

**NOVA SCOTIA POLICE REVIEW BOARD**

**IN THE MATTER OF:** The *Police Act*, Chapter 31 of the *Acts* of 2004 and the Regulations made pursuant thereto

- and -

**IN THE MATTER OF:** An appeal filed by **Vincent Garnier**, Complainant, on behalf of his son, Christopher Garnier, against Cst. Steve Campbell, Cst. Gary Fraser, Cst. Dennis MacSween and Cst. Troy Walker, of the Cape Breton Regional Police Service, requesting a review of a decision made by Supt. Phillip Ross dated June 18, 2018.

**BEFORE:** Jean McKenna, Chair  
Hon. Simon J. MacDonald, Vice-Chair  
Stephen Johnson, Board Member

**COUNSEL:** Vincent Garnier, Self-Represented  
Guy LaFosse QC, Counsel for Constable Dennis MacSween  
Tony Mozvik QC, Counsel for Constable Gary Fraser  
Darlene MacRury, Counsel for Constable Troy Walker  
Jillian Barrington, Counsel for Constable Steve Campbell  
Demetri Kachafanas QC, Counsel for CBRPS

**HEARING DATES:** January 18 – 22, 25, 2021

**DECISION DATE:** November 2, 2021

**FACTS**

[1] This matter comes before the Nova Scotia Police Review Board (The Board) as a result of a complaint by Mr. Vincent Garnier, father of Christopher Garnier against Constables Stephen Campbell, Gary Fraser, Dennis MacSween, and Troy Walker of the Cape Breton Regional Police Service (CBRPS). Mr. Christopher Garnier filed a consent permitting Mr. Vincent Garnier to act on his behalf in this matter. Vincent Garnier was not present during any of the interactions that occurred between the witnesses in this matter.

[2] On December 20, 2016 Christopher Garnier was charged with murder under section 235(1) of the *Criminal Code of Canada* (CCC) and interference with human remains contrary to section 182(b)(f) of the CCC. Christopher Garnier was released on a Recognizance Order which contained a number of conditions including the following; “to prove compliance with the house arrest condition by presenting yourself at the entrance of your residence should a peace officer attend there to check compliance.”

[3] Under the terms of the Recognizance Order Christopher Garnier was allowed to be at his father's home in Bedford, and also allowed to be at his mother Kim Edmunds' residence at 117 Millville Highway in Millville, Nova Scotia. At approximately 12:00 noon on February 17<sup>th</sup>, Christopher Garnier had attended HRP headquarters on Gottingen Street in Halifax. He was provided with a phone number for the answering service, to advise of planned weekend travel, and he told the Commissionaire on duty of his plans to travel to his mother's in Cape Breton. He also called the answering service, leaving a message to the same effect.

[4] Constable George Farmer was assigned to do a compliance check, that evening, at the Bedford home of Vincent Garnier, where Christopher Garnier was required to reside. For reasons unknown, Constable Farmer was not aware of Christopher Garnier's messages to Halifax Regional Police (HRP), and he attended and telephoned the Bedford address, getting no response. (Vincent Garnier had driven Christopher Garnier to his mother's home in Cape Breton.) Constable Farmer advised Constable Mike Stevens, HRP, of the result of his compliance check, and Constable Stevens asked Cape Breton Regional Police to conduct a compliance check at the Millville property. Constable Steve Campbell was directed to do the check, and he did so, at approximately 1:00 a.m., February 18, receiving no response.

[5] In the meantime, Constable Farmer had called the cell phone of Christopher Garnier's step-mother at approximately 4:00 a.m., and left a voice message advising that he was doing a compliance

check at the Bedford property, and that there was no response (she was in Cape Breton by that time). She called back the next morning when she found Constable Farmer's message and left a message for him. She also received a call from Constable Mike Stevens, HRP, and advised him that Christopher Garnier was at his mother's home in Cape Breton and surmised that Constable Campbell may have gone to the wrong door. (There are three entrances to the Millville property, one to the basement apartment where his mother lives, and the other two to the main floor, where her father lives.)

[6] From the time of entering the Recognizance, Christopher Garnier had been meticulous in maintaining a log record of compliance checks, including the date, time, and name of the officer who performed the check.

[7] According to the evidence at the hearing before the Police Review Board, Christopher Garnier, Brittany Francis, and Kim Edmunds were inside the residence on the morning of February 18<sup>th</sup> at 1:00 a.m. However, because they were asleep, they say they didn't hear Constable Campbell knocking on the door.

