

IN THE MATTER OF THE POLICE ACT, R.S.B.C. 1996 C. 367

AND

IN THE MATTER OF A REVIEW OF ALLEGATIONS OF MISCONDUCT AGAINST
CONSTABLE [REDACTED] (#3281)

NOTICE OF ADJUDICATOR'S DECISION

To: Mr. [REDACTED] (Complainant)
c/o Ms. [REDACTED]

And to: Constable [REDACTED] (Member)
c/o Vancouver Police Department
Professional Standards Section

And to: Sergeant [REDACTED] (Investigating Officer)
c/o Vancouver Police Department
Professional Standards Section

And to: Acting Inspector [REDACTED]
c/o Vancouver Police Department
Professional Standards Section

And to: His Worship Mayor Kennedy Stewart
Chair, c/o Vancouver Police Board

And to: Mr. Clayton Pecknold
Police Complaint Commissioner

Introduction

This is a review under section 117 of the *Police Act*, R.S.B.C. 1996, c. 367, of a complaint of misconduct against Constable [REDACTED] of the Vancouver Police Department. I have been appointed, as a retired judge, to conduct the review.

The complaint arises out of the interactions of Constable [REDACTED] with Mr. [REDACTED] at around 8:12 pm on March 15, 2021. At that time, Mr. [REDACTED] was walking eastbound with a friend, [REDACTED], on the south sidewalk of the [REDACTED] of East Hastings Street, in Vancouver, British Columbia. A marked police car drove by in the same direction and stopped at the light at the intersection of Columbia Street. Constable

██████ was the driver of the police car and Constable ██████ was in the passenger seat. They were both in uniform and on duty. Constable ██████ exited the passenger side of the police car and approached Mr. ██████. Mr. ██████ says that the officer grabbed his jacket and took him to the ground, whereupon the officer punched him in the back of the head. He says he was not resisting. Other officers attended, and Mr. ██████ was taken to the jail. He says that he was never informed of the reason for his arrest. He was later released from jail without charges.

The Complaint of ██████

The specific wording of Mr. ██████ complaint, apparently taken by telephone on April 30, 2021 and then signed on May 4, 2021, reads as follows:

On March 15, 2021 at 8:12 p.m. Mr. ██████ was walking on Hastings, near Columbia when a male officer got out (sic) of the passenger side of a police car waiting at the lights. A female was driving. The male was walking/lightly jogging towards ██████ and was yelling. ██████ was looking around, up at the buildings surrounding him, not knowing who the officer was yelling at. ██████ asked who are you talking to and the officer said, "You bitch!" He was two feet in front of ██████ face, ██████ gut reaction was to defend himself. The officer grabbed his jacket and took him to the ground. ██████ didn't resist. Asking the officer if he knew him, what's going on, etc. The officer told him, "You're the bitch!" and punched him in the back of the head while he was on the ground. The female officer (presumably from the car) kicked him in the rib area. ██████ was not resisting but when the male officer started smashing his face into the ground, his natural reaction was to protect his face. He was cuffed and by then 4-5 other units arrived. For about 10 minutes the male officer continued to taunt him, telling him "I know who you are" and "I'm gonna get you". Another officer was trying to calm the male officer down. ██████ was asking what was happening, what is he being charged with. No one answered him. He was left handcuffed on the street "like a common bum", astonished at what had just happened. He was transported to jail, without being told what the charges were. He continued to ask when he got to the station. He took another "lickin'" there. He ended up dealing with a Sergeant who was almost apologetic and told him that he'd be out within the hour. The Sergeant treated him with respect and ██████ was released without charges. He was asking what had just happened here, did he take a beating for someone else?

No one told him. He still to this day has no idea what happened that day. His friend, [REDACTED] recorded the entire incident on her phone. On March 18, 2021 he took himself to the hospital and showed the doctor the video and she immediately ordered an MRI, an x-ray and was shocked he wasn't more injured than he was. A couple of days later [REDACTED] had a young officer attempt to intimidate him by revving his engine and then swerving towards him before hitting the siren at a light. This type of behaviour by police officers has to stop.

On the Complaint Form, Mr. [REDACTED] described his injuries as: "Stiffness, soreness in ribs, difficulty breathing, ringing in ears, concussion."

What Constitutes Misconduct

"Misconduct" is defined in section 77(1) of the *Police Act* as including a disciplinary breach of public trust under section 77(3). For present purposes, sections 77(3)(a)(ii), 77(3)(m)(ii) and 77(4) are relevant:

77 (3) Subject to subsection (4), any of the conduct described in the following paragraphs constitutes a disciplinary breach of public trust, when committed by a member:

(a) "abuse of authority", which is oppressive conduct towards a member of the public, including, without limitation,

(i) intentionally or recklessly making an arrest without good and sufficient cause,

(ii) in the performance, or purported performance, of duties, intentionally or recklessly

(A) using unnecessary force on any person, or

(B) detaining or searching any person without good and sufficient cause, or

...

(m) "neglect of duty", which is neglecting, without good or sufficient cause, to do any of the following:

...

(ii) promptly and diligently do anything that it is one's duty as a member to do;

...

(4) It is not a disciplinary breach of public trust for a member to engage in conduct that is necessary in the proper performance of authorized police work.

Investigation of Mr. [REDACTED] Complaint And The Discipline Authority Decision

The Office of the Police Complaint Commissioner (OPCC) received Mr. [REDACTED] complaint on April 30, 2021 and determined that the complaint was admissible under Division 3 of the *Police Act*.

Mr. [REDACTED] complaint was investigated by Sergeant [REDACTED] of the Vancouver Police Department (the Investigator). His Final Investigation Report (FIR) was provided to the Discipline Authority, Acting Inspector [REDACTED] [REDACTED] of the Vancouver Police Department Professional Standards Section, on January 17, 2022.

On January 31, 2022, the Discipline Authority issued a decision under section 112 that the allegations of Abuse of Authority and Neglect of Duty under sections 77(3)(a)(ii)(A) and 77(3)(m)(ii) of the *Police Act* did not appear to be substantiated.

Appointment of Retired Judge

On March 1, 2022, the Police Complaint Commissioner reviewed the Discipline Authority's decision and found a reasonable basis to conclude that the Discipline Authority was incorrect in determining that Constable [REDACTED] had lawful authority to use force and that the force used was not excessive in the circumstances.

Specifically, the Police Complaint Commissioner expressed these concerns:

After review of the Discipline Authority's decision, I am of the view that the Discipline Authority appears to have erred in not adequately and independently assessing all of the available evidence as to whether Constable [REDACTED] had lawful authority to use force and whether the force deployed by Constable [REDACTED] was necessary and proportional in the circumstances.

