

June 23, 2025

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

AND

IN THE MATTER OF A DISCIPLINE PROCEEDING UNDER SECTION 124

AND

IN THE MATTER OF AN ALLEGATION OF MISCONDUCT AGAINST
CONSTABLE [REDACTED] AND CONSTABLE [REDACTED]
OF THE VANCOUVER POLICE DEPARTMENT

DISCIPLINE AUTHORITY'S FINDINGS AND REASONS UNDER SECTION 125(1)(b)
(Supplement to Form 3)

TO: Constable [REDACTED] Member

AND TO: Kevin Westell Counsel
Counsel for [REDACTED]

AND TO: Constable [REDACTED] Member

AND TO: Clair Hatcher Counsel
Counsel for [REDACTED]

AND TO: Prabhu Rajan Commissioner
Police Complaint Commissioner

I. Discipline Proceeding – the allegation of misconduct against the members.

1. This Discipline Proceeding pursuant to sections 123 to 125 of the Police Act pertains to an allegation of misconduct against Constable [REDACTED] and Constable [REDACTED]. The allegation, which is set out below, concerns whether the members intentionally or recklessly used unnecessary force on November 24, 2022 during the arrest of [REDACTED] [REDACTED] Constable [REDACTED] a Vancouver Police Department (VPD) dog handler, deployed [REDACTED] police dog during the arrest of Mr. [REDACTED]. The dog bit Mr. [REDACTED] causing injuries. Constable [REDACTED] was also involved in the arrest. [REDACTED] discharged [REDACTED] police weapon, described as a less lethal beanbag shotgun, at Mr. [REDACTED]. Mr. [REDACTED] was struck four times by shotgun projectiles. Mr. [REDACTED] was eventually taken into custody by the police and later treated in hospital for his injuries.

II. History of Proceedings

2. On November 25, 2022, the Office of the Police Complaint Commission (OPCC) received information from the VPD pursuant to section 89 of the Police Act in relation to an incident that occurred on November 24, 2022. Clayton Pecknold, the Police Complaint Commissioner at the time, ordered an investigation pursuant to the Police Act. In his Order For External Investigation he stated:

According to the VPD's General Occurrence (GO) report, VPD members conducted a high-risk traffic stop of a taxi transporting a male named [REDACTED] ("affected person") to effect an arrest for breach of probation. The affected person exited the taxi after some delay and was reported to be uncooperative and aggressive with

VPD members. Acting Sergeant [REDACTED] deployed less-lethal beanbag shotgun rounds at the affected person. The affected person then sat on his buttocks with his torso facing away from police and according to the VPD refused police commands to get on his stomach. Acting Sergeant [REDACTED] deployed an additional beanbag round to the affected person.

According to the GO, Constable [REDACTED] then deployed a Police Service Dog (PSD) to prevent the affected person from getting back into the taxi and from continuing to reach into his waistline. VPD members subsequently took control of the affected person and Constable [REDACTED] directed the PSD to release its grip.

Our office has also reviewed video footage of the incident which captures aspects of the arrest of the affected person. The videos depict the use of the less lethal shotgun as well as the deployment of the PSD while the affected person appears to have his hands up and visible to the officers. The video raises concerns that the behavior of the affected person may not support a justification for the level of force employed and some or all of the force employed may therefore be excessive.

3. Commissioner Pecknold was of the opinion that the conduct alleged against the members, if substantiated, would constitute misconduct and could potentially be defined as intentionally or recklessly using unnecessary force on any person contrary to section 77(3)(a)(ii)(A) of the Police Act.
4. On December 20, 2022 Commissioner Pecknold ordered that the alleged misconduct be investigated by the West Vancouver Police Department. Chief Constable Lo of the West Vancouver Police Department appointed Sergeant [REDACTED] to investigate the matter. Inspector [REDACTED] was

appointed the Discipline Authority pursuant to section 93(1)(a) and section 93(1)(b)(ii) of the Police Act.

5. On April 9, 2024, Sergeant [REDACTED] (Sgt. [REDACTED]) submitted his Final Investigation Report (FIR) to the Discipline Authority. Sgt. [REDACTED] concluded that the evidence did not prove on a balance of probabilities that Constables [REDACTED] and [REDACTED] committed the alleged misconduct.
6. On April 23, 2024, Inspector [REDACTED], as the Discipline Authority, issued his decision pursuant to section 112 of the Police Act. Inspector [REDACTED] determined that the evidence in the FIR did not appear to substantiate the allegation pursuant to section 77(3)(a)(ii)(A) of the Police Act.
7. On May 22, 2024 Police Complaint Commissioner Rajan reviewed the allegation and the alleged conduct and considered that there was a reasonable basis to believe that the decision of the Discipline Authority was incorrect.
8. On July 25, 2024 Commissioner Rajan appointed me to review the investigating officer's report, the evidence and the records pursuant to section 117 of the Police Act.
9. On September 11, 2024 I decided the evidence appeared sufficient to substantiate the allegation and a Discipline Proceeding was ordered.
10. The Discipline Proceeding convened on November 13, 2024 and was adjourned from time to time pursuant to section 123(10) of the Police Act. Constables [REDACTED] and [REDACTED] testified on April 22, 2025. Counsel's written submissions were delivered on June 4, 2025. The Discipline Proceeding was adjourned to June 12, 2025.

