

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
CERTAIN OFFICERS OF THE VANCOUVER POLICE DEPARTMENT**

**NOTICE OF ADJUDICATOR'S DECISION
PURSUANT TO SECTION 125(b) POLICE ACT**

**DISCIPLINE AUTHORITY BRENT G. HOY
APPOINTED RETIRED JUDGE**

- TO: Constable [REDACTED] (Cst. [REDACTED])
c/o Vancouver Police Department
Professional Standards Department
- AND TO: Constable [REDACTED] (Cst [REDACTED])
c/o Vancouver Police Department
Professional Standards Department
(the "Members")
- AND TO: Ms. Claire Hatcher, counsel for Cst. [REDACTED] ("counsel")
- AND TO: Mr. Kevin Westall, counsel for Cst. [REDACTED] ("counsel")
- AND TO: Sergeant [REDACTED]
c/o Vancouver Police Department

Professional Standards Department

(Investigator)

AND TO: Mr. Prabhu Rajan

Police Complaint Commissioner

(Commissioner)

DECISION AND OVERVIEW SUMMARY

1. Pursuant to Section 117(4) of the Police Act issued on December 29, 2022 by the Police Complaint Commissioner, I was appointed as Adjudicator concerning complaints of misconduct by Constables ■ and ■ which occurred on September 6, 2021.

2. On December 8, 2021 upon the request of the Vancouver Police Department, the Commissioner ordered an investigation into a matter which had occurred on September 6, 2021. This is a section 93 investigation. After further investigative steps as directed by the Commissioner were completed, the Final Investigation Report (FIR) dated November 16, 2022 was submitted by Sergeant ■ Inspector ■ as Discipline Authority, issued her decision pursuant to Section 112 of the Act on November 30, 2022. In her assessment she identified one allegation of misconduct against both officers contrary to Section 77(3)(a)(ii)(A), Abuse of Authority and found it was not substantiated.

3. The commissioner was of the view this was incorrect.

4. On February 1, 2023, upon my review of the Final Investigation Report (FIR) and its' evidence and records, I had identified the following allegations of misconduct which appears to constitute misconduct contrary to section 77(3)(a)(ii)(A):

(1) Cst. ■ Abuse of Authority in the performance of his duties did intentionally or recklessly use unnecessary force on a member of the public by using a beanbag shotgun on 2 occasions, contrary to Section 77(3)(a)(ii)(A) of the Police Act.

(2) Cst. ■ Abuse of Authority in the performance of his duties did

intentionally or recklessly use unnecessary force on a member of the public in the course of arrest by kicking him in the head or shoulder contrary to Section 77(3)(a)(ii)(A) of the Police Act.

(3) Cst. ■ and Cst. ■ Abuse of Authority in the performance of their duties did intentionally or recklessly use unnecessary force on a member of the public in the course of arrest by hitting his head onto the hood of a police vehicle, contrary to Section 77(3)(a)(ii)(A) of the Police Act.

5. On March 27, 2024 a hearing was held and evidence heard.
6. Submissions were filed by counsel on June 28, 2024.
7. I have concluded as against each of the Members that none of the allegations of Abuse of Authority contrary to Section 77(3)(ii)(A) of the Police Act have been substantiated. In brief summary:

(1) Cst ■ use of the beanbag shotgun was not substantiated as his subjective beliefs, objectively considered were reasonably held. Noted was the flight by the affected person from the police, his possession of a bat for a time during the chase and non-compliance with commands to stop. Furthermore, officer safety concerns were a factor given the affected person's belligerence, and intoxicated state. At one point, he appeared to hide when he rounded a corner of an alcove. The officer thought he was alone but in fact Cst ■ was present. The Member notes he would have conducted himself in the same manner even if he had known of Cst ■ presence. Reliability and credibility are noted. There are numerous other elements that are set out fully in this decision including whether the member ought to have seen hands up by the affected person and the officers decision to fire his shotgun. Furthermore, force is not to be measured with exactitude nor should the officer be held to a standard of perfection. The force used upon the entirety of the circumstances was reasonable, proportional and necessary. The issue and assessment of serious blameworthy conduct does not arise in this instance.

(2) Cst ■ alleged conduct was kicking the affected person in the head/shoulder area after being handcuffed as he laid prone on the ground. After hearing the Member give his evidence and review of the CCTV video, upon the whole of the evidence there was no intent to kick the affected person. It was innocent contact. There was no culpable conduct. Reliability and credibility are noted.

(3 a) Cst ■ and ■ had taken the affected person to a waiting police car for the purposes of searching him. For Cst ■ the evidence does not establish he acted in a manner amounting to an abuse of authority. Noted was the ongoing belligerent and intoxicated state of the affected person and resistance as he was moved from the ground to a standing position and then to the vehicle. In this process the member had a firm grip over his neck area and arm. The CCTV video suggests unwarranted force was used as it appears the affected person's face was pushed to the hood of the police car. The Member was of the belief this did not occur. The momentum of the Member's actions were noted and in any event, the force used is not to be measured with exactitude or with perfection. The Member's subjective belief was, in all the circumstances objectively reasonable, proportional and necessary. There are numerous elements set out in the body of this decision which addresses the subjective and objective analysis.

(3 b) As for Cst ■ the evidence does not establish he was acting in a manner that exhibited the same degree of control or force as seen for Cst ■. He was encumbered with his shotgun as he assisted in moving him to the police car for a search. In relation to him, upon the whole of the evidence and on the balance of probabilities, there is no culpable conduct. He was not a party to the misconduct allegation.

MISCONDUCT - THE POLICE ACT AND THE CRIMINAL CODE

8. Section 77(3)(a)(ii)(A) of the Police Act says this:

(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,
(ii) in the performance , or purported performance , of duties, intentionally or recklessly
(A) using unnecessary force on any person*

9. Section 77(4) limits any misconduct assessment with these words:

77(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.

10. Section 25 of the Criminal Code is also relevant in this review and states the following:

25 (1) Everyone who is required or authorized by law to do anything in the administration or enforcement of the law

(b) as a peace officer or public officer,

Is, if he acts on reasonable grounds, justified in doing what he is required or authorized to do and in using as much force as is necessary for that purpose.

11. Unlike a determination pursuant to section 117 which is only a preliminary review of the allegations to determine if they appear sufficient to substantiate misconduct, a section 125(b) review requires a careful filtering of clear, convincing and cogent evidence with proof on the balance of probabilities.