In assessing Constable [REDACTED] lawful authority to use force, the Discipline Authority does not appear to sufficiently consider the available video evidence and independent witness testimony with respect to the complainant's conduct prior to being taken to the ground. Specifically, the evidence of the female acquaintance and the independent witness support the complainant's contention that he did not grab Constable [REDACTED] as alleged by the member, and the complainant and the independent witnesses gave evidence that the complainant had his hands down at the time Constable

█████ initiated the take-down. Additionally, the CCTV video evidence appears to depict a rapid take-down by Constable █████ upon approach.

I further note that it does not appear the Discipline Authority considered the inconsistencies between Constable █████ statement in his General Occurrence report (that the complainant immediately charged at the member upon approach) and his testimonial evidence, as well as the video evidence, which does not appear to support this initial assertion.

Finally, the Discipline Authority does not sufficiently analyze Constable █████ assertion that he was "in a fight for [his] life," and other statements made by Constable █████ describing the actions of the complainant, in light of other available sources of objective evidence, such as video, in order to appropriately determine whether the force used in these circumstances was necessary, reasonable and proportional in the circumstances.

Accordingly, the OPCC appointed me, as a retired judge, to conduct a review under section 117 of the *Police Act*.

The Nature And Scope of a Section 117 Review

The appointment of a retired judge and the nature and scope of a review are governed by section 117 of the *Police Act*.

Subsection 117(1) provides that the retired judge is to do the following:

- (a) review the investigating officer's report referred to in section 112 or 116, as the case may be, and the evidence and records referenced in that report;
- (b) make her or his own decision on the matter;
- (c) if subsection (9) of this section applies, exercise the powers and perform the duties of discipline authority in respect of the matter for the purposes of this Division.

Subsection 117(7) stipulates that the review is to be completed and the parties notified within ten business days, and subsections 117(8)-(11) specify the nature and effect of the review decision.

Specifically, section 117(8)-(11) provides:

117 (8) Notification under subsection (7) must include

(a) a description of the complaint, if any, and any conduct of concern,

(b) a statement of a complainant's right to make submissions under section 113 [*complainant's right to make submissions*],

(c) a list or description of each allegation of misconduct considered by the retired judge,

(d) if subsection (9) applies, the retired judge's determination as to the following:

(i) whether or not, in relation to each allegation of misconduct considered by the retired judge, the evidence referenced in the report appears sufficient to substantiate the allegation and require the taking of disciplinary or corrective measures;

(ii) whether or not a prehearing conference will be offered to the member or former member under section 120 [*prehearing conference*];

(iii) the range of disciplinary or corrective measures being considered by the retired judge in the case, and

(e) if subsection (10) applies, a statement that includes the effect of subsection (11).

(9) If, on review of the investigating officer's reports and the evidence and records referenced in them, the retired judge appointed considers that the conduct of the member or former member appears to constitute misconduct, the retired judge becomes the discipline authority in respect of the matter and must convene a discipline proceeding, unless section 120 (16) [*prehearing conference*] applies.

(10) If, on review of the report and the evidence and records referenced in it, the retired judge decides that the conduct of the member or former member does not constitute misconduct, the retired judge must include that decision, with reasons, in the notification under subsection (7).

(11) The retired judge's decision under subsection (10)

(a) is not open to question or review by a court on any ground,

and

(b) is final and conclusive.

Some guidance on the interpretation of section 117 may be found in *Scott v. British Columbia (the Police Complaint Commissioner)*, 2016 BCSC 1970. There, Justice Affleck remarked at para. [39]:

[39] Section 117 of the *Police Act* is unfortunately worded in some respects. On one possible interpretation a retired judge appointed pursuant to the *Act* is directed to reach conclusions about the conduct of a member of a police force before a disciplinary hearing has been conducted by the retired judge in respect of that conduct. I do not accept the legislature intended such an approach to be taken. If that was the appropriate interpretation it would inevitably raise a serious issue of an apprehension of bias when the retired judge made preliminary findings adverse to the petitioner and was then required to conduct a disciplinary hearing. I conclude that the retired Judge adopted an interpretation which has now led to that unfortunate outcome.

Those remarks were in relation to the interpretation of section 117(9), which is worded somewhat differently from section 117(10).

In short, my task on this section 117 review is to review the Final Investigation Report and the evidence and records referenced therein, and make my own decision of whether the member's conduct appears to constitute misconduct under section 117(9) or whether the conduct of the member does not constitute misconduct under section 117(10).

My review is not an appeal from any previous determination. I do not hear witnesses nor do I consider any additional evidence or submissions beyond what is referenced in the Final Investigation Report.

The Final Investigation Report and the Alleged Misconduct

I have reviewed the entire Final Investigation Report and the evidence and records referenced in it. I have also watched the video recordings and listened to audio recordings of the interviews. The Report itself is 155 pages long, and the records attached to it are several hundreds of pages.

One of the reasons for the length of the FIR is that in addition to interviewing the people who witnessed the initial interaction between Mr. [REDACTED] and Constable [REDACTED] Sergeant [REDACTED] also interviewed the officers who were called for back up, transport, and the jail staff members. He also reviewed radio transmissions and jail video recordings. He reviewed training records and medical records. All this was necessary because Mr. [REDACTED] initially claimed that he was mistreated not only by Constable [REDACTED] and perhaps Constable [REDACTED] but also those who subsequently dealt with him during transport and in the jail.

On a review of all that material, I am satisfied that no allegation of misconduct can be substantiated against any of the officers who dealt with Mr. [REDACTED] after his initial interaction with Constable [REDACTED]. All of the officers involved were interviewed, and they denied participating in or witnessing any mistreatment of Mr. [REDACTED]. Sergeant [REDACTED] showed the videos to Mr. [REDACTED] during one of his later interviews, and Mr. [REDACTED] acknowledged that his real complaint is against Constable [REDACTED]. As he put it, "So for the record... I'm not worried about any other assault that is taking place here... that's not what I'm worried about" (FIR p. 57). With respect to Constable [REDACTED] he was asked, "After watching the video would you say Constable [REDACTED] did she administer any strikes on you or not?" Mr. [REDACTED] replied, "I would have to say not" (FIR p. 58). He was asked if he got assaulted at the jail, and he replied, "No I didn't" (FIR p. 60).