11. Pursuant to section 125(1) this decision is due by June 26, 2025.

III. Allegation and the Police Act

12. The allegation of misconduct pursuant to the Police Act that is relevant to this Discipline Proceeding is set out in Section 77 (1). "Misconduct" means:

(3) Subject to subsection (4), any conduct described in the following paragraphs constitute 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

13. Section 125(1)(a) requires me as discipline authority to decide, in relation to the allegation of misconduct, whether the misconduct has been proven. Applicable case law establishes that the standard of proof is a balance of probabilities, and the question is whether there is clear, cogent and convincing evidence establishing that the actions of the members amount to misconduct.

IV. Evidence

14. The records considered in this proceeding consist of the FIR, cell phone videos and accompanying documents. As well, I have considered the

testimony of Constables [REDACTED] and [REDACTED] and the written submissions of counsel.

V. Discussion of the Evidence

15. In my section 117 decision (paragraph 15) I referred to the Record and described the arrest of Mr. [REDACTED]. After reviewing the FIR and the records referenced in it and considering the testimony of Constable [REDACTED] and Constable [REDACTED] I am satisfied the circumstances surrounding the arrest are as follows:

- a) On November 24, 2022, VPD Constables [REDACTED] and [REDACTED] saw [REDACTED] getting into a taxi in the Downtown Eastside of Vancouver. Constable [REDACTED] knew Mr. [REDACTED] had an outstanding breach of probation charge. The two officers pulled the taxi over and called for other police to assist in arresting Mr. [REDACTED]. Constable [REDACTED] who was an acting Sergeant at the time, arrived and assisted Sergeant [REDACTED] who was coordinating the arrest. Several more VPD officers arrived at the scene including Constable [REDACTED] a VPD dog handler, who had [REDACTED] police service dog (PSD [REDACTED] with [REDACTED] in [REDACTED] police vehicle.
- b) Constable [REDACTED] described the scene as a Code 5 traffic stop. [REDACTED] testified, "it means a high risk vehicle stop that is rare and dangerous".
- c) Mr. [REDACTED] was well known to the VPD. He had a criminal record, was believed to be involved in drug trafficking as a member of the [REDACTED] gang and was considered to be armed and dangerous.

- d) Shortly after the taxi was pulled over, the driver Mr. [REDACTED] quickly ran from the taxi. Constable [REDACTED] said the driver appeared terrified. Mr. [REDACTED] remained seated in the rear of the taxi for about five to six minutes and appeared to be speaking on his cell phone. During this time he was repeatedly told by the police to get out of the vehicle. A crowd of onlookers gathered and some of the people were taking cell phone videos of the incident.
- e) At approximately 14:18 hours Mr. [REDACTED] exited the taxi, left the rear passenger door open and turned to face the group of officers, which included Constable [REDACTED] and Constable [REDACTED]. Constable [REDACTED] was holding PSD [REDACTED] by [REDACTED] harness. Constable [REDACTED] explained that several officers -a pod- were standing at the rear of one of the police vehicles. Some of the officers had their firearms drawn and pointed at Mr. [REDACTED]. Constable [REDACTED] also had a weapon. [REDACTED] described [REDACTED] weapon as a less lethal shotgun which, I am satisfied, is a type of shotgun used by the police that shoots beanbag projectiles designed to create temporary motor dysfunction of a resistant suspect in order to gain control.
- f) There are several videos included in the Record. Two of them are particularly relevant. The first video, which records 79 seconds of the incident, begins as Mr. [REDACTED] is standing by the taxi. His arms are at his side at waist level and he does not have a weapon in his hands. As I said in my earlier section 117 decision,

“although the audio portion of the video does not capture all that is said, I accept that Mr. [REDACTED] is telling the police to “go ahead and shoot me” and the police are yelling, “get down, get

on the ground". This standoff lasts for a brief period of time and then Mr. [REDACTED] turns to his right, takes a step towards the taxi with his arms and hands raised at shoulder level. At this point Constable [REDACTED] discharges [REDACTED] shotgun and Mr. [REDACTED] legs buckle. He looks back toward the police and appears to be hit twice more by beanbag projectiles. He falls to the pavement out of sight. For the remaining 60 seconds of this video Mr. [REDACTED] is not visible; however with 37 seconds left on the video one can hear another shotgun discharge."

- g) Constable [REDACTED] said [REDACTED] observed Mr. [REDACTED] standing by the open taxi door and as Mr. [REDACTED] turned towards the open door the member decided that it was too dangerous to let Mr. [REDACTED] access the taxi. Constable [REDACTED] described the scene:

So as he turns towards it there's a police term called area of control. So that part of the taxi that [REDACTED] was previously in, I have no idea what's in it. And [REDACTED] turns towards it. So I'm thinking, is he going to take something from that area or is he going to go into the taxi or maybe possibly drive away at a -- you know, and cause some sort of police issue. So there was no way I was going to allow [REDACTED] [REDACTED] to go into an area of control that I can't control.

I -- in my opinion, as he turned towards the taxi, that's when he became a very high level of assaultive on the use of force continuum. I advised the police officers that were beside me that I was going to deploy my beanbug -- "beanbug"; beanbag shotgun.