THE LAW ON USE OF FORCE

12. From the SCC, *R v Nasogalauk* 2010, 1 SCR 206 notes that if force is required to complete an arrest that force is constrained by the principles of proportionality, necessity and reasonableness. Force is justified if the officer has acted on reasonable and probable grounds and only used as much force as necessary in the circumstances.

13. What is or is not “as much force as necessary” was discussed in *Akintoye v White* 2017, BCSC 1094. Also see *R v Nasogalauk* (supra) and *Anderson v Smith* 2000, BCSC 1194. It is a subjective-objective analysis or modified objective test. Thus, was the officer’s subjective belief that the force used was necessary and, when objectively weighed, was it reasonable in all the circumstances.

14. Refining an understanding of the parameters of this concept, an officer is not expected to measure the amount of force used with exactitude given the variable exigencies of the moment. As noted from *Akintoye v White* (supra) @ para 101 and 102:

(101) A subjective-objective or modified objective test is applied to assess the reasonableness of a police officer’s belief that the force used was necessary: he or she must subjectively believe the force used was necessary and that belief must be objectively reasonable in all the circumstances.

(102) Recognizing police officers often engage in dangerous and demanding work that requires them to react quickly, they are not expected to measure the level of force used “with exactitude”. Put another way, they are not required to use the least amount of force necessary to achieve a valid law enforcement objective. Although entitled to be wrong in judging the degree of force required, an officer must act reasonably (Crompton V Walton, 2005 ABCA 81 (CanLII) at para. 22). The common law accepts that a range of use of force responses may be reasonable in a given set of circumstances (Bencsetler v Vancouver (Cit), 2015 BCSC 1422 (CanLII) at para. 153). The reasonableness, proportionality and necessity of the police conduct are assessed in light of those circumstances, not based on hindsight.

15. In another example, *R v Brill* 2019 BCPC 315 care must be taken to avoid measuring the use of force used to a level of perfection and the fact an individual was struck on the head does not necessarily mean that excessive

force was used by the police.

16. From a decision by Adjudicator Brian Neal in OPCC File No. 2022-21993 he reviewed the use of force where a member had struck the complainant numerous times in the head and neck with his service pistol during an arrest. He suffered a fractured arm and other significant injuries. He provides a useful summary of the various elements in assessing the use of force. Noted among the findings was the conclusion that while the Member's decision was reckless his action can nonetheless be characterized as an error in judgement made in good faith as he attempted to complete the lawful arrest of the affected person. It was conduct that did not rise to the level of serious blameworthy misconduct.

17. Further guidance on the parameters of the use of force is found in *Scott v Police Complaint Commissioner* 2016 BCSC 1970. To find misconduct, there must be a serious blameworthy element and not simply a mistake of legal authority alone. A "blameworthy element" would be some form of bad faith; that is, where a police officer conducts a search or detention for some ulterior purposes (perhaps in the opportunistic hope of getting evidence for another investigation, or to put pressure on the detainee, or out of malice for the detainee.). From *Lobel and Hoang* OPCC File No. 2016-1766 Adjudicator Ian McKinnon observes that even if the Member exceeded their authority in the course of search and detention did they do so intentionally or recklessly such that there is a serious blameworthy element. These words are noted:

... a finding of misconduct in these circumstances requires a conclusion that the Members exercised powers of detention and/or search either knowing they had no lawful authority or not caring whether they did.

18. Mere errors of law or judgement by police officers does not constitute misconduct. See *Lowe v Diebolt* 2013 BCSC 1092. Furthermore, *R v Asante-Mensah* 2003 SCC 38 adds that an officer is not required to measure the force used with precision. At paragraph 73 this was stated:

... a certain amount of latitude is permitted to police officers who are under a duty to act and must often react in difficult and exigent circumstances.

THE LAW ON THE BURDEN OF PROOF

19. From *F.H v McDougall*, 2008 3 SCR 41 the burden of proof is on the balance of probabilities which lies upon the body alleging the misconduct. It is evidence which is sufficiently clear, convincing and cogent.

THE RECORD

20. The Final Investigative Report (FIR) dated November 16, 2022 and its various attachments, a flash drive with the FIR contents, and the transcript of the witnesses' testimony from the proceedings of trial held March 27, 2024 collectively comprise the "Record".

THE EVIDENCE – MISCONDUCT ALLEGATION #1 – CST █

21. On September 6, 2021 at 01:49 a 911 complaint had been received from the █ on █ advising 6 males had been ejected due to intoxication. Two returned carrying cricket bats which was swung at people outside, destroying property, throwing stanchions and making threats. They were described heading north towards BC Place Stadium. Descriptions were provided with the affected person noted to be wearing a grey reflective hoodie, black sweat pants and carried a cricket bat.

22. Csts █ and █ who were partnered with one another, responded along with another patrol unit. These were marked police vehicles and the officers were in full uniform. As they exited their pc Cst █ took his beanbag shotgun. There were 4 persons who were challenged, 2 of whom appeared compliant while 2 others ran. Cst █ gave chase and expressed they were arrestable for assault with a weapon and mischief. As he chased these 2 persons they split up with the officer continuing his pursuit of the affected person.

23. From his General Occurrence (GO) Report dated September 6, 2021 written at 03:36 the following is noted:

Cst. ■ was approximately 30 feet behind the male (identified as the “affected person”) and yelling “Police! Stop running! Get on the ground.”

Cst. ■ was confident that the affected person heard Cst. ■ commands but was continuing to flee to evade police custody.

The affected person ran north bound toward Griffiths Way into a corner with no obvious out. The affected person began to slow and look back at Cst. ■ with the bat in hand. Cst. ■ was unsure whether the affected person was going to turn on Cst. ■ with the bat in hand in a continued effort to escape police custody.

Cst. ■ believed the affected person committed the offence of assault with a weapon and mischief and was not going to stop despite all verbal commands given for him to surrender.

To prevent any further harm to the public or other personal property, Cst. ■ delivered one bean bag round toward the affected person which missed.

The affected person through (“threw”) the bat and ran around a corner of a cement wall in an attempt to conceal himself. The affected person was looking around as if he was searching for a way out and a direction to run. Cst. ■ delivered 2 more bean bag round to the thigh of the affected person which led to him lying on the ground.

Cst. ■ was unsure whether the affected person was armed with any other weapons underneath his stomach/waistband are and therefore directed the affected person to crawl toward Cst. ■ away from the area he attempted to conceal himself from members.