This review will focus, therefore, on what happened in the initial interaction between Constable [REDACTED] and Mr. [REDACTED]. The questions that arise are why was Constable [REDACTED] attention initially drawn to Mr. [REDACTED] and why did Constable [REDACTED] exit his police car to confront him? Why did Constable [REDACTED] take Mr. [REDACTED] to the ground? Did Constable [REDACTED] use excessive force? Was Mr. [REDACTED] advised of the reasons for his arrest?

The alleged misconduct that must be considered is whether Constable [REDACTED] abused his authority contrary to section 77(3)(a) of the *Police Act* by intentionally or recklessly making an arrest without good and sufficient cause, or by using unnecessary force on Mr. [REDACTED] and whether he neglected his duty contrary to section 77(3)(m)(ii) of the *Police Act* by failing to inform Mr. [REDACTED] of the reason for his arrest.

With respect to the allegations of misconduct in relation to Constable [REDACTED] although I have considered the entire FIR and all of the records referenced in it, I find that the most salient evidence is that of Mr. [REDACTED] Constable [REDACTED] Constable [REDACTED] Ms. [REDACTED] and Ms. [REDACTED] as well as the video recording on Ms. [REDACTED] cell phone (the Cell Phone video), and the CCTV video from a camera located at [REDACTED] East Hastings Street (the CCTV video).

The Evidence of Mr. [REDACTED]

Mr. [REDACTED] account of the incident is contained in he written complaint (as set out above), and in his interview with Sergeant [REDACTED]

In the interview, Mr. [REDACTED] states that he was walking with his friend [REDACTED] [REDACTED], having come back from having dinner. They were joking around, and they ran into [REDACTED] son. As Mr. [REDACTED] put it:

He was happy to see me. Very warm welcome let's just put it that way and I was just kinda joking around saying that mom's kinda getting on my nerves or whatever. What I remember of it, I said the gist of it you always gotta love your mother, whatever and high five and I think I gave him a hug. Not 100% sure on that but you know we walked away and she was in a good mood and we joked and walked about.....like I said the block is very short and [REDACTED] was saying to me cause we joke around, I believe I said something to the effect of you know [REDACTED] your son loves you but you know you can be a bitch sometimes right.

He then described what happened next:

All of a sudden I didn't think nothing of it about 25-40 feet away from him and on that side the right side heading up towards Hastings and Main I seen a police car. It had slowed down and it had stopped at the light. The constable had come out. I thought he was walking and I'm looking at [REDACTED] and I'm looking around on the street and there is nobody else and I'm going who is he talking to cause he is yelling and screaming. I thought there is something wrong with him. So I believe he was walking, [REDACTED] told me no he was running at you so technically stood my stance to square off with him and she yelled out don't and that's where everything went out.....all my energy was just released because you know what am I going to get shot.....couple of things went through my head at the time right and I put my hands up. He grabbed me by my jacket I believe and threw me down to the ground and was yelling all kinds of stuff. I think it was his partner who was yelling stuff too but she was talking to him. Like I said things were happening so fast that it was slow motion type of thing. I was on the ground and I had my hands behind my back and then I guess that's when [REDACTED] said she was recording this or whatever. I said put the handcuffs...and he is whispering very quietly in my ear saying who are you I don't know you what are you doing like you know. Again, it should be on the video I don't there is quite a bit of loudness but there is also a point in the video where he is talking

to me. He is saying I'm going to get you and I'm like I don't even know you. I think at one particular point I said, buddy did I sleep with your wife or something. Like who are you that's when.....well in the video he is smashing my head to the ground, I just thought I had my teeth I just spent \$6000 on teeth and I was worried about that so I was restraining my head from getting smashed into the ground but as it went on it just seemed like it was going on forever and the punches in the head and I was just.... you know basically the guy had just come out of his car at me I don't know how you can make a mistake like that if I was somebody else or whatever his reason was but there is no conduct of his. There is just no conduct for that...you know if I did know him in the past or I have done something in the past to him or anybody I mean I don't know the guy I have never met him. He looks quite young I mean I said at one point put the handcuffs on for your safety and mine. And then they tried to put me in the back of a pickup truck and I said how am I supposed to get in there. I got a little bit of rib shots, hair pull and I said grab me by the hair and throw me in if that's the way it's going let's do it. The whole thing was just.....you know what I mean I am 240 lbs Sgt I.....if I wanted to fight back it would of went a different way but it wouldn't have got good for me no matter what. But I was trying to keep the peace here cause I didn't know what was happening from the day, from the second it happened to the time it ended. They finally got the police wagon there...oh no I think I yelled out something to him you fucken goof. My head just kinda went goofy there cause I was like....he was badgering me. Like again the video shows he was on top of me I was down on the ground like a common bum. I was just trying to get my life together and this was the end result and I think that's probably part of the problem with my injury it's that not fighting back is caused even more tenseness. What do you do to a police officer you know.....they got the authority... I complied with him I mean again go back to the video I wasn't fighting swinging back I was just trying to protect my face. There were some words that were said on the video, I'm not quite sure cause I was just angry, I was emotional, it all happened so fast but there is no reason even if something, if I had a gun or if I had a knife wielding it on a street there would be probable cause or whatever.....downtown with a gun or knife. I mean I get it...I was walking after a nice supper with a girl that's father had just passed away, I just ran into her son I wasn't in a foul mood at all. It just went sideways from there....

Later, he added:

I lived up in downtown all around I never....this is all new to me right. So again I don't winna, I feel like I'm rambling now but the video speaks a thousand words and I'm getting grief from so called friends well you should have this on the news, these people RCMP and the police are taking advantage of you. Well it's not taking advantage of people, when I'm wrong take me out back and give me a good beating I mean. I'm not too concerned about that but don't beat somebody up for no reason and he had no reason. He ran out of the vehicle and he attacked me and I'm surprised he didn't shoot me really because I've done something to that guy or he has seen me as somebody else and he was a rogue cop.....rogue. Before the interview we talked about our sizes and stuff so and I don't know if he was trying to prove something to....yah I don't even want to try and speculate I just....he was wrong and I don't even know what to think about it.

Questioned by Sergeant [REDACTED] Mr. [REDACTED] said that he had consumed two Sambuca shooters, a Budweiser and a screw driver. He thought his level of intoxication was 1 out of 10.

Mr. [REDACTED] admits having "stood my stance to square off with him" when Constable [REDACTED] came at him, but says he put his arms down at [REDACTED] request, and the officer then grabbed his jacket and threw him to the ground:

Did you say anything to the police officer before they approached you?