[8] Constable Stevens, upon receiving the information on the compliance check, instructed Constable Campbell to do another check at the Edmunds residence. Constable Campbell along with Constable Gary Fraser attended at the 117 Millville Highway residence at 9:59 p.m. on February 18, 2017. They were also instructed to photograph the entrances to the residence. Christopher Garnier was present at that time.

[9] The photographs taken by Constable Fraser and the reports submitted to Constable Stevens led him to request that CBRPS arrest Christopher Garnier for non-compliance with the terms of his Recognizance Order namely, his failure to present himself at the entrance of his residence at Millville on February 18, in compliance with the Recognizance Order conditions.

[10] On February 19, 2017, Christopher Garnier was placed under arrest by Constables Dennis MacSween and Troy Walker, at his mother's residence. He was then transported to Halifax. He was held in custody until the hearing on the breach, April 4 and 5, 2017.

[11] In a decision dated April 13, 2017, Justice Rosinski dismissed the breach of recognizance charge against Christopher Garnier. His Lordship determined that when Constable Campbell conducted his compliance check at 1:20-1:36 a.m. on February 18<sup>th</sup>, Christopher Garnier, Brittany Francis and Kim

Edmunds were in the apartment and they must have been asleep, and did not hear Constable Campbell knocking on the apartment door.

[12] In his decision, Justice Rosinski stated that he was satisfied "that at the time Mr. Garnier was arrested, the officers had reasonable grounds to believe that an indictable offence had been committed."

[13] As a result of Vincent Garnier's complaint against the officers an investigation was done by Staff Sergeant Bill Turner of the CBRPS. Staff Sergeant Turner provided his report dated May 9, 2018 to the delegated Disciplinary Authority, Superintendent Philip Ross. Superintendent Ross in his decision found there was no misconduct on the part of Constables Campbell or Fraser. Superintendent Ross in his decision did not refer to whether or not there was any misconduct on the part of Constables MacSween or Walker.

[14] Vincent Garnier filed a Form 13 requesting a review of his public complaints against these officers and the decision of Superintendent Ross dated July 12, 2018. His Form 13 requested a review against all four officers. In an interim decision of the Board, it was determined that the Review could continue as against all four officers.

## **ISSUES**

[15] The Police Complaints Commissioner Judith McPhee QC reviewed the file and placed two issues before the Nova Scotia Police Review Board namely:

1. The complainant's complaint concerning the taking of pictures by the CBRPS at 117 Millville Highway; and
2. The arrest without warrant by CBRPS of Christopher Garnier on February 19, 2017.

## **DECISION**

[16] At the outset, we emphasize, that while we consider the lawfulness of the acts, our mandate is to determine whether the actions would constitute a breach of the Code of Conduct. (Nova Scotia *Police Act* Regulations, s. 24) The applicable sections are as follows:

### **Code of Conduct**

**24 (1)** A member who engages in discreditable conduct in any of the following ways commits a disciplinary default:

(a) acting in a disorderly manner or in a manner that is reasonably likely to bring discredit on the reputation of the police department;

...

(7) A member who abuses their authority in any of the following ways commits a disciplinary default:

(a) making an arrest without good or sufficient cause

(c) unlawfully exercising authority as a member.

[17] Christopher Garnier had been charged with the murder of an off duty female police officer, and with the disposal of her remains. It is the express and implied rationale underlying this complaint, that the conduct of these officers was motivated by the fact that the victim of the crime alleged, was a police officer.

#### **1. The taking of photographs by Constable Fraser**

[18] As noted above, Halifax Regional Police (HRP) had asked Cape Breton Regional Police Service (CBRPS) to provide exterior photographs of the entrances to 117 Millville Highway, to be used as part of the evidence in the event Christopher Garnier was charged with breach of his Recognizance. Constable Stevens of Halifax Regional Police had asked CBRPS to take photographs of the entrances to the Millville home. This request was passed on to Constable Campbell, who in turn, had requested a SOCO officer to accompany him to the home, to take the photographs. Constable Fraser attended the property and while Constable Campbell conducted a further compliance check, Constable Fraser took photos of all of the entrances, including the back and side entrances utilized by Constable Campbell in his earlier compliance check. In order to obtain the photographs, Constable Fraser entered the property (the land surrounding the home). He did not have a warrant to enter the property, but provision of complete and accurate photographs would probably not have been accurate if taken from a location off the property.

[19] Constable Campbell's role was to conduct a further compliance check, and he was in the lawful execution of his duty. However, it is likely that a warrant would be required to enter the property to take photographs, in the absence of consent from Kim Edmunds, the landowner. Constable Fraser did not ask

for consent and testified at the Review Board hearing that he had not been aware that a warrant would be required.

[20] At the Breach of Recognizance trial of Christopher Garnier, the photographs were submitted as evidence without objection.