The affected person did not listen to commands. Cst. ■ delivered one more bean bag round to the affected person's thigh and gave him verbal direction to crawl toward Cst. ■. The affected person complied and was taken into custody without further incident.

24. Cst. ■ adds details of what had occurred in his follow up interview with Sergeant ■ on March 16, 2022. From my section 117 decision at paragraph 23 the details are as follows:

From the March 16 interview he adds details of the night's events. They include his perception of the events. He explained his concerns when he caught up to the affected person as he ran behind an alcove. He thought he was in an area enclosed by a fence; that the other person who was initially with the affected person was unaccounted for; that he may be hiding with the possibility of returning to confront him and that the affected person remained hidden and not complying with police directions. He adds that he did not know what other weapons he might have on him and that he was recently reported as violent, intoxicated and unpredictable. Furthermore, he did not want to go into the concealed area and that his partner was hundred meters away assisting other members. The following is part of his follow-up interview:

Again, Cst. ■ goal was to get the affected person to come out into view where he could easily be seen and where Cst. ■ could be easily seen so that others could come to Cst. ■ aid in the event they got into some sort of wrestling match. He gave the affected person commands, "come on out, come on out from behind the wall".

The affected person was not listening. He was belligerent and yelling. In order to get the affected person to come out and gain compliance, he delivered another beanbag round to him, which led to him dropping down to his knees and then onto his stomach.

Cst. ■ again stopped to reassess. The affected person was now laying on the ground but still in a concealed area, still yelling back at Cst. ■ still not listening to commands to come out to Cst. ■. Cst. ■ did not

want to go to the affected person; he wanted the affected person to come to him so that Cst. █ was in control of the situation. Again, Cst. █ did not know what was in the affected person's waistband or what he might have underneath him and of course Cst. █ did not want to conceal himself from arriving help.

Cst. █ gave the affected person several loud commands and believed he was gesturing with his hands, pointing to a spot in front of him: "come to me, come to me, come on out". The affected person did not follow that direction and continued to be non-compliant. At that point Cst. █ believed it was necessary to gain additional compliance from the affected person and he delivered one more beanbag round to the affected person's thigh.

This appeared to work and the affected person crawled toward Cst. █ to an area where Cst. █ felt was safe and that he could control the affected person. At that point he noted his partner had caught up and was there. Cst. █ felt the situation was much safer at that point with his partner there even though the other person was not yet accounted.

Sergeant █ asked Cst. █ some clarifying questions:

Sergeant █ noted to Cst. █ that CCTV footage at one point shows "the affected person" with his hands up, potentially showing compliance. Cst. █ stated that he did not have that perspective and did not see indications of "the affected person" complying and giving up. Cst. █ perspective, and from where he was observing "the affected person" (which is a very different angle than the view of the CCTV camera) was that although he was ordering "the affected person" to come out from behind that concealed area with loud clear directions, "the affected person" was not following his directions. This is when he deployed the second beanbag round.

25. From a further interview on October 13, 2022 Cst █ is unable to recall the exact moment when Cst █ was present explaining he was focused on the affected person but it would have been at some point prior to Cst █

moving in to arrest him.

26.. He adds from this subsequent interview that the reason he wanted the affected person to crawl out was:

... based on the affected persons demonstrated continued non-compliance, and his disregarding of every opportunity to take direction from the members to be taken into custody without additional use of force.

27. He goes on to explain that he would have used the same tactics whether he knew Cst. ■ was there or not.

28. From Cst. ■ GO report on September 6, 2021 there are few details of what occurred at the site of arrest. He only noted that the affected person refused to comply which resulted in the use of the bean bag shotgun.

29. In a follow up statement conducted March 16, 2022 he relates some specifics:

9. Cst. ■ partner Cst. ■ advised him that the affected person went around an alcove with a green patch at the back of the open-air parking lot they were in just to the east of BC Place. Cst. ■ could see the affected person in the alcove and both he and Cst. ■ made multiple announcements, "Vancouver Police, you are under arrest, get on the ground". The affected person was non-compliant.

15. When Cst. ■ arrived in the parking lot with Cst. ■ the affected person was standing behind the alcove area on the green patch. He observed the affected person get hit with a beanbag round there, and also when the affected person was non-compliant in coming out of the (alcove) area. Again, he did not observe the initial round fired and does not recall exactly how many beanbag rounds were fired.

30. On February 22, 2022 the affected person was interviewed by Sergeant ■ on the telephone. This was recorded and subsequently transcribed. He was given the opportunity to review the CCTV recordings of the incident

but declined. The affected person is male of South Asian heritage aged 21. English is not his first language. Part of the interview included this exchange:

Q. Ok and when the police stopped you, did they give you directions. What did they tell you to do - to lie down on the ground

A. Yah Yah - they said lie down - like put your hands behind your back.

Q. Yes.

A. And just crawl and all that things.

Q. Ok

A. Crawl on the ground - yah

Q. And did they hit you with a beanbag? The beanbag shotgun?

A. Yah yah.

Q. Can you explain why they did that

A. Because I ran.

Q. Ok and were you following the directions of the police officer

A. Yah - after that – yah. They said – they said – I remember that - They said to me crawl after like after that I was hit by the bullet - I just laying on the ground right - I just slipped right – then they said to me crawl I will crawled and then they like come on me and they were like 2 guys - 2 policemen - and they told me to crawl and to put one hand behind the back - and they just handcuffed me - and all that.

31. For intoxication, the affected person acknowledges he was drunk. As for Cst [REDACTED] he describes him as very intoxicated, belligerent and was yelling at

himself and Cst. [REDACTED] Cst. [REDACTED] in his supplement report of March 16, 2021 notes him as intoxicated with a strong odour of liquor, poor motor functions in standing, belligerent, yelling, posturing and slurred speech. Others who had contact with the affected person and who assisted in his detention for transport to the jail cell made their own observations of intoxication. One officer noted the affected person was impaired and had an odour of alcohol but his demeanor was quiet and compliant. For another officer he has no recollection of intoxication. The Jail NCO describes him as intoxicated, odour of alcohol, glazed eyes, incoherent slurred speech and unsteady on his feet.

32. Photographs of the affected person's thighs shows 2 bruises. One is located on the exterior upper part of his right thigh and the second appears on the back of his left thigh about 6 inches from the knee pit.

