

OCCPS Decision # 09-06

GAYLE IKEMOTO (ON BEHALF OF CODY IKEMOTO)  
Appellant

AND

CONSTABLE R.C. (RANDY) COTA  
AND  
ONTARIO PROVINCIAL POLICE  
Respondents

Presiding OCCPS Members:

Dave Edwards, Member  
Garth Goodhew, Member

Appearances:

Paolo Giancaterino, for the Appellant  
William R. MacKenzie, for Cst. Cota  
Superintendent Michael Shard, for OPP (via Factum)

Heard:

April 22, 2009

Date of Decision:

May 4, 2009

**UNLAWFUL OR UNNECESSARY ARREST - Warrantless arrests** - Hearing Officer dismissed charge of misconduct against Respondent officer - *Criminal Code* s. 495(1) provides police officers with authority to effect warrantless arrests - Criteria to be satisfied - Officer must subjectively have reasonable and probable grounds and demonstrate that a reasonable person could have reached same conclusion - Two-part test satisfied - Respondent officer also found to have acted in good faith in arresting Appellant - Hearing Officer's decision not void of evidentiary foundation - No fundamental errors - Appeal dismissed.

**UNLAWFUL OR UNNECESSARY ARREST - Warrantless arrests** - Charge of misconduct against Respondent dismissed by Hearing Officer - Assessment of whether confidential information reliable - Reliability factor relevant to issue of whether criteria met for effecting warrantless arrest - Information provided by informant compelling and specific - Source accurate in the past - Information bolstered by Respondent's own inquiries and observations - Subjective and objective criteria met - Hearing Officer not erring in finding that Respondent had reasonable and probable grounds for effecting warrantless arrest - Appeal dismissed.

## Summary of Reasons for Decision

On behalf of Cody Ikemoto, Gayle Ikemoto appealed the decision of the Hearing Officer, dismissing a charge of misconduct against the Respondent, Cst. Cota. The Hearing Officer found Cst. Cota not guilty of unlawful or unnecessary exercise of authority, contrary to s. 2(1)(g)(i) of the Code of Conduct.

In 1987 Cst. Cota joined the OPP and served in the First Nations program. In 1992 he rejoined the uniform division of the OPP. He had experience in the drug enforcement unit, including undercover work on drug projects.

Constable Cota was alleged to have arrested Cody Ikemoto, aged 17, on September 20, 2006 without good and sufficient cause. On that date Cody, who was in attendance at Sharbot Lake High School, drove his father's truck to a local pizza place with two female friends. Prior to Cody's departure from the school Cst. Cota received information from a confidential informant, who had proved in the past to be credible and reliable, that a drug transaction had occurred in the school cafeteria, specifically the purchase of marijuana. Cody was identified as being involved.

Constable Cota then followed the vehicle driven by Cody to the pizza place and back to the high school. In the meantime he ran the vehicle's license plate through CPIC and discovered that the vehicle was of special interest due to its association with the Hell's Angels motorcycle gang.

Constable Cota activated his emergency lights. He testified at his disciplinary hearing that the vehicle travelled 300-400 yards before coming to a stop. When he approached the vehicle Cst. Cota observed a sticker on the dash reading "Support Hell's Angels, Hamilton Chapter". The evidence about what followed diverged, with Cst. Cota claiming that he placed everyone in the vehicle under arrest after asking for identification papers. Cody testified that he was never advised that he was under arrest.

Cody was asked some questions, and denied having any narcotics. He was told to exit the vehicle, which he did, and Cst. Cota did a "pat down" search of Cody. Another police officer attended the scene, and Cody was asked to sit in the back of that car. The two girls were allowed to leave and return to school. Constable Cota searched the vehicle driven by Cody but found no narcotics. Cody and the vehicle were unconditionally released.

Gayle Ikemoto then filed a complaint on behalf of Cody Ikemoto. After a hearing which included testimony from Det. Sgt. Giwa of Professional Standards Bureau, who investigated the complaint, the Hearing Officer dismissed the charge against Cst. Cota. The Hearing Officer found that the information received by Cst. Cota was reliable, that he used what investigative methods he had available to him and due to the exigency of the circumstances made a good faith and reasonable decision to arrest Cody.

Counsel for the Appellant argued that the Hearing Officer erred in finding that s. 11(7) of the *Controlled Drugs and Substances Act* provided Cst. Cota with the authority to make a warrantless arrest and search. He argued that the exigency of the circumstances had not been established, and that reasonable grounds did not exist. Counsel also argued that the warrantless arrest was not authorized pursuant to s. 495(1) of the *Criminal Code*, and that the officer did not act in good faith.