[21] The Board accepts that Constable Fraser was not aware that a warrant would be required, absent consent. His conduct was inadvertent and does not amount to "... discreditable conduct .... that is reasonably likely to bring discredit to the reputation of the police department...". Furthermore, even if the conduct was technically unlawful, there is no evidence that it would constitute an abuse of his authority.

[22] There is no question that he would have obtained a warrant had one been requested. The complaint against Constable Fraser is therefore dismissed.

[23] Constable Campbell's limited involvement in the taking of photographs was to arrange for the SOCO officer, Constable Fraser, to conduct the assigned task. We are satisfied that there was no misconduct by Constable Campbell in that activity, and the complaint against him is likewise dismissed.

## **2. The arrest of Christopher Garnier**

[24] It is argued on behalf of Christopher Garnier, that Constables Walker and MacSween should have had a warrant to arrest Christopher Garnier.

[25] Halifax Regional Police Constable Mike Stevens had reviewed the reports of the compliance checks, including the photographs taken by Constable Fraser. He contacted Sergeant MacGillivray (CBRPS) and requested that Christopher Garnier be arrested for breaching the Order because of his failure to present himself at the door of 117 Millville Highway at 1:20-1:36 a.m. on February 18, 2017 for the compliance check

[26] Sergeant MacGillivray also reviewed the material, and he testified that he was of the opinion that there were reasonable and probable grounds as to arrest Christopher Garnier for being in breach of the Order. He then assigned the arrest of Christopher Garnier to Constable Dennis MacSween. Although Constable MacSween was not able to testify due to health reasons, his Arrest Report, (Exhibit No. 3)

summarizes his involvement in the arrest of Christopher Garnier.

[27] According to Constable MacSween's Arrest Report, which is dated February 19, 2017 at 15:06, before he went to arrest Christopher Garnier he reviewed the reports in the file, which would have included Constable Campbell's file materials and the photographs. Constable MacSween's Arrest Report indicates that he "agreed there had been a breach of conditions by Mr. Garnier when he did not present himself at the door when the officers conducted a compliance check."

[28] Constable MacSween's Arrest Report noted that at 10:25 a.m. when Constables MacSween and Walker attended at 117 Millville Highway, Kim Edmunds opened the door and "invited the officers into the residence."

[29] The evidence of Kim Edmunds differs.

[30] According to Kim Edmunds, Constable MacSween arrived at her door on the morning of February 19 while Constable Walker stood by the police car which was about 15 feet away from her door. She testified that Constable MacSween had not been there before. After Constable MacSween knocked on the door, she opened the inside door and stepped aside. She stated Constable MacSween then entered her home without a warrant or an express invitation from her to do so. She also testified that shortly after Constable MacSween entered her home, Constable Walker followed behind and entered her home, also without a warrant and without an invitation to do so.

[31] She says that at the time the officers entered her home, Christopher Garnier was standing behind her, a few steps below. She says they told her they were there to arrest Christopher Garnier for his failure to comply with his Recognizance, by failing to respond to the compliance check at 1:00 a.m. on February 18.

[32] In contrast to Kim Edmund's testimony, Constable Troy Walker testified that he was on the doorstep directly behind Constable MacSween when they went to the entrance door. Nothing significant turns on this, and it is likely a different recollection due to the passage of time.

[33] Constable Walker also testified that he and Constable MacSween were invited into the home by Ms. Edmunds.

[34] On behalf of Constable MacSween, the Board is referred to **R. v. Guiboche**, 2004 MBCA 16. That case also involved police officers arresting an accused without a warrant at his father's house. The police knocked on the door of the accused's father's home and the father opened the door, stepped back and the officers stepped over the threshold, without words of invitation by the homeowner to do so. Subsequently the father advised the police that his son was upstairs. In that decision, where there was a warrantless arrest, Freedman J.A. stated:

55. Implicit in these grounds of appeal is a challenge to the lawfulness of the arrest, based on the entry by the police into Joe Guiboche's house without a warrant. As was said by Kroft J.A., for this court, in *R. v. Petri* (V.R.) (2003), 170 Man.R. (2d) 238, 2003 MBCA 1 (at para. 29):

Undoubtedly, there have been many decisions since **R. v. Feeney** which have criticized police entry into private residences and warrantless arrests. It is critical, however, that the specific facts of each case be kept in mind when dealing with s. 8 breaches.

