

LERA  
771

THE LAW ENFORCEMENT ACT

BETWEEN:

R. S. M.

Complainant,

- and -

CONSTABLE D. L. AND  
CONSTABLE B. C.

Respondents.

February 12, 1990

DECISION

On December 8, 1988 at approximately 5:10 p.m, the complainant, R. S. M. was arrested at the Manitoba Youth Centre on a charge of robbery by City of Winnipeg Police Constables L. and C.

Almost immediately upon their arrival at the Public Safety Building, R. M. was informed that he was charged with robbery, he was cautioned in respect of the offence, and he was thereafter provided with his Charter rights. Pursuant to Section 56 of The Young Offenders Act, he was asked to sign a Waiver Form (Exhibit 4). R. M. requested the presence of his counsel and was, without delay, given the opportunity of contacting Mr. Howard Pitts. R. M., despite his protestations, ultimately signed the waiver form prior to the arrival of his counsel.

By 6:20 p.m. that evening R. M. was seen by his counsel. It was decided between them that he was not to give a statement to the police officers in respect of this matter, and further that if the police persisted in questioning him that he was to request counsel and await his attendance.

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- 2 -

As R. M. had during the course of this interview expressed some concern as to his physical safety while in the care of these two officers, Howard Pitts made a conscious and concerted physical assessment of his client. R. M., at this time, displayed no signs of physical injury nor did he complain of any.

Upon his leaving, Howard Pitts both informed Constable L. that his client vehemently denied the offence and asked if his questioning would continue. The constable replied that it might and thereupon Mr. Pitts requested that he be notified in such event. Constable L. replied that if R. M. specifically requested counsel that he would be allowed to contact counsel. Although the questioning of R. M. continued subsequent to counsel's departure at 6:55 p.m., R. M. had no further contact with him.

What becomes clear both from an overall analysis of the evidence, and by way of his own lawyer's account, is that R. M.'s attitude and presentation on the night in question was cocky and inappropriate to the point that counsel felt it necessary to encourage his client to be mannerly with the police. By all accounts, it is acceded that R. M. was laughing that night; albeit the said laughter was termed that of a nervous reaction by his counsel. By his own admission, R. M. recounted that he was laughing quite a bit that night. He thought that his arrest and questioning was a joke; "really stupid" as he put it. He did not think that he could be convicted of this offence.

From the outset, it was apparent that R. M. would not cooperate with the police in that he was not anxious to answer their questions nor to provide them with any information whatsoever. His demeanor was trying and may even have been provoking to the police officers by virtue of his laughter and somewhat unorthodox reaction to the situation at hand. It is within this admittedly difficult atmosphere that the police were left to deal with R. M.

It is clear that R. M. was well seasoned in the criminal justice system and its workings and he therefore cannot be viewed as one who would necessarily nor easily be intimidated or frightened by mere police presence, arrest or charge. It is equally clear that these two officers were under the pressure of a serious, continuing and somewhat convoluted robbery investigation which had not yet culminated in a conviction. A confession may at this juncture have proven both advantageous and expeditious to their case.

In his vive voce evidence, R. M. testified that while in the interview room at the Public Safety Building, that Constable C. pushed the table against his chest, thereby pinning him against the wall. Thereafter he stated Constable L. assaulted him. The Board finds that the officers acted jointly and in concert herein.

He described the assault as one of his being punched to the left side of the cheek, of being slapped on the face, of being grabbed by the hair with a resultant banging of his head against the wall, of being hit on the side of the head, of being kicked in the arm, and of being scratched on the neck. His evidence in respect of the assault would on the whole prove to be consistent with the particulars of his complaint as subsequently retold by him to both nurse E. L. and Howard Pitts.

R. M. alleged that the injuries that he sustained from the assault were those of a bump on the head, tenderness to the left side of the jaw, and a scratch on his right neck. Although he complained of being kicked to the arm, he acknowledged that it was uninjured. The alleged injuries are consistent with the assault as described by him and remain, despite the repeated retelling thereof, unembellished. In assessing the evidence of R. M., the Board finds his evidence to be both credible and compelling.