I shot one round. And then I made an

assessment, there was no behaviour change. Second beanbag deployment, I assessed, there was no change. Third beanbag, I made -- deployed, I made an assessment. He then went, fell to the ground. And then he fell in such a way that his body was angled kind of - oh boy, here we go - orthogonal to the taxi, which is diagonal. And so I couldn't control the left side of his body. And then I could see him kind of moving his left side of his body. I was thinking is he trying to reach into his pocket?

And so, as you can tell from the video, there's a pause and that's me trying to figure that out. And then I made that assessment, I'm going to deploy a beanbag here. So then I fired my fourth and final beanbag. And then his -- he kind of -- shocked. And then at that point (inaudible) assessed. And I thought, mmm, you know, I've kind of done everything less -- like a beanbag shotgun can do, I think we're going to have to go to higher levels of force here. Because also while this is happening, commands are being provided by our (inaudible) and he is non-compliant throughout the whole thing.

- h) The second relevant video records 30 seconds of the incident and was taken from a second story location. It shows Constable [REDACTED] reloading the shotgun and shooting Mr. [REDACTED] a fourth time. Constable [REDACTED] explained [REDACTED] needed to control Mr. [REDACTED] who was now lying on the pavement but was not complying with the police commands.

- i) The 30 second video also shows Constable [REDACTED] in the pod with PSD [REDACTED] [REDACTED] initially appears to be kneeling and holding the dog by its harness. The pod of officers is standing at the rear of a police vehicle about 1½ car lengths away from where Mr. [REDACTED] is lying on the pavement. Constable [REDACTED] is seen reloading the shotgun with 19 seconds left on this video. Constable [REDACTED] is now standing next to [REDACTED] Constable [REDACTED] fired [REDACTED] shotgun a fourth time and the sound of the discharge is heard 20 seconds into the video.
- j) Constable [REDACTED] testified [REDACTED] was kneeling in the pod holding PSD [REDACTED] while [REDACTED] watched Mr. [REDACTED] lying on the pavement after being hit by the third beanbag. [REDACTED] said [REDACTED] could not see Mr. [REDACTED] hands. Constable [REDACTED] said [REDACTED] was assessing whether Mr. [REDACTED] was going to comply with the command to get on his stomach with his arms out. Constable [REDACTED] fired the fourth beanbag with 10 seconds left on the video. Constable [REDACTED] testified Mr. [REDACTED] sat up but did not lie down on his stomach with his hands out. Instead of complying with the police command he sat up and at this point [REDACTED] decided Constable [REDACTED] less lethal weapon was not effective and [REDACTED] needed to deploy PSD [REDACTED] to take Mr. [REDACTED] into custody. [REDACTED] said, "I decided to send and gave the command to bite". With 5 seconds left on the video Constable [REDACTED] and the dog are seen moving towards Mr. [REDACTED] Mr. [REDACTED] who is now sitting up with his back leaning against the rear passenger tire of the taxi, has his arms extended at waist level. His hands are visible, he has no weapon in either hand and he is looking at Constable [REDACTED] and the dog approaching from about 10 feet away. Constable [REDACTED] has PSD [REDACTED] on a short leash and with 3 seconds left on the video the dog bites Mr. [REDACTED] leg as other officers are moving in to subdue and handcuff Mr. [REDACTED]

- k) Constable ██████ testified that at no time prior to PSD ██████ making contact on the bite did ██████ perceive Mr. ██████ to be compliant.

██████ testified:

I think there is some conception into police using use of force, specifically with canines, is that we get some sort of enjoyment in this and that this is our goal at the end of the day. And that when I drive to a call or a scene, I've already formulated the fact that I'm going to bite this guy. That's not the case.

Here I am sitting in a room explaining myself because of this general idea that we do this on purpose and try and manipulate the rules and regulations and laws to fulfill that urge or that need. That's not the case. Biting a subject is not the end goal. Sometimes it's necessary in order to execute our duties and to provide safety to the public, the subject and us.

But up until a fraction of a second before this, I did not want to bite him. I still didn't want to bite him. I had no intention on biting him. It was only him that dictated this and how it progressed. And at no point did I feel he was surrendering, going to surrender, or I could predict that this was going to end in a surrender. That's why I allowed another form of less-lethal to be used. That's why we let him sit in the cab for so long, instead of moving up as a pod, smashing the windows and then firing a bean bag through the window. Or, which I have done before, fired my dog through a broken window of a vehicle. We do not do that. [We] allowed him to sit in the cab on his own volition. Allowed him to stand outside the cab, given the fact

that there was a risk. Because we're constantly reassessing what he's doing in body language, in communication. We're giving him a stimulus, a form of either presence, communication or use of force, and we're seeing how he reacts. At no time during this entire progression did he show any signs of surrender or compliance, including and up until him sitting up and putting his hands down by his side, to which point I make the decision to send. Only after the dog has made contact with his leg does he finally give any sort of minute body language as if he's going to submit or surrender or comply

█ also said that at no point on █ approach towards Mr. █ which is recorded on the final 5 seconds of the video, did █ consider calling off or aborting the approach.

VI. The Law

16. I am satisfied the evidence proves Constable █ and Constable █ had reasonable and probable grounds to arrest Mr. █ for breach of probation. In OPCC File No. 2016-11867 Adjudicator Carol Baird Ellan reviews the test to be considered under section 25 of the Criminal Code. At paragraph 32 she states:

“The investigating officer considered the member’s actions from the point of view of whether the arrest complied with Section 25(1) of the Criminal Code. In the recent case of *Akintoye v White* 2017 BCSC 1094 Fleming J. considered the test under Section 25. She stated:

[97] Section 25(1) is not a source of extra police powers. Instead it operates to justify the use of force when a police officer’s conduct

is permitted pursuant to a separate statutory or common law power.

