy had special powers of search and arrest as a result of the activity of the “Black Bloc” on Saturday, June 26<sup>th</sup>.

### Conclusion

Was the arrest lawful?

Relying on s.495(1) of the *Criminal Code*:

A police officer may arrest without warrant

- (a) A person who has committed an indictable offence or who, on reasonable grounds, he believes has committed or is about to commit an indictable offence;
- (b) A person who he finds committing a criminal offence.

Can the evidence in this matter satisfy both the subjective and objective requirements to prove reasonable and probable grounds?

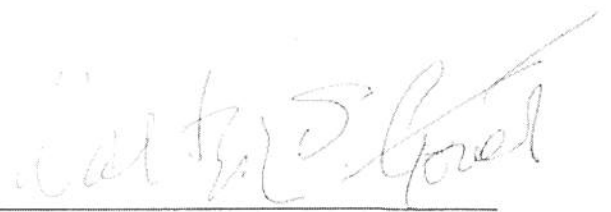
1. On Sunday, June 27<sup>th</sup> at or about 1 p.m., the area near College Street and Yonge Street was sparsely occupied by vehicular or pedestrian traffic. There were approximately 20 – 24 police officers on the west side of Yonge Street. Mr. Williams and Mr. MacKay were walking in a southerly direction through this group of police officers (EXHIBIT 6(a)-(c)). No crowds were forming or exigencies arising.
2. Mr. Williams was dressed as described above and had no similarity to the persons of the Black Bloc as shown in EXHIBITS 8(a) – (d). There were no tools or weapons visible on his body. This was substantiated on the pat-down search.
3. He was carrying no back pack to conceal any weaponry. He was carrying around his neck a 12 inch square piece of cloth which he described as a handkerchief and the police witnesses called a bandana.
4. Mr. Williams' interaction with Police Constable MacFayden was loud and uncooperative and he refused to remove the handkerchief (bandana).
5. Mr. Williams was originally stopped by Police Constable McFayden for wearing the neckwear and part way through their confrontation, Police Constable Ardiles joined into the action. Upon being refused by Mr. Williams to remove the neckwear, Police Constable Ardiles removed the neckwear and arrested and handcuffed Mr. Williams. He would have had little or no time to satisfy himself as to what had gone on between Police Constable MacFayden and Mr. Williams. It should be noted that the handkerchief /bandana last in possession of the police was lost.
6. Mr. Williams always maintained that he and Mr. MacKay were proceeding to the Eaton Centre to shop. This was confirmed by Mr. MacKay and he gave evidence that they did attend at the Eaton Centre.

I find that the prosecution has provided clear and convincing evidence that Police Constable Ardiles failed both subjectively and objectively in showing that he had reasonable and probable grounds to make the arrest.

Decision

I find that you, Police Constable Ardiles, did commit misconduct in that you did without good and sufficient cause make an unlawful or unnecessary arrest.

DATED at Toronto this 15<sup>th</sup> day of May, 2014.

A handwritten signature in cursive script, appearing to read "Walter S. Gonet", written in dark ink. The signature is positioned above a horizontal line.

Walter S. Gonet  
Hearing Officer