[REDACTED] response: "No I was looking around and I even said to [REDACTED] who is he fucken talking to. She goes me or you because we are the only ones here and I looked around and that street usually has 80-100 people on it. There was just me and her. So when I went to go like that she said don't. I thought he was walking but she said he was running."

Were you screaming or yelling? Could he have misinterpreted something?

[REDACTED] response: "Nope. There was no yelling I mean.... I think the loudest I got that night was after when he wouldn't pick me up and was chastising me and I yelled out you fucken goof or fucken cop or whatever. I mean I just had enough. I was having a good night and all of a sudden bam it's like....."

When [REDACTED] said he was running towards you...you said, you had your stance up and your guard up, what does that mean?

█ response: "Well I didn't know what the hell the guys was doing to me I was going to protect myself."

Please elaborate on that?

█ response: "I just...I went into a stance....like this guy is going to come at me. I gotta protect myself but then █ said don't so I put my arms down and that's when he grabbed me by my brand new crisp jacket so ended up throwing me down to the ground and his officer was still in the police car. So she come running out or whatever to help him and I said well buddy just handcuff me.....and a bunch more showed up and you seen it on the video."

Did you grab or lunge at him at all?

█ response: "Nope.....nope. I thought about it that's why I say I went into the stance and my arms went down and I had to calm down cause I wasn't wrong here."

Did you cause the police officer's mic to fall off his shirt at all?

█ response: "His what....no. Maybe when he was throwing me down on the ground I might of put my hand you know going down. I don't remember."

Did you at all resist?

█ response: "I put my hand behind my back and he had it and they he was reefing up on it and he was trying to smash my face in the ground and it was like.....is it really that necessary to do that."

Can you go into a little more detail when he threw you on the ground?

█ response: "I stayed on the ground."

Were you at all resisting at this point?

█ response: "I had my one arm that when he was smashing me I believe it's on the video. She didn't get that beginning part right. So that would of showed me going down to the ground and putting my hand behind my back but then he started hitting me and pushing my face down. What do you do.....you protect your face right and I'm thinking to myself....Fuck I just got these teeth in but good thing I didn't have them in cause they would have been smashed out right."

So when you are on the ground, I just want to make it clear.....you were absolutely not resisting?

██████ response: "No I was holding my face from being smashed into the ground which you know I don't know how to explain that Constable I mean I was protecting my face."

Like covering them up?

██████ response: "Well you are a police officer when you arrest somebody....even if you are a 30-40 lbs lighter than you are right now...you know I'm a big guy I could probably do some positioning to make you put your arm around your back. If you don't want to be handcuffed.....you don't get handcuffed that's why there are so many of them that jump on guys because it's hard to do."

With that said...were you doing that?

██████ response: "No. No I was too nice I think cause I should of just stood back...I said what are you doing like my name is ██████ if you are in some kind ofyou know who think about stuff like that. I told him to handcuff me for your security and mine. I don't know if that came up on the video."

Could the officer have misinterpreted...because you are a big guy right. It's not always easy because big guys don't have a lot of flexibility in the shoulders. Could he have misinterpreted your body positioning for you to be resisting at all?

██████ response: "Well no I don't believe so cause I told him I don't know who you are....there is no....he come at me for no rhyme or reason. The police car was here...I forget the name of the street. He got out of that car at a red light, left his partner in the car and what I thought was walking but I guess he was running. So what kind of...if there is a problem with me or somebody he thought I was or whatever wouldn't you phone that in and say listen I ran into Clark Kent attacking as ██████, I need some back up here. He didn't call for backup he left his partner sitting in the car like by herself cause she was yelling.....what do you...you know I can't remember....."

When they drove by did you make eye contact, did you gesture anything or anything like that?

██████ response: "I don't even remember looking at them until I seen them stop well is he talking tocause he is already out of the car.....and ██████ said I think he is talking to you or me cause

we are the only ones here and I'm looking up on the thing trying to think there has gotta be something else going on here."

So there was no one else on the street so he couldn't of misinterpreted someone else?

██████ response: "Well I think he thought I was somebody else....that's what...."

You didn't hear or see anything for him to misinterpret?

██████ response: "Nope. Nope."

Did the officers ever tell you why you were under arrest?

██████ response: "No...never said nothing except what he would was whispering in my ear which was, I'm going to find you? I know you? Like who the fuck are you that's when I yelled out you fucken goof. Get me off the fucken ground and ██████ said get him off the ground. You know.....here I am coming back from a nice supper...a couple of drinks and downtown eastside everybody else is shooting needles in their arms and stealing and thieving and here comes happy go lucky ██████ coming back from supper and I'm taken down like I'm.....like I robbed a bank or something.....and then to be released an hour later...you know."

Did you sustain any injuries during the arrest and if so what?

██████ response: "Yah I have..."

Maybe go with the physical ones first?

██████ response: "Well the physical ones were split lip it was bleeding. Arm and neck being punched and driven to the ground so when you are tensed up it's like somebody trying to push your neck down and I'm resisting so I think that's part of my neck thing is that I....just yeah trying to defend myself from getting smashed in the ground like I...."

Mr. ██████ later added that after attending the hospital on March 18, he was told he had a concussion.

In a follow-up interview, Sergeant ██████ showed the CCTV video to Mr. ██████ and then asked some further questions:

When did you first notice the officer? The police car?

Mr. ██████ response: "Basically when ██████ said that he is talking to you....talking to me....what the fuck you want with me."

Did you see the police car drive by you at the time?

Mr. [REDACTED] response: "No."

When did you know it was a police officer approaching you?

Mr. [REDACTED] response: "When I went to put up my fists...I was going to[REDACTED] said, "don't"....and that's when he knocked me down on the ground and I didn't fight back at all."

Did the police officer identify himself as a police officer?

Mr. [REDACTED] response: "No...but you know...I mean...it was plain to see with his gun and all that and that's why I kinda had the....you know [REDACTED] said that, "don't" cause I was going to hit him right. I mean coming at me I mean I got a right to defend myself don't I."

I know you said you had your fist cocked. How far away was Constable [REDACTED]

Mr. [REDACTED] response: "Right there.....from when he got out of the car? It seemed like a half a mile."

No how far away he was when you had your hand cocked back to defend yourself? How far away was he to you?

Mr. [REDACTED] response: "Oh he was coming at me...squaring off with me and I said, who are you talking to as I'm turning around and my instinct is to put my hands up."

When did you drop your hands down?

Mr. [REDACTED] response: "When [REDACTED] said, "don't [REDACTED]"

How close were you to him at that point?

Mr. [REDACTED] response: "About from here to the outside of the door. No....that's 6-7 feet."