[98] The defendants accept that under s. 25, they bear the onus of proving on a balance of probabilities, three requirements described in *Chartier v. Graves*. [2001] O.J. No. 634 at para. 54(S.C.), as follows:

1. the officer's conduct was required or authorized by law in administering or enforcing the law;
2. he or she acted on reasonable grounds in using force: and
3. he or she did not use unnecessary force.

[99] The third requirement focuses on the level or degree of force used.

[100] In *R v. Nasogaluak*, 2010 SCC 6 (CanLII), the Supreme Court of Canada specified the degree of "allowable" force is constrained by the principles of proportionality, necessity and reasonableness, cautioning: "courts must guard against the illegitimate use of power by the police against members of our society, given its grave consequences" (at para. 32).

[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 (City)*, 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.”

17. Section 125(1)(a) requires me as Discipline Authority to decide, in relation to the allegation of misconduct, whether the misconduct has been proven. This Police Act hearing is a civil process. The applicable case law establishes that the standard of proof is a balance of probabilities, and the question is whether there is clear, cogent and convincing evidence establishing that the actions of the officer amount to misconduct. (*F. H. McDougall* (2008) SCC 53)
18. Counsel for the members relies on the decisions in *R. v. Nasogalauk*, *Anderson v. Smith*, *Breen v. Saunders*, *Levesque v. Zanibbi*, *Tiwana* and *Berntt v. City of Vancouver*. I have considered those authorities and I am satisfied the legal principles expressed therein are applicable to this Discipline Proceeding. I agree the police should not be judged against a standard of perfection (*Nasogalauk*), that consideration must be given to the circumstances as they existed at the time (*Anderson v. Smith*), that it is both unreasonable and unrealistic to impose an obligation on the police to

employ only the least amount of force which might successfully achieve their objective (*Levesque v. Zanibbi*) and that an analysis, referred to as the “doppelganger approach”, of the officer’s use of force must not rely solely on an objective assessment but must also consider the subjective perspective of the officer (*Tiwana and Berntt*).

19. I am satisfied that, while the subjective beliefs of the members must be considered, the allegation of misconduct in section 77(3)(a)(ii)(A) must be assessed objectively to determine whether what the members believed and did was reasonable. In OPCC File No. 2016-11505 the Adjudicator discussed the meaning of recklessness in the context of the Police Act. He said:

I would add that the use in the Police Act of the word “reckless” (in both of the s. 77 subsections at issue here) is consistent with the fact the Police Act disciplinary matters involve an objective component. That is to say, the assessment of a misconduct allegation is not dictated by the individual officer’s personal intention of “good faith”, rather it also involves an objective question as to the reasonableness of what the officer believed and did. While an officer’s subjective belief will always be relevant, and may mitigate a misconduct allegation, the analysis does not start and end with the subjective component. It is necessary to assess objectively whether what the officer believed and did was reasonable.

20. In addition to the authorities referred to above I have considered the opinion of Sergeant [REDACTED] the National Use of Force Framework and the Provincial Police Standards and the Vancouver Police Regulations, which deal with the use of police service dogs and the obligations and

responsibilities of the dog handlers and the use of less lethal shotguns and the obligations and responsibilities of the officers using these weapons. As well, I have considered counsels' submissions regarding the decisions in *Lowe v. Diebolt*, *Scott v. Police Complaint Commissioner* and *Lobel and Hoang* that establish that there must be serious blameworthy conduct and not simply a mistake of legal authority alone in order to prove misconduct. Ms. Hatcher also referred to several decisions regarding the deployment of police service dogs.

VII. Submissions of Counsel

21. Mr. Westell and Ms. Hatcher submit there should be no issue or dispute regarding the circumstances of the November 24, 2022 investigation of Mr. [REDACTED]. They submit Constable [REDACTED] and Constable [REDACTED] were on duty patrolling the Downtown Eastside when they received a call to assist in the arrest of Mr. [REDACTED] whose was allegedly breaching his probation. The members attended the location to find Mr. [REDACTED] seated in the rear of a taxi, which had been pulled over by other VPD officers in a Code 5 traffic stop. Several police officers were present and commands were given to Mr. [REDACTED] to get out of the taxi and get on the ground. Mr. [REDACTED] was considered to be dangerous and a member of a drug trafficking gang. The police also believed he could be in possession of a weapon. Mr. [REDACTED] eventually exited the taxi but ignored police commands to get on the ground. He yelled at the police and said they should shoot him. The police described Mr. [REDACTED] as a large man standing 6' 3" tall and weighing around 300 pounds. He refused to comply and turned towards the taxi and it appeared to the officers he might try to re-enter the taxi. Constable [REDACTED] was concerned Mr. [REDACTED] may have access to a weapon in the taxi or may attempt to flee the scene. Constable [REDACTED] decided that it was too dangerous to permit Mr. [REDACTED]

to re-enter the taxi and fired [REDACTED] beanbag shotgun hitting Mr. [REDACTED] three times. Mr. [REDACTED] fell to the pavement. Mr. [REDACTED] continued to ignore the commands of the police and Constable [REDACTED] fired a fourth beanbag projectile at Mr. [REDACTED]. Constable [REDACTED] believed the less lethal shotgun was ineffective, as Mr. [REDACTED] was not complying. [REDACTED] ordered PSD [REDACTED] to bite Mr. [REDACTED]. Both counsel submit Constable [REDACTED] and Constable [REDACTED] subjectively believed Mr. [REDACTED] should quickly and safely be taken into custody and that Constable [REDACTED] use of the beanbag shotgun and Constable [REDACTED] deployment of PSD [REDACTED] were objectively reasonable and in compliance with the applicable VPD and provincial policies and standards and the National Use of Force Model. Counsel submit that the members' actions do not amount to intentional use of unnecessary force against Mr. [REDACTED].

