

OCCPS Decision # 08-02

CONSTABLE DAVID MOORE  
Appellant

AND

ONTARIO PROVINCIAL POLICE  
Respondent

Presiding OCCPS Members:

Murray Chitra, Chair  
Roy Conacher, Member  
Hyacinthe Miller, Member

Appearances:

William R. MacKenzie, for the Appellant  
Amy Leaman, for the Respondent

Heard:

February 28, 2008

Date of Decision:

May 2, 2008

**NEGLECT OF DUTY - Failure to perform duties - Failure to conduct investigation** - Pursuit of stolen van - Appellant arrested driver after being advised van was stolen - Appellant failed to determine origins of cash in driver's possession and released driver's girlfriend without determining ownership of property in her possession - Van not thoroughly searched and contents not inventoried - Finding of neglect of duty supported on the evidence before Hearing Officer - Appeal dismissed.

**NEGELCT OF DUTY - Essential ingredients** - Investigation of stolen van and its contents found to be faulty and incomplete - Hearing Officer properly found that Appellant was neglectful - Conduct of investigation went beyond mere mistake - Element of wilfulness demonstrated - Appeal dismissed.

Summary of Reasons for Decision

Constable Moore appealed his conviction on one count of neglect of duty, contrary to s. 2(1)(c)(i) of the Code of Conduct. Constable Moore did not contest the penalty imposed by the Hearing Officer, a reprimand.

Constable Moore had been a member of the OPP for over 12 years at the time of the events giving rise to the disciplinary charge.

On July 1, 2005 Constable Moore was conducting stationary radar on Highway 11. He began to pursue a speeding van. The driver took evasive action, forcing Cst. Moore onto the shoulder at one point. Constable Moore contacted the Communications Centre and was instructed to discontinue the pursuit. Constable Moore was then advised that the van was stolen. Another officer began to pursue the van, but also discontinued the pursuit as being too dangerous. However, both officers followed the van from a distance, and caught up with it when the van pulled onto the shoulder. After stopping, the driver suddenly reversed into Cst. Moore's cruiser, causing damage to the cruiser.

The driver and his pregnant girlfriend were arrested at gunpoint. The driver admitted that he stole the van and also some gas. Several officers from various jurisdictions arrived on the scene. Constable Moore took charge of the investigation since he was the only officer from the North Bay Detachment and he had originated the pursuit in his jurisdiction.

The driver was found in possession of a wallet which contained cash totalling almost \$800.00. Constable Moore asked other officers to search the van. Coolers and gym bags and knapsacks were located, but were not opened or searched, nor was the rear of the van searched.

At the North Bay Detachment, Cst. Moore acceded to the driver's request that most of the cash be given to his girlfriend for her trip home. The girlfriend was released and was driven to the bus station, taking the gym bags and knapsacks with her.

The next day Cst. Moore contacted the owner of the van, who advised that his wallet and \$3,000.00 in cash had been in the van when it was stolen, and that the van had been filled with furniture. The following day the stolen wallet was recovered from the garbage in the North Bay bus terminal.

Thereafter a complaint was lodged against Cst. Moore and the other officers who had been on the scene. Constable Moore was charged with neglect of duty. Specifically, Cst. Moore was alleged to have failed to investigate and inventory property recovered from the scene, and to have released property to suspects.

Constable Moore pled not guilty to the charge. However, the Hearing Officer concluded that "much more ought to have been done", Cst. Moore failed to properly investigate the property, and he was therefore negligent.

Counsel for the Appellant argued that the Hearing Officer erred in law by finding Cst. Moore guilty of neglect of duty. Counsel submitted that Cst. Moore's actions amounted to no more than a mistake or a poor effort, and that the element of wilfulness or recklessness, necessary to a finding of neglect of duty, was absent in this case. Counsel also submitted that the Hearing Officer erred in not finding that the failings of the other officers mitigated the Appellant's shortcomings. Counsel for the Respondent argued that

the Hearing Officer properly concluded that the Appellant's conduct was neglectful, and that as the officer in charge, the Appellant was responsible for ensuring a thorough investigation.

*Held*, Conviction upheld; appeal dismissed.

Constable Moore accepted the word of an admitted thief without question, and even gave back \$500 of the cash to the driver's girlfriend. He took no steps to determine the origins of the cash. Nor did he search the backpacks or inventory their contents. Although the other officers did not search the van as Cst. Moore requested, it was his responsibility to satisfy himself that appropriate investigative steps were taken. His failure to do so was not reasonable or prudent. Constable Moore assumed that a proper search had been done, but he was not entitled to delegate responsibility for investigative failures. The inadequacies of his investigation and his conduct during it went beyond a mere mistake. The Hearing Officer's decision that the Appellant neglected his duties was not void of evidentiary foundation and contained no manifest errors. Thus there was no basis for interfering with the Hearing Officer's findings.

Statutes cited

O. Reg. 123/98 as amended, s. 2(1)(c)(i)

Authorities cited

**Williams and Ontario Provincial Police** (1995), 2 O.P.R. 1047 (OCCPS)  
**Hewitt and Devine and Toronto Police Service** (1999), 3 O.P.R. 1372 (OCCPS #99-07)  
**Gottschalk and Toronto Police Service** (Jan. 29, 2003, OCCPS #03-02)

[Further authorities as submitted by the parties may be found at pp. 5-6 of the decision.]