33. Also evaluated are a series of CCTV security footage obtained from BC Place. These are video only and records the parties' interaction from 3 different angles. The images are shown in original format and enhanced with zoomed in cropped images and slow-motion speed.

34. The first camera records the affected person being chased by Cst. [REDACTED] during which the officer takes a stance to fire his shotgun. One can see Cst. [REDACTED] is also running behind Cst. [REDACTED]. In this part of the pursuit the affected person tosses away the cricket bat. This was later retrieved by Cst. [REDACTED].

35. In the second camera from a different view perspective their interaction occurs in a grassy alcove area adjacent to BC Place. There the affected person can be seen ducking into the alcove with hands up. From the CCTV time display 2 seconds passes and he then returns to the corner of the alcove onto a yellow marked curb and looks back in the direction he came from with hands up. Again from the CCTV time display, within 3 seconds of his hands in a raised position he flinches and falls to the ground. There he laid on his left side facing in the direction of the officers with his hands either clasped over the back of his neck or head. Cst. [REDACTED] enters within view of this camera with his shotgun raised. Cst. [REDACTED] can be seen to his left. As the officers approach the affected person he rolls onto his stomach prone to the ground with his hands in the back of his head area. This video

shows Cst. ■ slightly ahead and to the left of Cst. ■ when this occurred. At varying points of time Cst ■ is either looking through the view finder of his LLSG or over the top of his weapon as he points to the ground. Both officers also appear to be saying something to the affected person as they gesture to the ground in front of them. Next a flash of light can be seen emitting from the LLSG. After this the affected person drags himself with the use of his arms to the yellow marked curbed portion of the roadway. There he is handcuffed.

36. This scenario is also depicted in Camera 3 from a different angle of the scene depicted in camera 2. Of note are the officers side by side with Cst. ■ slightly ahead of Cst. ■ as they walked towards the affected person.

37. From the CCTV, the time elapsed from the point when the affected person falls to the ground until the flash of the LLSG is 22 seconds.

38. Also considered are a variety of Policies and Training regarding the standards established for the use of intermediate weapons. From the Vancouver Police Department there is a policy contained in the VPD Regulations and Procedures Manual at section 1.2.1 which addresses Use Of Force Justification.

39. With this policy in mind Sgt ■ expressed the view that “the LLSG, as a distance weapon, is the ideal tool in the circumstances to gain control of a resistive subject.”

40. Sgt ■ had also sought the opinion of Sergeant ■ who is an instructor and developed the curriculum for patrol Tactics for Recruit Training at the JBC (Justice Institute of BC) Police Academy. He presented a scenario that reflected the incident involving Cst ■ and queried whether the officer’s conduct conforms to best practises. His analysis was positive.

41. Sergeant ■ reviewed The National use of Force Model (NUF) which identifies 5 types of behaviour an officer may face with corresponding types of responses. How it applies relies upon the officers’ perception with responses ranging from lethal force, intermediate weapons, and physical control.

42. It is observed Cst [REDACTED] categorizes the affected person in his Subject Behaviour-Officer Response Report (SOBR) dated September 6, 2021 as "Assaultive." At the trial on March 27, 2024 he notes that he draws the "Assaultive" conclusion from his earlier 911 advice that the affected person had been destroying property and was assaultive with others. He also agreed that at minimum he is "Active Resistant." From Sgt [REDACTED] Cst [REDACTED] self- assessment was within the parameters of NUFF and the use of the LLSG was appropriate as an intermediate weapon.

43. Furthermore, Sgt [REDACTED] reviewed various articles on perception when an officer is under threat and its effect upon visual and auditory exclusion in such circumstances. Side effects include tunnel vision. That is, "the tendency to focus on the perceived threat, to the exclusion of all other stimuli. As a result , the officer may fail to perceive peripheral activities."

44. From Cst [REDACTED] trial evidence he relates that to the best of his knowledge 3 shots were fired, perhaps 4.

45. Cst [REDACTED] states in his trial evidence and in describing what is depicted in the video, when he came upon the affected person in alcove he did not see his hands up due to the angle of his view. He says that his angle of view would have been 45 degrees or less. At page 42 these questions and answers were given:

Q Okay. So, can you see his whole body at the time that he's put his hands up here?

A No.

Q Okay. What else is going on for you at this time? What else are you hearing, seeing?

A I'm very focused on ... during high stress situations I do struggle with auditory and visual exclusion at, at times.

46. In explaining why this might be so, the officer also notes that he simultaneously is trying to communicate through dispatch his location in an area that he was not familiar with. Furthermore, as he had lost visual contact with the affected person and given his unfamiliarity with the area

he expressed concerns what the area might contain for concealment of the affected person, hiding objects or further flight. As well he was mindful of the other person who had split off from this pursuit and a concern that he might rejoin the affected person.

47. Put to the officer was whether the knowledge that the affected person had thrown away his cricket bat changed his concerns. It did not as he notes that the affected person was still fleeing and not obeying commands. He also relied on past experience where a person had fled, discarded a weapon and after a struggle upon arrest had other weapons on his person.

48. As for commands he gave to the affected person it involved verbal commands for him to “come to me” or other words of compliance. He also pointed to the spot he wanted him to crawl to. Nonetheless Cst [REDACTED] explains that he was not compliant and thus he discharged his LLSG again.

49. Cst [REDACTED] is uncertain when he became aware of Cst [REDACTED] presence. At best he identifies the time period when they moved in and placed the affected person into custody.

50. The Member also related some of his experiences when dealing with persons who have fled from him. While noting the rarity of occurrences, the reasons for evading arrest included outstanding warrants, possession of contraband, prohibited objects or weapons. Furthermore, from his training continuity of observation of the individual is of importance and where, as here, there was a loss of visual contact at the alcove, he has a heightened awareness of potential dangers and the need to gain compliance. Furthermore, part of that compliance included demands that the affected person crawl to the curb which did not occur until after the next volley from his LLSG. In conjunction with this is alertness to changing circumstances.