Counsel for Cst. Cota argued that the Hearing Officer correctly applied s. 11(7) of the *CDSA* and determined that exigent circumstances were present. He submitted that pursuant to s. 495(1) of the *Criminal Code*, Cst. Cota had reasonable and probable grounds for arresting Cody, and that a reasonable person in Cst. Cota's position would likewise have believed that reasonable and probable grounds existed. Further, the Hearing Officer found that Cst. Cota acted in good faith, so he could not be held guilty of misconduct even in the absence of reasonable and probable grounds.

Counsel for the OPP submitted that the reasonable and probable grounds test was satisfied in this case. The Hearing Officer did not rely upon s. 11(7) of the *CDSA* but found that Cst. Cota believed he was acting under that authority. The search was incidental to the arrest and was authorized under s. 11(7). Noting the Respondent's concern about the loss or destruction of evidence, counsel argued that exigent circumstances existed. Finally, the finding of good faith should not be overturned lightly.

*Held*, appeal dismissed.

The authority of a police officer to effect a warrantless arrest derived from s. 495(1) of the *Criminal Code*. Whether the arrest in this instance was lawful depended on whether Cst. Cota had reasonable grounds to believe that Cody had committed an indictable offence.

**R. v. Storrey** (1990), 53 C.C.C. (3d) 316 (S.C.C.) contemplated a two-part test for establishing reasonable grounds under s. 495(1). The officer must have a subjective belief, and that belief must be objectively reasonable. From the record it was clear that Cst. Cota had a subjective belief that he had reasonable and probable grounds. As for the second part of the **Storrey** test, Det. Sgt. Giwa from Professional Standards testified that he would have done the same thing. Thus reasonable grounds were established.

The Hearing Officer also found that Cst. Cota acted in good faith, a finding which would not be lightly overturned on appeal. While a finding of good faith would not provide blanket protection from a charge of misconduct, it was an important element to consider. In this case the Hearing Officer's finding of good faith was not void of evidentiary foundation, and it served to strengthen the conclusion that the officer's actions were reasonable.

As was evident from the record, the search of Cody and the vehicle occurred after the arrest. The charge of misconduct comprised only the issue of unlawful or unnecessary arrest, so the search was not relevant to the appeal. The case of **R. v. Debot** (1989), 52

C.C.C. (3d) (S.C.C.), which was relied upon by the Appellant, concerned the use of information from confidential sources for the purpose of undertaking a warrantless search. To this extent it was relevant by way of analogy in determining whether the information received by Cst. Cota satisfied the standard set in **Storrey** for warrantless arrests. It was apparent that in this case the test in **Debot** had been met: the information provided was very compelling and very specific, and the source had proved to be very accurate in the past. The third part of the **Debot** test - corroboration by investigation prior to the search - had also been met. The Hearing Officer referred to: the CPIC inquiry and the association of the vehicle with the Hell's Angels; Cst. Cota's concern about the proximity of the vehicle to the school; the observation of delay in stopping after emergency lights were activated; and the observed Hell's Angels sticker.

Constable Cota had a subjective belief that there were reasonable and probable grounds for the arrest, and on the evidence a reasonable person in his position could have come to the same conclusion. Thus the Hearing Officer's decision was not void of evidentiary foundation and contained no fundamental errors or errors in principle.

#### Statutes cited

*Police Services Act* R.S.O. 1990, c.P.15 as amended, s. 57

O. Reg. 123/98, s. 2(1)(g)(i)

*Controlled Drugs and Substances Act* R.S.C. 1996, c.19 as amended, s. 11

*Criminal Code* R.S.C. 1985, c.C-46 as amended, s. 495(1)

#### Authorities cited

**Williams and Ontario Provincial Police** (1995), 2 O.P.R. 1047 (OCCPS)

**Wilson and Ontario Provincial Police** (Nov. 20, 2006, OCCPS #06-11)

**Galassi v. Hamilton (City) Police Service** [2005] O.J. No. 2301 (Ont. Div. Ct.)(JR #03-20)

**R. v. Debot** (1989), 52 C.C.C. (3d) (S.C.C.).

**R. v. Storrey** (1990), 53 C.C.C. (3d) 316 (S.C.C.)

**Whitney v. Ontario (Provincial Police)** [2007] O.J. No. 2668 (Ont. Div. Ct.) (JR #06-05)

**Tomie-Gallant v. Ontario (Provincial Services Board of Inquiry)** [1996] O.J. No. 2863 (Ont. Div. Ct.)