The Board must now address and examine the evidence of both Sergeant J. and Sergeant G. It is of no great import that neither officer saw the injuries sustained by R. M. The injuries themselves were not obvious nor were they highly visible. Given that the attention of these officers was not specifically drawn towards the injuries, it is accepted that they were capable of being easily overlooked.

Further, the Board draws no adverse inference from R. M.'s lack of complaint to Sergeant G. given the circumstances, it is understandable that he may not have chosen to register his complaint with this or any other police officer on the night in question. What is more compelling and persuasive than his lack of complaint to these police officers is his persistent and repeated complaint made upon first contact, with non police personnel, and its continuation thereafter.

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At 8:45 p.m. R. M. was returned to the Manitoba Youth Center. Shortly thereafter he met with Mr. E. N., the individual in charge of the Youth Centre on the evening in question. R. M. testified that he was very upset in the presence of Mr. N. This fact is ultimately confirmed by Mr. N.'s evidence. It is of import to note that Mr. N. was the first civilian, that is non-police person, to come into contact with R. M. subsequent to his release from police custody. It is upon this initial meeting with Mr. N. that he complained, albeit in a non particularized fashion, of having been assaulted by the police officers. Although Mr. N. commented in his evidence upon red markings around Mr. M.'s neck, and some markings on the left side of the eye and in the temple area, he cannot now be certain as to the exact location, degree, or description of these markings. It is clear however from his evidence that he was at the time of this incident cognizant of some physical markings about the person of R. M.

What is striking about the evidence of Mr. N. is that R. M. was visibly upset that night, his face was reddened, he was "really upset". Constable L. and Constable C concede to neither this upset nor to his being red in the face.

R. M. made it clear to Mr. N. that he wished to profer a complaint against the police. In an effort to facilitate this process, he had previously recorded the badge numbers of the two officers.

As was Mr. N.'s function, he referred R. M. to the medical unit.

At 9:00 p.m., R. M. was for the first time examined by medical personnel, nurse E. L. He continued his complaint of having been assaulted by the police officers and he further alleged that he had sustained physical injury directly therefrom. He stated that the police had hit him three times with a closed fist to the left cheek area, that he had been slapped with an open hand to the front of the face in the left cheek area and that he had been kicked to the left upper arm.

Nurse L.'s documented medical findings (Exhibit 6) were those of a bump to the back of the right side of the head, and a raised red area to the left chin. Although she detected nothing abnormal in the area of the left cheek, she

nonetheless noted the word "feels" in her documentation in respect of the left cheek; a particular which is confirmed the following morning, December 9, in Dr. C. 's examination of R. M. by virtue of his notation - slight tenderness to the left lower cheek (Exhibit 6).

At 9:15 p.m., R. M. , having completed his medical examination, again contacted his counsel. He complained of having been assaulted at the hands of the police. He told Howard Pitts that he had been punched in the face, slapped in the face a couple of times, that his hair had been grabbed, that he was hit in the neck, and that his head had been banged against the wall. The complaint as relayed to Howard Pitts was essentially consistent with that proffered by R. M. to E. L. .

At 10:25 a.m. the next morning, December 9, Howard Pitts met with his client at the Youth Centre. He physically examined him and observed and noted the following injuries, a bump on the back right side of the head and a red scrape like mark on the right side of the neck (Exhibit 3).

He further noted that R. M. continued to complain of tenderness to the inside of the left side of his mouth although again no markings were observed.

It must be noted that to this point in time that R. M. had not commented to anyone upon this scrape/scratch like marking. Despite three distinct and separate opportunities to do so, to Howard Pitts on December 8, to E. L. on December 8 and again to Dr. C. on December 9, an inference drawn as there is an absence of any such documentation in the doctor's notes, no mention thereof is made by him. Given the absence of his reporting of this injury, despite the repeated opportunities of his being able to do so, and given the intervening passage of some length of time prior to its ultimately being reported and documented (Exhibit 7), the Board attaches little weight to the existence of this injury.

Constables L. and C. both testified that neither one of them assaulted R. M. in any fashion whatsoever on the night in question. There is no evidence offered by them as to an explanation of the incurrence of the injuries sustained, nor as to an alternate method of their incurrence. This then is the evidence of outright denial.