MISCONDUCT ALLEGATION #1 - FINDINGS OF FACTS AND ANALYSIS

51. As I consider the Member’s conduct I am mindful of the framework of the legislation and authorities with these elements requiring assessment in evaluating “Use of Force”:

- a. Was the Member acting in the lawful execution of his duties.
- b. Did the Member subjectively determine that the force used was necessary.
- c. Was the Member's subjective beliefs objectively reasonable taking into consideration the Member's training, experience and the circumstances at hand viewed through the perspective of a reasonable officer of similar experience.
- d. Was the Member's conduct undertaken intentionally or recklessly using unnecessary force – that is “serious blameworthiness”

52. Refining these consideration are the following points:

- a. What were the exigencies of the moment that influenced the Member's conduct being mindful that quick decisions are often made without the benefit of detached reflection in a retrospective of the event.
- b. And in law there is no requirement that the member act with perfection to the circumstances presented.

LAWFUL EXECUTION OF DUTIES

53. It is accepted that both Cst ■ and ■ were in the performance of their duties. The officers were responding to a 911 call that involved rowdy behaviour at a nightclub. They knew that people in this group had bats, were threatening to others and damaged property. When they came upon the group the affected person had a bat in hand and fled along with another. These officers gave chase. He was clearly arrestable for a variety of potential offences. The officers were following their duty to enforce the law, protect life and property and keep the peace.

54. For Cst ■ there are 2 incidents under review where he made the decision to deploy his LLSG.

THE AFFECTED PERSON'S CREDIBILITY

55. The affected person had been consuming alcohol. He is described by the officers and the Jail NCO as having a strong odour of alcohol, glazed eyes, intoxicated, belligerent, poor motor functions in standing, slurred and incoherent speech. While one officer described his demeanor as quiet and compliant these observations were made after Cst [REDACTED] and [REDACTED] interaction. The affected person's statement was recorded on February 21, 2022. This was about 5.5 months after the incident had occurred on September 6, 2021. As I consider the affected person's credibility and reliability it is poor in light of his alcoholic state.

EVIDENTIAL VALUE OF CCTV VIDEOS

56. In *PH: 2012-01*, OPCC FILE No. 2010-5121 Adjudicator Casson was alert to the limitations of video evidence. It was a video taken with a handheld camera. As commented it shows only one perspective in a moment in time. With or without the video, a fact-finder must rely on the reliability and credibility of the individual police officer's evidence as to what they see and perceive. Obviously a camera cannot perform that function.

57. The CCTV video images from security cameras are likewise limited. They depict the scene from a stationary position. The angle of view is incomplete. It does not show what occurred from either the officer's or the affected person's perspective. However, it is also noteworthy that the CCTV is not unlike another witness to the events. It is a dispassionate eye of technology recording what had occurred as opposed to an individual who might be recording for a particular purpose. Whether it records the events completely and fairly is another matter. Furthermore, one must also be mindful that frame by frame analysis, zoomed images and slow motion playbacks can either distort or confirm what may have occurred. It can also invite critical analysis of the expressed evidence of others. Like any evidence its weight depends on what is being considered keeping in mind its limitations, context and point of view.

DISCUSSION – FINDINGS OF FACT

58. One portion of the evidence requires findings of facts. It was submitted that the affected person had simply fallen to the ground in the alcove as he

expressed in his statement after the first volley at the alcove. I find his intoxicated state reduces his reliability. Furthermore the weight of the evidence says otherwise. It is quite plain that within moments after appearing at the corner of the alcove he is shot, flinches and then falls. The CCTV does not show he involuntarily slipped. Additionally there are photos of the bruising left by the beanbags to his legs.

59. From the CCTV there is a scene where the affected person stands with hands raised at the corner of the alcove. While likely true that this gesture was not as a result of a police command, it would seem he was, of his own volition, signalling submission. He was asked in a follow up interview by Sgt [REDACTED] why this was not observed. In explanation Cst [REDACTED] notes he did not have that angle of view. This is similar to his testimony. It is nonetheless observed that he obviously saw him clear enough to take his shot which he did immediately when the affected person came to the corner of the alcove.

60. The time lapse between the first and second volley was about 22 seconds. In that time frame the affected person lay prone on the ground with his hands over the top of his head. Cst [REDACTED] can be seen alternately looking through the scope of his LLSG and over it. He is also pointing to the ground in front of him. From his testimony he is instructing him to come to the curb. Meanwhile Cst [REDACTED] is to his immediate left gesturing in a similar manner to the affected person. Again Cst [REDACTED] was not aware of his presence until some point as they move to secure him after he had been shot.

61. Cst [REDACTED] expressed his ongoing concerns for potential concealed weapons either under him or in the area, that he was dealing with a non-compliant person and by training the desired method is to control the situation for officer safety protection. That is, in this instance to have the person come to him at the curb portion of the roadway. In further explanation he adds that he would have responded in the same manner whether Cst [REDACTED] was there or not.

62. As the affected person had his hands over the back of his head while he lay prone on the ground, albeit non-compliant with the officer's demands to move to the curb, should Cst [REDACTED] have given more opportunity for him to

comply or to otherwise change his tactics? Put in the context of the legislation was the force used intentional or reckless? Was the force used unnecessary? These questions are similar to that posed in the discussion concerning the first round fired at the affected person.

63. From his evidence Cst █ acknowledges he suffers from auditory and visual exclusion when under high stress situations. To what extent does this affect the questions to be addressed of whether he abused his authority.

SUBJECTIVE EVALUATION – USE OF FORCE

64. Setting the stage for Cst █ subjective state of mind, one must be mindful that the evaluation is done with what was presented at the time and not hindsight. Thus, regardless of when he became aware of Cst █ presence or the absence of noting the affected persons hands up position, was he nonetheless performing his lawful duties.

65. The officer knew the affected person had been violent and destructive of property and was intoxicated. He ignored commands to stop. The officer also knew the affected person had discarded his bat but he continued to run and ran around the corner of an alcove. The officer was of the view he was attempting to conceal himself. He was looking around as if he was searching for a way out and a direction to run. When he revealed himself at the corner of the alcove he was shot. In explaining why he wanted him to go to the curb area of the alcove he was of the view he was alone and did not want to enter an area where he might be concealed from the assistance of other officers. Furthermore, he did not know if he might have other weapons and was uncertain of the whereabouts of his companion. Throughout he was belligerent and yelling and did not follow the officer's demands to come out to the curb until he was shot again.

66. I find the officer was forthright in giving his evidence. While he acknowledges he was not aware of Cst █ presence, he states he would have conducted himself in the same manner. Furthermore, the fact he shot the affected person immediately upon him appearing at the corner of the alcove and did not observe his raised hands does not detract from his subjective state of mind. This is particularly so given his perception that the

affected person had fled, was not compliant and his concerns for officer safety. Having considered the totality of the evidence I find the Member subjectively believed that his use of the LLSG on both occasions was a reasonable use of force as he pursued his duties to arrest the affected person.