That's when you dropped your hands down?

Mr. [REDACTED] response: "Yeah."

During the struggle...?

Mr. [REDACTED] response: "There was no struggle....he knocked me down on the ground....he came...I don't know what other police came but there was stomping on my leg, kneeing my balls, kneeing my throat. Every time I put my one arm behind my back he starting punching me in the head and smashing my face in the

ground and my natural reaction is to try to hold your head up so you are not getting your head punched or smashed into the ground."

Do you remember any statements or commands being given by Constable [REDACTED] during the struggle?

Mr. [REDACTED] response: "Not really he was just teeing off on me...you can see in the video...It wasn't just an act...or hey put your hands behind your back. I mean I've been handcuffed and I've been messing around with you guys all my life. I mean I know a takedown. That guy was pinpointing temple shots in the back of the head and in the temple. He was looking to hurt me."

Did you ever get on top of Constable [REDACTED] during the struggle?

Mr. [REDACTED] response: "Awwwww.....I don't think so....I think I yelled put the fucken handcuffs on. Kept on swinging on me and then all the other cops came. They were more concerned about [REDACTED] camera.....how ever long I think it was 16 minutes [REDACTED] tape. Here I am sitting in Hastings Street like a common bum on the street and he is chastising me...you could see him."

Did you ever pin Constable [REDACTED] legs to the ground during the struggle?

Mr. [REDACTED] response: "No."

Did you ever punch or attempt to punch Constable [REDACTED] or any other officers during the struggle?

Mr. [REDACTED] response: "No. As you can see in the video I got my hands trying to accommodate him....for your safety and my safety handcuff me. He was too worried about...."

The Evidence of Constable [REDACTED]

Sergeant [REDACTED] interviewed Constable [REDACTED] He summarized the interview in the FIR as follows:

- On March 15, 2021 at approximately 8 pm I was in uniform and was a passenger in a marked police vehicle working with Constable [REDACTED] in the driver's seat.
- We were driving eastbound in the [REDACTED] of E Hastings Street when a J-walker darted out in front of us dressed all in black.

- We used the air horn to notify her that we were driving and to also other vehicles for the danger of that person.
- I rolled down my window to inform the person that they were J-walking and that they need to be careful as they almost got killed and they need to be careful.
- What caught my attention was that there was a male on the south side of the sidewalk causing a disturbance, screaming, swearing, acting belligerent and people were looking at him. I didn't know exactly what was going on there but noticed a female also around him acting quite quiet.
- I told my partner to stop at the lights and I was going to go investigate it....I didn't know if it was a domestic assault, an assault or if someone was hurt...so I was just going to go investigate the situation to ensure everybody's safety.
- I exit my police vehicle and walked over to the sidewalk and I was 2 meters away from the male who ended up grabbing me by my collar with his left hand.
- He ended up knocking my radio off and I saw he had a cocked fist behind his back and he was in a fighting stance like he was about to punch me and knock me out cold.
- This happened so fast I didn't have any time to react. When I did walk across the street I did announce, "Vancouver Police". I was walking across I was in full uniform. It went right from officer presence to communication to straight assaultive. He grabbed me...I instantly reacted and my partner didn't even have time to put us out with a person on the radio or even get out of the car. He immediately grabbed me...I thought if he hit me I would have been knocked out cold. He could have access to anything on my duty belt. So I ended up doing a hard takedown on him to the ground where I struggled to get him under control cause he was extremely strong. He is approximately 6'2", 280 lbs at that time and I'm 6'1" about 170lbs and he was incredibly strong. He overpowered me multiple times on the ground he continued to try and fight. He was actively fighting me...he tried to punch me at one point he got on top of me where my legs were pinned. During this time I was in a fight for my life at this time...I used knee strikes and closed and open fist strikes just to get him under control. Gain compliance from him as quickly and as safely as possible to get him in custody. At that time, I kept screaming advising him that I was a police officer...you are under arrest for assaulting a police officer

put your hands behind your back. Give me your hands...stop. He then at points was turtling...I didn't know if he had a weapon on him or anything but due to his strength I was almost gassed. I was at the end of my wits. My partner came in and I heard her broadcast something and then before she could get him cause he was such a big guy another police vehicle came and they were able to help me get him into handcuffs. At that point I did verbally charter him in the very beginning that he was under arrest for assaulting a police officer."

- I sat him up on the curb.
- I tried to charter him again but he was continuously screaming at me telling me to fuck off...saying he is going to kill me...he will get me.
- At that point I also told him that he was also under arrest for uttering threats and I ended up chartering him again for assaulting a police officer, causing a disturbance and for uttering threats and breach of peace.
- He was so fixated on me during that situation and threatening me. At that point one of my colleagues told me to go to the side so they could deal with the situation because he was so distraught and angry.
- He was then taken to jail.

In response to follow-up questioning, Constable [REDACTED] added:

He grabbed me by my collar...didn't even give me a chance to react. He knocked my radio off and was about to punch me in the face as hard as he could like from his stance."

While on the ground, was Mr. [REDACTED] resisting arrest? If so can you describe in more detail?

Constable [REDACTED] response: "He was actively fighting me so he was trying to punch me and he actually ended up getting on top of me at one point, pinned my legs down and he is 280 lbs. So it took all of my strength to push him off. He ended up turtling his arms in towards his body. I don't know if he was reaching for a weapon or anything like that. I repeatedly told him to give me his hands, to stop fighting, to stop resisting just give me your hands and I was able to take him into custody after multiple members came and assisted."

After you had Mr. [REDACTED] on the ground did you administer any strikes to him? If so how many and why?

Constable [REDACTED] response: "I don't know but yes I admit I did administer hard hard strikes."

At what point in your mind when you were dealing with Mr. [REDACTED] was he arrestable and for what offence?

Constable [REDACTED] response: "As soon as he laid his hands on me but during that I was investigating a possible offence."

Did you observe any other police officers administer any physical strikes on Mr. [REDACTED] If so who?

Constable [REDACTED] response: "No."

Once Mr. [REDACTED] was in handcuffs what was his demeanour like? Did his behaviour change at all?

Constable [REDACTED] response: "Continued to be extremely angry, agitated...threatening me but then he ended up apologizing to me and said sorry for trying to punch me and fighting me and he admitted to drinking a large amount of alcohol and I could smell that from his breath."

Where did that happen?

Constable [REDACTED] response: "When I was talking to him on the ground. Just after he was in handcuffs. When I did end up putting him in the wagon he just kept saying sorry and then he would switch to an aggressive kill you it was just back and forth almost like a manic state."