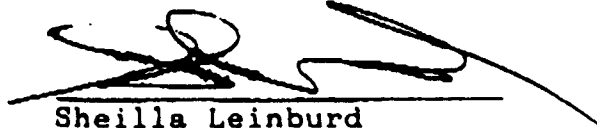
The Board is nonetheless faced with the incontroverted medical evidence of some injury having been sustained by the complainant while in the custody and exclusive control of these two officers. Barring any intervening causal factors of which the Board has no evidence, and dismissing as the Board does, any self-inflicted injuries, we are led to the inescapable conclusion that Constables L. and C. assaulted R. M. The Board makes this finding based on an overall assessment of the totality of the evidence, and is persuaded thereof beyond a reasonable doubt.

As it is common ground between the two officers that there was absolutely no physical violence, aggression nor resistance on the part of R. M. the assault upon him was by definition therefore the use of unnecessary violence and excessive force. Although the Board is cognizant of the fact ~~that it~~ need not find both component parts of the allegation to be in existence in order to establish a contravention of Section 29(a)(ii), both component factors do, in these circumstances, exist concurrently. It is therefore the finding of the Board that Constable L. and C. did on December 8, 1988 commit a disciplinary default by abusing their authority in the use of unnecessary violence and excessive force towards R. S. M. and are thereby accordingly in breach of Section 29(a)(ii) of The Law Enforcement Review Act.

Our system of justice will not and must not tolerate nor countenance the use of physical violence as a tool of policing nor of law enforcement.

Having come to this finding, the Board is nonetheless strongly impressed by the evidence of Sergeants J. and G. as it relates to both the character and the work records of Constables L. and C. These two men are normally highly productive and effective police officers whose work and attitude is in all respects both exemplary and exceptional. It is accordingly a further finding of the Board that the incident in question was both one of an isolated nature and one which was normally out of character for these two officers.

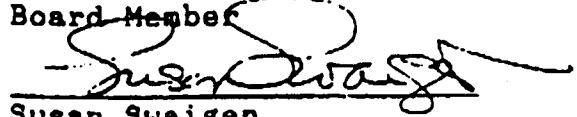
The Board will determine the disposition of this matter on a date that is mutually convenient to all parties herein, and upon the submission of both counsel.



Sheilla Leinburd  
Presiding Officer



Dolores Beaumont  
Board Member



Susan Swaigen  
Board Member



Law Enforcement  
Review Agency

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945-8667

February 23, 1990

H.B. S.  
Chief of Police  
Winnipeg Police Department  
P.O. Box 1680  
Winnipeg, Manitoba  
R3C 2Z7

Dear Chief S. :

Re: L.E.R.A. File No. 771  
Board File No. 37 - R M

On February 12, 1990 the Law Enforcement Review Board rendered its decision on this matter. The Board found Constables D. L. , and Constable B. C. , guilty of the alleged disciplinary default of unnecessary violence and excessive force in contravention of Section 29(a)(ii) of The Law Enforcement Review Act. The matter was remanded for the Board to determine a penalty.

At 9 a.m. February 21, 1990 the Board convened at the 12th floor boardroom, 405 Broadway to deliver its disposition of this matter. Submissions were heard from Ms. Leslie Tough, counsel for the complainant, R. M. . In addition to making a recommendation to the Board on the penalty to be imposed, Ms. Tough also recommended the Board comply with Section 35(1) and refer this matter to the Attorney-General for the possible laying of criminal charges.

Mr. Al McGregor, counsel for the officers, made a submission on behalf of Constables C. and L, as well as recommending the matter be dealt with only by the Board.

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The Board ordered a penalty of a written reprimand be given to both constables. The Board advised all parties they were obliged to comply with the requirements of Section 35(1) and the matter would be referred to the Attorney-General with the Board's recommendation this matter be concluded with the penalty ordered by the Board.

The Chief of Police is required to impose the penalty ordered by the Board in compliance with Section 28(4), however I would also direct your attention to Section 35(2) in the event the Attorney-General orders criminal charges in this matter.

Yours sincerely,

*Des DePourcq*  
.....  
Des DePourcq  
Commissioner

DD/tm

- cc: P. D.
- E. M.
- Constable B. C.
- Constable D. L.

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