OBJECTIVE EVALUATION – USE OF FORCE

67. The next step is whether the officer’s subjective beliefs when objectively considered were reasonably held.

68. It is to be remembered that the police are duty bound to act and do so in potentially stressful circumstances with unpredictable exigent circumstances continually changing. They are not expected to measure the amount of force used “with exactitude” nor is the evaluation done “with hindsight” as stated in *Akintoye v White* (supra). At para 102 these words are again noted:

... Put another way, they are not required to use the least amount of force necessary to achieve a valid law enforcement objective. Although entitled to be wrong in judging the degree of force required, an officer must act reasonably (Crompton V Walton, 2005 ABCA 81 (CanLII) at para. 22). The common law accepts that a range of use of force responses may be reasonable in a given set of circumstances (Bencsetler v Vancouver (Cit), 2015 BCSC 1422 (CanLII) at para. 153). The reasonableness, proportionality and necessity of the police conduct are assessed in light of those circumstances, not based on hindsight.

69. Relevant to the objective analysis are a number of assessments done with training practise standards and policy in mind. Sgt [REDACTED] determined his decision to use the LLSG was in accordance to VPD Regulations and Procedure Manual 1.2.1 Use Of Force Justification. In Sgt [REDACTED] opinion, an instructor for Patrol Tactics Training at the Justice Institute of BC Police Academy, who was presented as a person with special knowledge in matters involving use of force and threat assessment, stated Cst [REDACTED] had conformed to best practise. Sgt [REDACTED] noted that the National Use Of Force

Model Framework (NUFF) is a model designed to address the appropriate type of force once a subject's behavioural type has been identified. It is a shifting analysis depending on how the subject is responding. For Cst ■ his personal assessment conformed to this model and his decision to use the LLSG, an intermediate weapon for compliance purposes, was appropriate as determined by Sgt ■■■■■

70. As a note in observation of the NUFF assessment and the other training practise standards, policies and evaluations, collectively they provide a baseline of how a reasonable officer might exercise his judgement. Findings of facts will determine the objective appropriateness of the conduct under review.

71. Also introduced in the FIR is an article by a psychologist's which speaks about stressful situations an officer might face which results in not being observant of all surrounding events due to tunnel vision. Admissibility is problematic for this type of evidence. There are numerous evidentiary hurdles. The attempt to use this academic study on neurophysiological factors to explain and give evidential strength to cognitive and perceptual distortion is filled with weakness. This type of evidence has not been tested for its credibility or trustworthiness. The author has not been subjected to filtering of his expertise nor has any finding of admissibility been made. To accept the proposition of stress induced circumstances causing perceptual and cognitive distortion as a measurement of objective reasonableness standards usurps the filtering function of assessing acceptable evidence.

72. Nonetheless, the general notion of the effects of stress and the ability to carefully note one's situational awareness is an element I am alert to. It is an aspect of the overall weight which might be applied to observations claimed to be seen or missed. It is part of the assessment of credibility and reliability and how that might be evaluated upon the whole of the evidence which includes the exigencies of the moment. Thus, if the obvious presence of Cst ■ was not observed or the raised hands by the affected person were missed, these are aspects that are weighed for credibility and reliability purposes when examined collectively with all the evidence presented.

73. It informs whether the choices made when objectively considered and on the balance of probabilities is appropriate in all the circumstances. In this regard his training and experience adds another layer to this part of the assessment.

74. What he should or ought to have done or seen is not the test. This is hindsight. (see *Akintoye v White* (supra)) The test is on the balance of probability and upon the entirety of the evidence, was it clear, compelling and cogent. Weighed is his training and police experience measured against a standard set by a reasonable police officer with similar training and experience and confronted by similar circumstances. Thus was the conduct when objectively considered reasonable, proportional and necessary.

75. In all the circumstances objectively considered, I find the officer's subjective beliefs were reasonably held. The officer's evidence gap in not seeing Cst ■ does not negatively affect his decision to pursue the course of action he undertook by the use of his LLSG to gain compliance. He was duty bound to arrest the affected person and the force used was within the parameters of police policy, training and the law. His expressed officer safety concerns remained whether Cst ■ was present or not. Furthermore, given the exigencies of the moment, the fact he did not see the affected person with hands up at the corner of the alcove does not negatively affect this objective assessment.

INTENTIONAL OR RECKLESS FORCE - SERIOUS BLAMEWORTHY CONDUCT

76. While it may perhaps be said he acted somewhat precipitously it is not intentional or reckless conduct when he shot him at the corner of alcove. It must be remembered the officer was in hot pursuit. The CCTV does not reflect the officer's state of mind as he notes he was uncertain of what the affected person was about to do after he rounded the corner of the alcove other than his perception that he was hiding and looking for a way out. Again officer safety and pursuit of duty are extant considerations. The fact the affected person had disposed of one weapon - the bat – does not alleviate ongoing officer safety concerns of other potential weapons or the

possible threat of his companion's return. Furthermore, the law recognizes that the force used need not be measured with exactitude nor should an officer be held to a standard of perfection. I find his response to the situation, objectively considered, was reasonable, proportional and necessary. The issue and assessment of serious blameworthy conduct does not arise in this instance.

CONCLUSION – MISCONDUCT ALLEGATION #1 - UNSUBSTANTIATED

77. I conclude given the totality of the circumstances Misconduct Allegation #1 has not been substantiated.

THE EVIDENCE – MISCONDUCT ALLEGATION #2 – CST ■

78. Cst ■ is the subject of Misconduct Allegation #2. The antecedent facts giving rise to this allegation are essentially the same as that described earlier. This officer is currently 30 years old. On the date under review he had about 4 years of service with VPD. He was the driver of a police vehicle that had responded to the complaint about the affected person. When they chased him Cst ■ was out of his sight. Enroute he heard the sound of gunshots. He did not know its origin and his concerns for officer safety became pronounced. When he arrived at the alcove he was then unaware whether the affected person still had the bat or any other weapons. He reiterates the commands made by Cst ■ for him to crawl out from the alcove noting he was non-compliant. After being shot he crawls out to the curb area of the alcove. In the course of taking control of him and after he was placed in handcuffs the CCTV video camera 2 and 3 records the officer rise from his kneeled position. It is then the video shows him make a motion with his right foot towards the affected persons head/shoulder area. The affected person's body moves in response. It is low impact. The affected person does not make any reference to this in his statement.