Was Mr. [REDACTED] intoxicated? From a scale of 1-10, 10 being very intoxicated where would Mr. [REDACTED] be at?

Constable [REDACTED] response: "I would say maybe a 7 or 8 but it seems like he seems like he is very strong when he is drunk."

Why do you think that?

Constable [REDACTED] response: "From him admitting to me but I could also smell the alcohol emitting from his breath."

Did you inform Mr. [REDACTED] why he was under arrest? If so for what offence? Did you Charter and warn him?

Constable [REDACTED] response: "Yes I did."

Did he respond to your questions?

Constable [REDACTED] response: "No...his response was either fuck you I'm going to kill you...you are a goof. I continued multiple times but I don't think he was listening to me."

Did you make notes of any of that?

Constable [REDACTED] response: "Yes I did."

Did any other officers advise Mr. [REDACTED] why he was under arrest?

Constable [REDACTED] response: "I believe multiple members did. I did hear it but I can't recall."

Did you taunt or threaten Mr. [REDACTED] while he was in custody?

Constable [REDACTED] response: "no."

Did Mr. [REDACTED] taunt or threaten you or any other officers?

Constable [REDACTED] response: "I believe it was just directed at me. Possible officers as well."

Have you ever dealt with Mr. [REDACTED] prior to this incident?

Constable [REDACTED] response: "Never."

Did Mr. [REDACTED] suffer any injuries from the arrest? If so what?

Constable [REDACTED] response: "Not to my knowledge. He refused first aid when I asked him if he needed any medical assistance."

Was EHS called to attend?

Constable [REDACTED] response: "No they did not."

Anything further you want to inform me regarding the interaction with Mr. [REDACTED]

Constable [REDACTED] response: "I did see the videos and everything and I've broken my hand twice before and it's not my intention to use force or to cause people harm. If someone is attacking me I'm going to fight for my life. In the end I just wanted to ensure that everyone got home safely and investigate a situation. I didn't want to get my hand broken again cause it's always caused me.....I've already lost work multiple times. That was one of my main things and to be honest I literally had my lunch and I was just driving back to the office."

In follow-up questioning, Constable [REDACTED] said he did not charge Mr. [REDACTED] with assaulting a peace officer because he was not injured from the altercation and Mr. [REDACTED] was intoxicated. He felt such a charge was not in the public interest.

The Evidence of Constable [REDACTED]

Sergeant [REDACTED] summarized his interview with Constable [REDACTED] as follows:

Constable [REDACTED] and I are partners and working in the downtown eastside. That evening we were working night shift, Constable [REDACTED] was driving and Constable [REDACTED] was passenger. Driving a marked police vehicle eastbound in the [REDACTED] of E Hastings Street. We heard some man screaming in the unit east on the south side. I stopped on Columbia about to turn left. Screaming can mean different things to police like a domestic, people arguing or anything. Sounded like profanity a male and a female screaming "fuck you". Constable [REDACTED] told me to stop and gets out to deal with the situation with a male and female screaming. I am still sitting in the vehicle because I thought this was going to be a quick de-escalation. I put the lights on cause I didn't have time to pull over properly. I look back and I hear [REDACTED] yelling. I get out of the vehicle and I can see [REDACTED] throwing the male that was screaming to the ground. So I start running towards him and I come over the air and call for more cover units to attend. I'm on top and I try to grab control of his right hand which at that time [REDACTED] is trying to get control of his other hand. [REDACTED] is yelling at him to stop resisting as he is "turtled". Turtle is where they hide their hands underneath so they are on their stomach and they are resisting to bring their arms out. We have told him multiple times to release his arms so we can get control of him. We don't know if he is reaching for a weapon. A lot of people from experience are reaching for a weapon. A lot of people put weapons in their waistband which he would have access to if his hands were underneath him. I'm facing more eastbound and [REDACTED] is facing more westbound during this incident so I can't see anything behind me. The male is actively resisting by keeping his hands underneath his body. I remember asking him to show us his hands show us his hands and at that point other members arrived on scene and I don't remember who arrived first but I know there were a few members who arrived as we were actively fighting with the male. I assist [REDACTED] with handcuffs, we get control of his hands and [REDACTED] pulls out the handcuffs and I assist him in handcuffing the

male. I stood up after handcuffs went on, I get off his back. [REDACTED] rolls him over to start talking to him. From what I recall [REDACTED] was discussing the situation with him and he advised him that he was under arrest for assaulting a police officer. [REDACTED] later advised me that he had pulled at his radio and hence why the male grabbed [REDACTED] he was thrown to the ground. I then ran over to our police vehicle to move it off the road. When I returned Mr. [REDACTED] was now sitting on the curb. I then tried to de-escalate him as he was very agitated and seemed quite intoxicated to me just by the slurred of words, his profanity, very flushed and he even stated to me that he had been drinking. As we were standing there [REDACTED] was beside me and Mr. [REDACTED] I was trying to get his attention as he was too busy screaming at [REDACTED] Calling him names and can't recall exactly but it was something like, "you fucken goof". He continued so then I told [REDACTED] if he could walk away so I can get focus of him to just to start to identify him. At one point I did ask him for his first name and last name and I got a current home address which is in my book. At that time I then had a discussion with him I don't know exactly it must have been how do you know that girl. I think he said it was his girlfriend. At that time the wagon wasn't there and there was a lot of people screaming at us from the block so we thought it would be best to....I didn't do it but other members assisted him to what we call our cage car....secured him in the back of our caged pickup truck just to place him there so he was off the ground kind of de-escalate the situation and take him away from everyone screaming. When the wagon showed up he was escorted to the wagon...I wasn't with him as I was writing the jail 8 which is a piece of paper that provides all information regarding the incident to the jail guards when he arrives on scene. At one point when I was advised that it was not going to be an assault call and it was going to be a breach of peace so he was sent to jail for that. I can't speak to if he was advised to the new.....I was not there during certain points of the incident. The female who was also involved was highly intoxicated and very confrontational with us. At one point I lost sight of her cause of the male he was actively fighting with [REDACTED] Other than that I can't speak to what [REDACTED] saw when he initially got out of the vehicle. I never put in a SBOR as I only assisted with handcuffing I never struck, kicked, punched.....the most I did was try and get control of his right arm and once he was handcuffed I got off him.

Sergeant [REDACTED] asked Constable [REDACTED] if she observed any officer advise Mr. [REDACTED] why he was under arrest. She replied:

Other than the initial moment right after he was handcuffed [REDACTED] advising him that he was under arrest for assaulting a police officer.