22. Mr. Westell, counsel for Constable [REDACTED] in his written submission at paragraphs 36-39 states:

The Member testified to feeling that the need to control the Arrestee in the circumstances was "immediate" given the conduct he had been exhibiting and the information [REDACTED] was aware of about the Arrestee's past behaviour and associations. Immediately prior to firing the first beanbag at the Arrestee, the Member was focused on:

- (a) the agitated demeanour of the Arrestee,
- (b) the non-compliant nature of his movements in relation to the officers and their commands, the Arrestee's commands to the officers that they should "just shoot" him, and
- (c) That he had turned his body to face the open, rear-passenger door of the taxi keeping the interior of the taxi within his "area of control".

Regarding (c), the Member testified that ■ was concerned that the Arrestee might have left a weapon within the taxi – this was more than speculation, of course, since the Arrestee was known to be armed and dangerous. This concern was also heightened by the Member’s earlier observation of the extent to which the taxi driver had seemed terrified as he fled from the taxi.

DP Transcript - ■ ■ OPCC 2022-22930 - 2025-04-22, p.27.

The Member testified to firing two beanbags which each contacted the Arrestee, resulting, respectively, in no observable behavioural change. After the third round was deployed and contacted the Arrestee, the Member noted that the Arrestee fell to the ground but was turned away from the Member such that the Member could not clearly see the left side of his upper body. The Member could surmise from the way his body was moving overall that he was moving the left side of his upper body but could not tell exactly how. This left ■ with a basis for concern that the Arrestee was maneuvering to reach into his own pocket – possibly for a weapon. For that reason, ■ made the decision to fire one final beanbag at the Arrestee. ■ had no further dealings with the Arrestee and all other operational steps including the steps taken to bring the Arrestee into custody were taken by other officers without input or direction from the Member.

DP Transcript - ■ ■ OPCC 2022-22930 - 2025-04-22, pp. 27-28.

The Member testified that ■ actions as a whole were meant to avoid greater harm and were not an attempt to punish or teach the Arrestee a lesson. ■ summed up ■ overall involvement as based on a need

to protect the public from a “violent, armed and dangerous, previously combative to police person in a crowded, mid-day busy Chinatown”. ■ added that given the troubling comments the Arrestee was making, encouraging the police to shoot him, ■ felt ■ actions were necessary to place the Arrestee in custody quickly while causing the least amount of damage to him, while in turn safely managing the risk of harm to the public. ■ testified as well to ■ belief that ■ used no more force than was necessary in the circumstances.

DP Transcript - ■ ■ OPCC 2022-22930 - 2025-04-22, p.39.

23. Ms. Hatcher, counsel for Constable ■ in her written submission at paragraphs 69-75 states:

Cst. ■ was in engaged in the lawful execution of ■ duty as a peace officer when ■ deployed PSD ■

Cst. ■ acted in accordance with ■ training and the provincial standards with respect to this deployment. The decision to deploy PSD ■ was reasonable and proportionate to the very real risk of grievous bodily harm presented by ■ to himself, the police and the public.

In considering the objective reasonableness of Cst. ■ subjective belief, it may be tempting to engage in a hindsight second-by-second and frame-by-frame breakdown of all the circumstances facing Cst. ■ and PSD ■ - particularly as one views the incident via the short video clip available to us.

However, such an approach is impermissible if it demands perfection from an officer, or runs contrary to the doppelganger approach, *supra*, s. 3.1).

█ did not indicate surrender by word, gesture or body language until after PSD █ bit him. It was only then that he said “okay, okay, okay” that he started to comply. In the seconds leading up to the bite, he was baiting Cst. █ and PSD █ just as he had been baiting and attempting to incite the police during the entire call (exhibiting the “catch-me-if-you-can” mentality cited by Judge Solomon in *Kempton, supra*, para. 53).

Cst. █ made decisions in the heat of the moment according to █ training and extensive experience; █ was the opposite of reckless in █ application of force.

The deployment of PSD █ was entirely commensurate with the level of risk █ posed to Cst. █ the other officers and on scene, and most importantly, the DTES community.