79. From Cst ■ statement of March 16, 2022 he had no recollection of any contact his foot may have had with the affected person until after seeing the video. He explains it to Sgt ■ in this manner:

... After looking at the video, he stated he stood up and stepped over the affected person's head. It looks like his foot might have brushed the affected person's head, but at the time he had no intention of this and wasn't even aware of it. He was unaware of even making a "collision" with his facial region. Again, he stepped over, adjusted his stance and it looks to him like when he adjusted his stance, his foot might have brushed the affected person's face.

80. At trial, he describes that by training he places his knee on the affected person's upper back. The objective is to get as close as possible to minimize his body movement and any attempt to flee. He goes on to describe he then took the affected person's right hand and next his left and placed them into the handcuffs. He also adds that he had just finished sprinting 300 meters up a staircase and was concerned for Cst ■ wellbeing. His adrenaline was heightened.

81. From his trial evidence he agrees that the video shows his foot made contact with the affected person's head but there was no intention to strike him. He explains it was only incidental contact as he trying to adjust his stance for balance as he stood.

DISCUSSION – FINDINGS OF FACT

82. I am mindful that the affected person was intoxicated. The evidential weight of his evidence is treated cautiously. While he does not relate being struck the CCTV video suggests otherwise. It shows what appears to be a deliberate motion by Cst ■ to kick the affected person. However, these facts are in conflict given the evidence heard and his earlier statement. Furthermore, the opportunity to have observed the officer give his testimony is invaluable in assessing credibility and reliability.

83. As well, I am mindful of the value of CCTV video evidence can be quite variable as commented earlier in this judgement. Cropping, slow motion and zoomed images may distort or add evidential strength to what has occurred. It is noted from one of the CCTV videos played at normal speed and without a zoomed image the kicking incident is not clearly perceptible.

Additionally the careful and fulsome explanation provided by Cst ■ gives context and meaning to what had occurred.

84. I find Cst ■ is a credible and reliable witness. Upon the whole of the evidence and on the balance of probability his evidence of innocent contact is reasonable and believable. Given this finding of the facts it is unnecessary to evaluate the subjective/objective considerations.

CONCLUSION – MISCONDUCT ALLEGATION #2 - UNSUBSTANTIATED

85. I conclude given the totality of the circumstances and the absence of culpable evidence Misconduct Allegation #2 has not been substantiated.

THE EVIDENCE – MISCONDUCT ALLEGATION #3 – CST ■ AND ■

86. Both Cst ■ and ■ are subject to Misconduct Allegation #3. After the affected person was handcuffed he was left lying on the road in the prone position next to the curb area of the alcove. The officers were waiting for the arrival of a patrol car as they intended to search him. From the video upon its arrival Cst ■ can be seen to be pulling the affected person from the ground to a standing position. The officer noted he was belligerent and hostile. Meanwhile Cst ■ can be seen to his right.

87. As Cst ■ was on the left side of the affected person he placed his left forearm over his neck area while his right arm is holding the affected person's left arm. He explains it is a means of controlling body movement. He noted as well the affected person had been trying to turn to speak and through his speech was spittle, noting that prior he had been spitting but he added it was unknown if this was intentional or due to his intoxicated state. It was another element he was mindful of to keep control of the affected person. When told he was going to be walked to the police vehicle for a search the officer observed he refused to listen and did not walk freely. He was dragging his feet. He was not cooperative. He describes him as passive resistant as he was not walking freely and pushing back. The video appears to confirm this subjective assessment. However, from the affected person's statement he notes his leg hurt him.

88. Explaining why he had this type of control over the affected person's head, by experience he had witnessed other officers had been headbutted even though handcuffed. He was trying to avoid being assaulted. He was concerned not only about officer safety but the safety of the affected person as well. He did not want him to run off with cuffs on knowing he was intoxicated. Furthermore, he did not want him to flee again given his earlier flight from the police.

89. Cst [REDACTED] also explained he had to apply more effort in this process as Cst [REDACTED] was unable to fully assist. He was encumbered by his shotgun in his right hand.

90. The video shows the affected persons upper body area impact the car hood first and then his face all the while with Cst [REDACTED] arm over his neck area. Cst [REDACTED] describes the affected person's hip struck the hood of the vehicle which "broke his body posture" and from his statement of March 16 "... causing his torso to go over the hood." He did not believe that the affected person's face struck the hood.

91. From the affected person's statement this is noted:

A. I was following all their orders right - they tell me to crawl - they tell me to stand - I stand - and I can't stand on my leg cause my leg is so paining me right now - so can you help me - yes yes they help me - and they just put my head on that uh uh car - the car bonnet - like they bumped me on that.

Q. Yah. Do you think they did that too hard?

A. Yah - my ear is paining for 2, 3 days.

Q. Yah. And when they pushed you against the car what part of your body hit the car

A. My face - like my right side of face.

Q. The right side of your face

A. Yah

92. Cst [REDACTED] also states that at no time was he acting to punish the affected person given his earlier flight from police nor did he intend to hurt him.

93. From Cst [REDACTED] he describes having been horse kicked, spit at and otherwise assaulted in the course of moving an arrested subject to police vehicles for search purposes. Thus collapsing their posture makes these types of non-complaint resistive persons easier to control. He remarked the affected person was throughout belligerent, intoxicated, aggressive and yelling.

94. He observed that as he was assisting in moving the affected person to the police vehicle he was stiff, rigid – not moving in a compliant manner.

95. In Cst [REDACTED] opinion he did not use strength nor did he intend to forcefully put the affected person on the car. Furthermore, he was not angry at him nor he was acting in some punitive fashion against him. He said the same of Cst [REDACTED] interaction with the affected person.

96. Sgt [REDACTED] presented his assessment of the officers conduct through the National Use of Force Model (NUFF). From this the affected person falls between passive resistant and active resistant behaviour. He concludes given the behaviour of the affected person there was a reasonable risk of assault from him. By NUFF given the potential risk of an assault on the officers the use of controlled force to take control of him by getting him over the hood of the police car was justified.