Sergeant [REDACTED] asked Constable [REDACTED] how difficult it was to handcuff Mr. [REDACTED]. She answered:

I've handcuffed a lot of people...he was a big guy. He was obviously using some sort of resistance cause typically when I ask somebody to show their hands it doesn't take as long as it did with him. I had a grip at one point and then lost the grip so I knew he was still resisting cause usually...it's a grab the elbow and then try and pull it out beneath their body but the way he was resisting I couldn't get a hold of him and it slipped a few times....so.

The Evidence of [REDACTED]

Sergeant [REDACTED] interviewed [REDACTED], which he transcribed as follows:

We have just left dinner we were walking home from Granville Street walked down Granville to Hastings Street and Hastings all the way where the incident happened. Just prior to that at Carrol, we had seen my son, [REDACTED] had not seen my son in almost 10 years and they were quite excited and gave each other big hugs and kiss. We had left [REDACTED] and not even a half a block later we were excited and giddy and were goofing off in the street. He called me a bitch and the next thing you know we see this cop driving beside us up to the light. All of a sudden the door opens and you see the male officer jump out of the car and charge towards [REDACTED] towards us. I was walking beside [REDACTED] [REDACTED] was like what the fuck is going on. I said I don't know and he said, who is he coming after. I said, I think he is coming to you and then [REDACTED] took his stance so he wasn't going to be pummeled over. The cop proceeded to charge at [REDACTED] force him down to the ground and started to, I feel overly like he was ramming his head against the ground and friggen on top of him and then the female cop came a few minutes later and she looked shocked. Like what the fuck is going on kinda look on her face. [REDACTED] was already down on the ground, I proceeded to pull my telephone out and start recording because I have witnessed other incidents where it got overly aggressive and I didn't want him getting hurt and then

everything happened it feels like so fast. While they were down on the ground you could hear other sirens coming and there were more cops that showed up and then they jumped in front of me. An East Indian fellow looked like he was gonna charge towards me and I told him I was recording and then he backed off. And then another officer came and kind of stood in front of me also between us and I understand they are in the middle of arresting him or whatever and I proceeded to tell them you know as you can tell in the video I was excited and they freaked me out, I was scared, I was yelling. So I just continued recording so I tried to make sure nobody hurt him because you know it's been known to happen. I just felt like they were way too aggressive with him they proceeded to take my name after they had arrested [REDACTED] called the police said that I said that I had known to verify if I was who I said and if I knew them. Which then ended up confirming through [REDACTED] and then they tried to put him in the truck, it didn't work, they put him in paddy wagon and then they let me take his keys and stuff out of his pocket so that he didn't lose anything. They put him in the car and they never did tell us why they were arresting him for and then they proceeded to tell me to go home and that he would be out later or tomorrow. Well you are not even telling us what you are taking him for. So when I got home cause I left after the incident and they were taking him away I came home and phoned the police department asked what he is being charged for and when he was being released and I was told that he was being released right away and that he would be home within the hour.

Later, in response to further questioning, Ms. [REDACTED] added:

We had just passed Carrol and going up to the next one which is I believe Columbia. We were smack in between where the old teepee use to be. Where they used to sell stuff. The street was empty we were just commenting that we have never seen the street so empty here before as there is usually a lot of street people right. We were goofing around and he said, you bitch or something like that and I was like excuse me and the cop came towards us and said something about. [REDACTED] said what's this all about or something and he something about a bitch and I said what. You calling me a bitch and that's when he was on top of [REDACTED] and [REDACTED] was down.

The Evidence of [REDACTED] [REDACTED]

Sergeant [REDACTED] interviewed [REDACTED], who lives in the area and observed the events from her apartment window. He asked her what happened on March 15, 2021 at 20:12 hours, in the [REDACTED] of E Hastings Street when Mr. [REDACTED] was arrested by the Vancouver Police. Sergeant [REDACTED] summarized her response as follows:

- I was sitting at home watching TV from my home.
- I could hear some kind of verbal disagreement from the street.
- My apartment faces Hastings, so I walked to my window and looked out. I could see a couple that appeared to be on my side of the street and had just crossed onto the south side of Hastings Street.
- There was a gentleman and woman walking towards Main Street directly across the street from me.
- I could hear a disagreement going on from Mr. [REDACTED] and someone quite loud.
- As he was walking, I could see a police car heading towards Main Street and stopped at Columbia Street.
- The car stops at the light and the passenger door opens and a police officer exits the vehicle and walks, pretty close to running headed towards Mr. [REDACTED].
- He went up to Mr. [REDACTED] and struck him and the gentleman that was hit to me appeared unprepared because he didn't put up his arms to defend himself or stop the striking.
- The police officer continued to strike him and then the gentleman then wound up on the sidewalk where he continued to be hit.
- The woman that was with him was standing off to the side towards the building with her telephone videotaping the incident that was going on.
- The police officer had him on the ground and continued to strike him and put his knee on his back and pushed him face down onto the sidewalk.
- It didn't appear to me that the gentleman who was being assaulted didn't appear to be defending himself.
- At that point another police car showed up. That police officer joined the other officer at this point was now standing upright.

- The gentleman on the ground had been handcuffed and other police units started arriving.
- I saw the gentleman in handcuffs and at that point I got really upset and yelled out my window, "He is not the one who should be in handcuffs."
- I got into the elevator and walked across the street where police were standing and Mr. [REDACTED] was still on the street in handcuffs.
- At that point, I just said I just saw the entire incident that happened and I gave the female my name and phone number and address.
- I said I saw the entire incident and this guy didn't do anything. I could hear a verbal disagreement but there is no way that should be happening.
- If a police officer can't take getting yelled at he should not be in a god dam uniform.
- The police officer did not say anything.
- I did not see anything before the male and female crossed the street on that side.
- I didn't see what happened beforehand. I just heard some verbal bantering back and forth, but he hit the gentleman multiple times, he was quite violent.
- The next thing you know Mr. [REDACTED] was in the paddy wagon and was gone.
- I was quite upset after witnessing that...it was very violent and it upset me and that's where my statement will end.

In follow-up questioning, Sergeant [REDACTED] asked what happened just prior to the whole incident. Ms. [REDACTED] replied:

[REDACTED] response: "I don't know what happened before...when they came into my line of vision they were three-quarters of the way across the street from my side to the opposite side. There was some yelling going on beforehand but again it was unclear to me. I did not know it was actually with the police officer and so the police officer stopped at the light and exited the vehicle and went at it with the gentleman. I had no idea who was doing what until I actually witness him go out of the car and go towards the gentleman."