24. Ms. Hatcher also submits the video evidence is of limited value. I have considered the authorities she relies on and I agree that an adjudicator only sees what the camera captures of the incident. I also agree with the comments of the Adjudicator in OPCC File No. 2010-5121 that, “ I cannot disagree with what the camera captures of an event is not what an officer sees through their own eyes and on which they base their perception of circumstances in deciding to use force ... 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”. I agree the videos have evidentiary limitations, including that the 30 second video does not capture a view of the moment when Mr. █ sits up. This video does confirm that Constable █ was initially kneeling in the pod and I accept █ could not see Mr. █ hands as he lay on the pavement. After Constable █ shot him a fourth

time, Mr. ██████ sat up. At this point with 10 seconds remaining on the video Constable ██████ is standing and ██████ testified that Mr. ██████ stomach blocked ██████ view of his left hand. I accept that ██████ perceived ██████ needed to deploy PSD ██████ I am satisfied however that as ██████ started moving towards Mr. ██████ ██████ would have seen that both of his hands were, as the video clearly depicts, empty of weapons. ██████ said the decision to deploy ██████ dog was made as Mr. ██████ sat up because Mr. ██████ would not get on his stomach and his refusing to comply was “a direct indication of further harm or potential harm that could be so grievous to a member of the public or the police”. Notwithstanding the video limitations, I find the last 19 seconds of the 30 second video are helpful and reliable.

VIII. Analysis of Constable ██████ Use of Force

25. Having considered the evidence and the testimony of Constable ██████ I find Constable ██████ subjective belief that ██████ needed to use force given the circumstances was justified and reasonable. The issue is whether, viewed objectively, the member intentionally used unnecessary force.
26. Section 25 of the Criminal Code authorized Constable ██████ when acting within the lawful execution of ██████ duties to use force provided ██████ acted on reasonable grounds and the force ██████ used was necessary for that purpose. I am satisfied the evidence proves Constable ██████ was acting in the lawful execution of ██████ duties on November 24, 2022. Mr. ██████ was known to the police to be violent and possibly in possession of a weapon. I find Constable ██████ training and understanding of the National Use of Force Model would lead ██████ to believe that Mr. ██████ behavior was actively resistant after exiting the taxi and became assaultive when he turned

towards the open taxi door. Sergeant [REDACTED] accurately described the scene as follows:

It was clear to me that Mr. [REDACTED] understood police direction, and clearly communicated his intentions. On several occasions, Mr. [REDACTED] was told that he was under arrest and was instructed how to surrender to police: i.e. show his hands, get down on his hands and knees. The next step in the progression would then be to have Mr. [REDACTED] crawl back to the arrest team and/or lay down for handcuffing; however, every instruction to him from police was interrupted with a strong "fuck you!" or other curse words. To me this confirmed that Mr. [REDACTED] could hear police commands, understood what was being asked of him, but he was being 'actively resistant' of police direction. This cycle repeated for a number of minutes....clear police direction, with a strong "fuck you" rebuttal from Mr. [REDACTED]

At this point, there was no need for police to precipitate any action. The police, public, and Mr. [REDACTED] were safe and Mr. [REDACTED] was not causing any harm to himself or anyone else.

It is my belief that Mr. [REDACTED] forced police to act when he became assaultive. This occurred when he made his first motion back towards the cab. I believed he was returning to the cab for 1 of 2 reasons:

- To retrieve a weapon (firearm, knife, or other) OR
- Attempt an escape (trying to drive the cab)

If Mr. [REDACTED] had accessed a hidden firearm, he would pose a grievous bodily harm or deadly threat to the public/police in the nearby area. Similarly, if Mr. [REDACTED] were able to put the cab in motion, he would put the nearby police/public at grave risk of harm. By ignoring police direction and making the conscious decision to

retreat to the cab, Mr. ██████ chose to fight with police. He knew what that fight was going to be, but it would be a surprise to police. It was my belief that his active resistant behavior had escalated to assaultive. Police communication was ineffective, so we were forced to use intermediate weapons and hard physical control to prevent his assaultive behavior from escalating to deadly threat to nearby public and police.

I am satisfied the evidence proves Constable ██████ reasonably believed Mr. ██████ was intentionally non-compliant, that as Mr. ██████ moved towards the open taxi door the police needed to quickly apprehend Mr. ██████ who may have access to a weapon or may try to flee, that there was no option to deescalate and that the member's force options were limited to use of the less lethal beanbag shotgun weapon given the circumstances. When viewed objectively, I find the first three shotgun rounds ██████ fired were reasonable and necessary. The video shows the rounds hitting Mr. ██████ knocking him to the pavement. I find that the shotgun rounds caused Mr. ██████ to lose motor function and effectively prevented Mr. ██████ from re-entering the taxi. Constable ██████ testified ██████ fired the fourth round because ██████ could not see Mr. ██████ hands. I am satisfied it was objectively reasonable for Constable ██████ to believe the suspect continued to be a non-complaint before shooting him a fourth time. I find his ██████ the less lethal shotgun was not reckless and was necessary. The authorities relied on by counsel establish that police actions should not be judged against a standard of perfection and officers are not required to use only the least amount of force to successfully achieve their objective. There is no clear, cogent and convincing evidence that proves Constable ██████ intentionally or recklessly used unnecessary force during the arrest of Mr. ██████