DISCUSSION – FINDINGS OF FACT

97. The video is quite brief in duration for this incident. From the time stamp of the CCTV it is only about 4 seconds. The video suggests the affected person was compliant as he lay, handcuffed at the curb by the alcove. However, as previously discussed, such evidence must be carefully reviewed keeping in mind its various strengths and weaknesses. This is tested against other evidence as related by both officers. They paint a

picture of a person who continued to be defiant, belligerent, intoxicated and uncooperative. The video alone does not paint a complete picture of what was occurring. As previously, found both officers are credible and reliable witnesses and noting as well the decreased level of credibility of the affected person given his state of intoxication.

98. One aspect that requires some comment is the observation made by both officers that the affected person was stiff and uncooperative, not walking freely as he was moved towards the police vehicle. Passive resistance was the phrase used by Cst █ in his trail evidence. Indeed the video appears to confirm this uncooperative attitude. Again from the video, there is a sense that without the officer's firm grip the affected person seems to have been reluctant to get up into a standing position and to move unassisted.

99. Nonetheless, in counterpoint the affected person had explained in his statement he could not stand as his leg hurt him. Certainly a reasonable explanation given the fact he had just been shot twice on his legs. However, neither officer was of the view he was injured.

100. As between the two officers it is appropriate to determine each person's level of culpability. The evidence points to Cst █ He was the one who initially pulled the affected person up from the ground. He notes Cst █ still had his shotgun in his right hand and thus had a lesser level of control and force. Cst █ expressed that circumstances dictated that he took on the task of a higher level of control. Indeed as one reflects on the CCTV evidence what is depicted reinforces this point of view.

101. Upon the whole of the evidence and on the balance of probabilities I find that Cst █ was not a party to this allegation of misconduct. Having made this decision it is unnecessary to evaluate his subjective/objective considerations.

102. Cst █ was careful to state in his evidence that as they came to the police vehicle it was the affected person's hip which struck it first which in turn "broke his body posture". From his statement of March 16, 2022 these additional words are noted: "... causing his torso to go the hood." He

did not believe that the affected persons face struck the hood of the car. The CCTV video suggests otherwise. Further noted are the affected person's statement that the right side of his face had struck the hood which caused him ear pain for 2 - 3 days.

SUBJECTIVE EVALUATION – USE OF FORCE

103. As previously discussed, this part of the analysis addresses Cst [REDACTED] state of mind at the time of the incident and not with the rear view mirror of hindsight. Thus regardless of whether the affected person's complaint of a sore leg is due to having been shot was the causation of his reluctant behaviour in standing or whether or not his face had impacted the hood of the police car, was the officer nonetheless performing his lawful duties.

104. Cst [REDACTED] knew the affected person had been violent, had a weapon and was intoxicated at the time he was initially responding to the 911 call. Furthermore, he had a demonstrated pattern of non-compliance in the course of the evening's events. He failed to stop when commanded to go so and did not follow Cst [REDACTED] demands to crawl to the curb of the alcove area until force was applied. At the curb while waiting for the arrival of the police car he continued to be belligerent and yelling. In this instance it matters not what he was like after he was searched on the hood of the police car nor that he then seemed compliant.

105. While the affected person complains that he could not stand due to his leg hurting him, this would not have been within Cst [REDACTED] knowledge as it was not made known to him. It is noted from the officer's evidence it was his belief that the affected person's face did not strike the hood of the police car, contrary to what was seen on the CCTV. His subjective belief versus reality is noted to be in conflict. Further noteworthy however, is he was dealing with a non-compliant, intoxicated, belligerent person. His concerns for officer safety and that of the affected person were well founded. Adding to his subjective belief was the resistive manner which the affected person demonstrated as he was being walked to the police car. Upon the whole of the evidence I find the officer subjectively believed that his use of force in the course of completing a search was reasonable.

OBJECTIVE EVALUATION – USE OF FORCE

106. The assessment next turns to whether Cst [REDACTED] subjective beliefs were objectively reasonably held.

107. I have already reviewed the law and will not re-examine its details. Only to be reminded that an officer has a duty to enforce the law and do so in an environment with unpredictable exigent circumstances. They are not expected to measure the amount of force used “with exactitude” nor is the evaluation done “with hindsight” in mind.

108. NUFF is also another element to be weighed in determining whether the officer acted reasonably.

109. While mindful that the affected person had been shot with the LLSG there is nothing in the evidence to say that Cst [REDACTED] should have known he was injured. He certainly did not complain until his statement. Objectively considered, he presented as belligerent and intoxicated. He had fled from the police and was not compliant until the LLSG was used. The CCTV video is an incomplete record for it does not record his ongoing confrontational attitude as described by the officers while he was prone on the ground waiting for the arrival of the police car. Furthermore, the subjective view that the affected person continued to display a recalcitrant attitude is objectively reasonably held as he required support into a standing position and was stiff, uncooperative and not walking freely as they escorted him to the vehicle. While the CCTV video suggests there was a deliberate and distinct use of force as the affected person’s head struck the hood of the vehicle, in all the circumstances, the officer’s firm hold of him and the manner of placing him over the hood of the vehicle is a reasonable use of force. As I have previously found, Cst [REDACTED] was a reliable and credible witness. He held no malice nor was he reacting out of anger. His use of force was informed by the affected person’s prior and ongoing belligerence. His officer safety concerns and for that of the affected person remained extant – and thus the need for a proper search at the police vehicle. Furthermore, his training and past experience gives weight to the cautious manner he adopted of firmly escorting the affected person.

110. Measured against a reasonable police officer of similar training, experience and scenario plus the positive NUFF assessment I find, when objectively considered, Cst's ■ conduct was reasonable, proportional and necessary. I do not make a finding that the affected person's face was deliberately pushed onto the hood of the car. The force used and momentum are reasonable explanations for what had occurred as the officer pursued his duties. Even if it could be said that the affected person's face upon hitting the hood of the car was excessive, an officer is not expected to measure the amount of force used "with exactitude." (*Akintoye v White* (supra)) nor should he be held to a standard of perfection. In all the circumstances, objectively considered, I find the officer's subjective beliefs were reasonable, proportional and necessary.

111. Given these findings it is unnecessary to review the question of serious blameworthy conduct.

CONCLUSION – MISCONDUCT ALLEGATION #3 - UNSUBSTANTIATED

112. With regard to Cst ■ I conclude given the totality of the circumstances and the absence of culpable evidence Misconduct Allegation #3 has not been substantiated.

113. With regard to Cst ■ I conclude given the totality of the circumstances Misconduct Allegation #3 has not been substantiated.



Brent G. Hoy
Discipline Authority