56. It is clear to me that in relation to their entry into the house, the police acted in good faith, without trickery, without misleading (unlike in *R. v. Adams* (2001), 2001 CanL11 16024 (ON CA), 157 C.C.C. (3d) 220 (Ont. C.A.) relied on by the accused) and, importantly, without any degree of force whatsoever (unlike in *Feeney*). They knocked on the door, and Joe Guiboche opened it, stepping back. Cpl. Fraser stepped over the threshold, without any words of invitation by the homeowner to do so. That act, in and of itself, is insufficient to render unlawful what followed. The benign nature of such a threshold crossing was aptly expressed by Newcombe P.J., in *R. v. Jerao* (27 May 2001), Winnipeg (Man. Prov. Ct.), wherein he observed that entry to a foyer (at p. 3):

... is a common although not universal courtesy extended to callers such as delivery men, canvassers, census takers and indeed, police officers, as here. By convention, it is understood to grant entry to a foyer, entryway or hallway and no further. The officers did not encroach beyond that point.

[35] Freeman, J.A. continued in his decision stating as follows:

81. Moreover, in *Feeney* the entry into the accused's dwelling-house was forced and without his consent, and so the court did not have before it a situation where the police were in the dwelling-house and carrying out their purpose with the consent of the person(s) who have a reasonable expectation of privacy in the premises. Such a situation would, in my view, be an exception to the broad statement about warrantless entries. It would be encompassed in the qualification expressed by Sopinka J., that "in general," i.e. subject to certain potential exceptions, not then before the court, warrants would be required.



82. It is, I think, clear that the consent to enter a dwelling-house by the person(s) with a reasonable expectation of privacy in the house, would create one of those exceptions, and would obviate the need for a warrant to enter”.

[36] Mr. Garnier refers the Board to **R. v. Ellison** (2010) NSPC 78. In that case, officers attended a residence to arrest an individual for breach of interim release conditions. They were refused entry and told to obtain a warrant. The entry door was closed, but almost immediately, a melee developed within the home, and the officers entered, and arrested the accused who was in a physical struggle with his mother. Williams, PCJ, held that entry into the dwelling in response to the struggle was lawful, the arrest for breach, of conditions was not, and that consent to enter could not be implied.

[37] Can consent be implied by the conduct of Ms. Edmunds? Ms. Edmunds testified that she was (understandably) shocked and upset at her son being unexpectedly arrested that morning, and throughout the arrest, she repeatedly commented that Christopher Garnier had been present at the time that Constable Campbell noted him as being absent. She also said that, while she did not “invite” the arresting officers into their home, she did not refuse entry; she said, and we accept, that she did not know that she could refuse.

[38] She also confirmed that Constables Walker and MacSween were courteous throughout the process, and that she understood that they were “just doing their job”.

[39] The legality of the arrest was not raised or considered in the course of the breach hearing before Justice Rosinski.

[40] But even if the arrest was unlawful, in a criminal court, the question before the Board is whether it was done in such a way, or for an improper motive, so as to constitute a breach of discipline? The officers were, according to even Ms. Edmunds, courteous throughout, and there was no use of force at all. But there has been no reason advanced for the failure to obtain a warrant, and these officers should have been aware that a warrant would normally be required for entry for the purpose of arrest. There is no way of knowing whether a warrant would have been issued, given the totality of the information regarding the location of Christopher Garnier on the early morning of February 18<sup>th</sup>. Constable MacSween had reviewed the material prior to making the arrest. He was making the arrest on instruction from another officer.

[41] Mr. Vincent Garnier was, and is clearly, very distressed about the arrest, and ultimate conviction of his son. He and other family members continue to be very supportive of Christopher Garnier. Vincent Garnier has clearly done extensive, thorough, legal research on the issues, and has presented his case in an able and articulate manner. However, his arguments for the most part are not relevant to the question before the Board, which is, misconduct.

[42] The miscommunications regarding Christopher Garnier's message to HRP, which would have confirmed his intention to be at his mother's home, is unfortunate. The lack of response to the early morning knock at the Millville residence, is equally unfortunate, but as found by Justice Rosinski, it was because all of the occupants were sleeping.

[43] As a result, Christopher Garnier, who was innocent until proven guilty, was deprived of liberty for close to two months.

[44] The consequence of that arrest was that Christopher Garnier was denied his freedom for almost two months, and the Board is satisfied that there was a disciplinary default on the part of Constables MacSween and Walker. The Board orders that a reprimand be entered for breach of ss. 24(7)(a) of the Code of Conduct.

[45] The Board does conclude that there is no cogent evidence at all that the subject officers were motivated by anything other than to carry out the duties assigned to them.

Dated at Halifax, Nova Scotia this 2<sup>nd</sup> day of November, 2021.



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Jean McKenna, Chair

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Hon. Simon J. MacDonald, Vice-Chair



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Stephen Johnson, Board Member

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