IX. Analysis of Constable ██████ Use of Force

27. Having considered the evidence and the testimony of Constable ██████ I am satisfied the member subjectively believed ██████ needed to use force - deploy PSD ██████ - because ██████ assessed Mr. ██████ behavior met the threshold as outlined in the provincial and VPD regulations to deploy ██████ police dog. The issue is whether, viewed objectively, the member intentionally used unnecessary force.
28. Section 25 of the Criminal Code authorized Constable ██████ when acting within the lawful execution of ██████ duties to use force provided ██████ acted on reasonable grounds and the force ██████ used was necessary for that purpose. I am satisfied the evidence proves Constable ██████ was acting in the lawful execution of ██████ duties on November 24, 2022. ██████ arrived on the scene with PSD ██████ to provide whatever assistance might be necessary in arresting Mr. ██████ Constable ██████ is an experienced police dog trainer and handler. I find the evidence proves ██████ training and understanding of the National Use of Force Model would lead ██████ to conclude Mr. ██████ behavior was actively resistant after he stepped out of the taxi and became assaultive when he moved toward the open taxi door. Constable ██████ understood the provincial and VPD policies and regulations regarding the use and deployment of police dogs. ██████ testified:

A The standards are reviewed minimally every year when we have to do our provincial validations. Every time I deploy my dog the standards are in the back of my mind.

Q Okay.

A It is literally how we dictate our deployments. It's literally how we dictate our work. It's how I respond to a call. Every time a police -- like, a police dog is essentially a patrol

resource or a specially sectioned resource. We do a lot of proactive policing, but our bread and butter is we are asked for as a tool. When someone asks for a canine unit over the air, as such, I make sure I get an entire rundown and be educated on the call and who I'm dealing with as a subject. And in that assessment I take all those facts and I figure out where I fit in, as far as the regulations and procedures, based on VPD and provincial standards.

Q Okay. With respect to the threshold of using or deploying PSD [REDACTED] and this is, I'm at page 74 of the FIR, under 1.4.2, "Threshold and Circumstances of Police Dog Use", it says in Part 1, "Prohibit..." so this is a restriction:

"Prohibit police dog handlers from permitting a police dog to bite a person, and prohibit dog handlers from permitting a police dog to continue to be deployed if it would reasonably be expected that the police dog would bite a person, unless:

- (a) The person is causing bodily harm to an officer, a third party or the police dog;
- (b) The police dog handler is satisfied, on reasonable grounds, that the person's behaviour will imminently cause bodily harm to an officer, a third party, or the police dog; or
- (c) The person is fleeing or hiding and there are reasonable grounds for their immediate apprehension by a police dog bite."

So having heard those three, what sub-category would you say applied to this call?

A I would say, first, there's two that apply. So at first it would be the noncompliance is a direct indication of further harm or potential further harm that could be so grievous to a

member of the public or police. Secondly, the propensity to flee, because he had the opportunity to get into a vehicle that we didn't know if it was on, off, the keys were still in it. Given the nature of his likelihood and past history of flight from police, that was definitely a possibility.

Q Okay. Subsection (2) speaks to dog handlers considering the following prior to and during each deployment. That you must conclude on reasonable grounds that of bite is justified. So, you must consider, "(a) Whether there is lawful authority to arrest..." You have earlier testified that you satisfied yourself there was.

A Yes.

Q "(b) That no lesser use of force would be appropriate or effective..." Can you speak to that?

A We went through the entire use of force spectrum, up until this point, including using, for what we're using as a common term, beanbag shotgun. Not only once but four deployments of that beanbag shotgun with what I feel, and what I know other officers who I've since heard from feel, was of no success in changing the behaviour, the subject behaviour.

Q Okay.

A At that point, in my mind, there is literally no other option.

Q Okay. What about just the pod going hands on Mr. [REDACTED] Just approaching him and going hands on?

A Like I said before, the problem with that, and given Mr. [REDACTED] is that there was still a very high-risk space that

we did not have control over, which was the back of that cab, which he spent an exorbitant, unnatural amount of time in. Being able to calculate whatever he could in that space. The likelihood of him being armed and dangerous. I think everybody -- it's not an unreasonable or irrational frame of mind to think that if he had a weapon and it was not necessarily on his person, that it could be in that area that we didn't have control over. He had access to that way quicker than we had access to him. We would have to travel approximately a car length and a half, approximately two car lengths to get to him to put hands on. He would have six inches to get back into that cab. Reaction time and all the rest of it, that essentially would be an officer parti- -- I don't know. Like an officer precipitated interaction that could end up lethal, if that were the case.

Q Okay.

A Beyond that, you have to take Mr. [REDACTED] statue into account. He is 6'4", 300 and something pounds. Multiple officers would have to be hands-on with him in order to make that subject, put him into handcuffs if he was non-compliant. And he was clearly displaying that he was non-compliant. In fact, active if not assaultive. In my experience as a police officer, if you are going hands-on with a subject of that size, with that volition and that intention, you're breaking bones.

Q Is that -- would that be -- to go hands-on at that point, would that be in compliance with police training?

A No. The reason why he's listed as Code 5 is so that officers don't go hands-on with him, essentially. They give him

a reactionary distance. He has proven to us in past interactions that you cannot safely go hands-on with him. You have to, essentially, first have presence, then communication and an attempt to negotiate, and then possibly have -- be able to have the reactionary distance to use less-lethal force on him if he becomes combative. Which in this case he was. Prior interactions with him have proven that if you go hands-on with him right away, it will not result well for either Mr. [REDACTED] or a police officer or the public.