Did the police officer stop because of the yelling or was the police officer yelling from the car to them?

██████ response: "My understanding the officer did not exit the car until they stopped at the street light, the light was red and the car stopped. The gentleman and the officer were having some kind of discussion. I found out afterwards and it was hearsay it was something about the couple jaywalking across the street."

Did the police officer exit his vehicle because of the argument to deal with the couple?

██████ response: "I would assume...I'm assuming that's all I can do is assume because I did not physically see it that.....whatever the argument was it ended with the police officer exiting the vehicle and going directly to the man that was assaulted."

The CCTV Video and the Cell Phone Video

For reasons that will be discussed below, the CCTV Video and the Cell Phone Video are of limited assistance in understanding what transpired at the moment when Constable ██████ took Mr. ██████ to the ground. That event was in the far distance of the CCTV video, and the picture was blurred by lights from the police car. There is no soundtrack on the video. The Cell Phone video did not start to record until Mr. ██████ was already on the ground. It depicts Constable ██████ striking Mr. ██████ during the process of trying to handcuff him, but it does not depict what happened before.

Analysis and Decision

The accounts of this incident by the two main participants, Mr. ██████ and Constable ██████ provide two very different impressions of what transpired. From Mr. ██████ point of view, he was walking down the street with Ms. ██████ after having spent an enjoyable evening together. He feels that he was doing nothing wrong and that Constable ██████ came at him and pulled him to the ground for no reason. Once on the ground, he feels that Constable ██████ used excessive force, particularly the blows to the head. He believes he was never told the reasons for his arrest. He says he was not resisting and that the only reason he had his hands under his body, making handcuffing difficult, is that he was trying to protect his face from being driven into the pavement.

Constable ██████ on the other hand, says he heard yelling on the street and that he had a legitimate reason to investigate and to make sure there was not a domestic assault. Once out of the police car, he was confronted with Mr. ██████ adopting a "stance" with a cocked fist. Fearing that he was about to be assaulted, he took Mr.

█████ to the ground and tried to handcuff him. This was made difficult by the fact that Mr. █████ had his hands underneath his body, so Constable █████ struck Mr. █████ in the head in order to get him to release his hands for handcuffing.

Initially, one might think that by consulting the videos of the incident, these different points of view could be resolved. Unfortunately, the videos are of limited assistance. The CCTV video shows Constable █████ getting out of the police vehicle and taking Mr. █████ to the ground. We can see that this all happens very quickly. However, the video has no soundtrack, so we cannot tell if Mr. █████ was yelling in a way that would legitimately call for the police to investigate. As well, the incident of taking Mr. █████ to the ground occurs in the distance of the video camera, and lights from the police car obscure the view. The video is of little assistance, therefore, in determining whether Mr. █████ charged at or grabbed at Constable █████ as Constable █████ asserts.

Similarly, the Cell Phone video taken by Ms. █████ is of limited assistance. It clearly depicts Constable █████ striking Mr. █████ on the back of his head, but the sound track is not clear due to Ms. █████ talking loudly during the video. What we can see is that Mr. █████ hands do not appear to be under his chest, as one might expect if his intention was to resist being handcuffed. Rather, his hands are near his face, and he appears to be trying to protect his face and mouth from being injured on the pavement.

The accounts of Ms. █████ and of Ms. █████ are generally sympathetic to Mr. █████. However, in some respects, they support Constable █████ account. They both agree there was yelling on the street. Indeed, Ms. █████ said that the reason she looked out of her window was that she heard yelling, which to her sounded like an argument.

On all the evidence, my decision is that Mr. █████ was yelling on the street, and this is what attracted Constable █████ attention. Mr. █████ himself admits that he used the word "bitch" in relation to Ms. █████ Constable █████ was justified in deciding to exit the police car to investigate. Regrettably, events moved very quickly from that point on. It clearly would have been preferable if Constable █████ had been able to investigate and de-escalate the situation without a physical confrontation. Indeed, that is what Constable █████ expected was going to happen. Unfortunately, and by his own admission, Mr. █████ took up a "stance" when he saw Constable █████ As he put it in his interview, "█████ said that, "don't" cause I was going to hit him right." From Mr. █████ point of view, this was a defensive response, but Constable █████ reasonably interpreted it as an aggressive posture that meant he was about to be assaulted unless he took Mr. █████ to the ground. There is, of course, the discrepancy about whether Mr. █████ charged at or grabbed at the officer's clothing or equipment. In the end, I do not need to resolve that factual issue, because I am satisfied that the stance adopted by Mr. █████ in itself provided a reasonable basis for Constable █████ to believe that Mr. █████ was about to assault him. Believing that he was about to be assaulted, Constable █████ was justified in defending himself from the apprehended attack by taking Mr. █████ to the ground.

Once Mr. [REDACTED] was on the ground, Constable [REDACTED] was justified in trying to handcuff him in order to prevent either an assault or a continuation of a breach of the peace. Given Mr. [REDACTED] size and strength, and the fact that Mr. [REDACTED] hands were underneath him, Constable [REDACTED] used force, namely, striking the back of Mr. [REDACTED] head, in order to force him to produce his hands for cuffing. While I accept Mr. [REDACTED] assertion that he was not trying to resist arrest and was only trying to protect his face and mouth, Constable [REDACTED] reasonably concluded that the force he used was reasonable and proportionate in the circumstances.

Several officers testified that Mr. [REDACTED] was advised of the reasons for his arrest. I accept that evidence as accurate. The fact that Mr. [REDACTED] Ms. [REDACTED] and Ms. [REDACTED] did not hear it can be explained by their state of agitation, excitement, and perhaps intoxication.

On all the evidence, I find that Constable [REDACTED] was justified in arresting Mr. [REDACTED] that the force he used was not unreasonable or disproportionate in the circumstances, and that Mr. [REDACTED] was informed of the reasons for his arrest.

I conclude that the allegations of Abuse of Authority and Neglect of Duty do not appear to be substantiated.

Pursuant to section 117(10) of the *Police Act*, with respect to all of the complaints and allegations of misconduct, upon my review of the Final Investigation Report and the evidence and records referenced in it, it is my decision that the conduct of Constable [REDACTED] does not appear to constitute misconduct.

Pursuant to section 117(11) of the *Police Act*, this decision is not open to question or review by a court on any ground and is final and conclusive.

Dated at Vancouver, British Columbia this 24th day of March, 2022.



Hon. William Ehrcke,
Retired Judge of the Supreme Court of British Columbia, Adjudicator