29. The evidence proves Constable [REDACTED] subjectively believed Mr. [REDACTED] was intentionally non-compliant, that as he moved towards the open taxi door the police quickly needed to apprehend him because he may have access to a weapon or may try to flee, that there were no further options to deescalate, that Constable [REDACTED] use of the beanbag shotgun appeared to [REDACTED] to be ineffective in getting Mr. [REDACTED] to comply and that it was reasonable and necessary to deploy PSD [REDACTED] to end the incident and safely take Mr. [REDACTED] into custody. [REDACTED] testified [REDACTED] could not see his left hand as he sat up and, at that moment, [REDACTED] assessed his behavior met the threshold to deploy PSD [REDACTED] because it appeared to [REDACTED] he was trying or could try to access the taxi or a weapon and flee and that he posed an imminent threat of harm.
30. However, when the evidence, including the video evidence, is viewed objectively I am satisfied on a balance of probabilities the member's decision to permit the dog to bite Mr. [REDACTED] was unreasonable and unnecessary. Mr. [REDACTED] had been struck four times by beanbag rounds causing him to lose motor function. I am satisfied the evidence proves that the beanbag rounds were effective, that Mr. [REDACTED] was incapacitated and

physically could not re-enter the taxi. Constable [REDACTED] stated in his General Occurrence report:

A/Sgt [REDACTED] [REDACTED] delivered less-lethal bean bag shotgun rounds (Please see evidence of A/Sgt [REDACTED] [REDACTED] These rounds were effective in preventing [REDACTED] from re-entering the taxi.

Constable [REDACTED] stated in his General Occurrence report:

-A/SGT [REDACTED] then aimed at the thigh of [REDACTED] and delivered a series of beanbag rounds which were ultimately effective in stopping [REDACTED] from re-entering the taxi.

There were several police officers present and Mr. [REDACTED] could not escape. In the last 5 seconds of the video Constable [REDACTED] and PSD [REDACTED] are seen moving towards Mr. [REDACTED] who is sitting up, leaning against the tire of the taxi. [REDACTED] would have seen that Mr. [REDACTED] hands were visible, empty and that he appears to be giving up or surrendering. Constable [REDACTED] was obliged, even in those brief 5 seconds, to continue assessing whether to deploy PSD [REDACTED] [REDACTED] testified [REDACTED] was constantly reassessing and [REDACTED] said, "up until a fraction of a second before this I did not want him to bite". The evidence proves [REDACTED] proceeded and did not restrain PSD [REDACTED] who was under [REDACTED] control and on a leash. [REDACTED] permitted the dog to bite Mr. [REDACTED] despite the requirement [REDACTED] not deploy nor allow the dog to bite unless she determined that one or more of the three considerations set out in the Provincial Policing Standards (see Section 1.4.2) was applicable. I am satisfied none of those options apply in this case when [REDACTED] decided to deploy [REDACTED] dog. As [REDACTED] moved forward it was apparent Mr. [REDACTED] had lost control of his motor functions and was sitting on the pavement. He was not causing anyone bodily harm, he

physically could not flee and he did not pose an imminent threat of harm. The footage captured in the last 10 seconds does not support Ms. Hatcher's contention that Constable [REDACTED] needed to deploy PSD [REDACTED]. Ms. Hatcher submitted that Sergeant [REDACTED] who was described as an experienced use of force expert, agreed Constable [REDACTED] decision to deploy [REDACTED] police dog was necessary because, as he said, "Mr. [REDACTED] displayed grievous bodily harm or death behavior". I am satisfied the video evidence does not support Sergeant [REDACTED] opinion regarding Mr. [REDACTED] behaviour.

31. I find the deployment of PSD [REDACTED] was not proportionate to the level of risk posed by Mr. [REDACTED] to the members, the police and the community and the deployment did not comply with the requirements and standards set out in the VPD and Provincial Policing Standards. Constable [REDACTED] was obliged to minimize as much as reasonably possible the likelihood that PSD [REDACTED] would bite Mr. [REDACTED]. By holding onto the dog's leash, Constable [REDACTED] would have prevented the dog from biting Mr. [REDACTED] (see BCPPS 1.4 Police Service Dogs). There was no objective necessity for PSD [REDACTED] to be deployed given the exigent circumstances. To find that Constable [REDACTED] should not have deployed PSD [REDACTED] and should have restrained [REDACTED] would not amount to judging the member on a standard of perfection. The clear, cogent and convincing evidence proves on a balance of probabilities that Constable [REDACTED] intentionally used unnecessary force.
32. Ms. Hatcher argues that mere errors of law or judgement by a police officer, depending on the circumstances do not necessarily constitute misconduct unless the conduct rises to the level of being seriously blameworthy. While I agree mere errors of law or judgement may not constitute misconduct, in this case, I find Constable [REDACTED] deliberate decision to deploy PSD [REDACTED] knowing the dog was an intermediate

weapon capable of causing serious harm was not a mere error of law or judgement given that Mr. [REDACTED] was out of the taxi, was unable to flee and did not pose an imminent threat.

X. Conclusion

33. The evidence proves on a balance of probabilities Constable [REDACTED] intentionally used unnecessary force. I find the allegation of misconduct has been proven. The evidence does not prove on a balance of probabilities that Constable [REDACTED] intentionally used unnecessary force.

XI. Next Steps

34. Pursuant to section 125 (1)(d) Constable [REDACTED] may make submissions regarding disciplinary or corrective measures. Pursuant to section 125 (2), those submissions must be made within 10 business days of the member being served a copy of the Form 3 in this matter.

David Pendleton

David Pendleton

Adjudicator

June 23, 2025