



**Delta Police Department**

**Major Crimes Section**

**Final Investigation Report**

**Into the Matter of Constable Nicholas FLORKOW and Constable  
Bryan LONDON (subject members) and Mr. Yao Wei WU  
(complainant)**

OPCC 2010-5034  
DE2010X-11

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Prepared by:  
Sergeant Guy LEESON  
October 18<sup>th</sup>, 2010



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**Final Investigation Report**

**Complainant: Mr. Yao Wei WU**

**Subject Members: Constable Nicholas FLORKOW and  
Constable Bryan LONDON**

**Executive Summary**

On January 21<sup>st</sup>, 2010 at 0216 hours, the Vancouver Police Department received a 911 call of a domestic dispute. The 911 call originated from a cellular telephone. The female caller (later identified as [REDACTED] [REDACTED]) stated that her husband was drunk, had assaulted her and that her 10 month old baby was present at the residence.

Cst. FLORKOW and Cst. LONDON were working together as a 2 person unit – 3echo 21. They were working a plain clothes detail and operating an unmarked police vehicle. Cst. FLORKOW and Cst. LONDON were dispatched to this call at 0220 hours.

[REDACTED] was reluctant and slow to provide details to the 911 call taker over apparent concern that her child would be removed by social services. E-comm worked with the cell site and [REDACTED] to eventually establish the location of this incident which progressed from:

- Knight and [REDACTED]
- Cell site located 1600 blk of East 41;
- 6016 [REDACTED] (didn't exist)<sup>1</sup>;
- 6216 [REDACTED] St;
- Basement 6216 [REDACTED] St. - Entrance around back.

Cst. FLORKOW and Cst. LONDON attended the front door of 6216 [REDACTED] St. Both officers were in plain clothes, wearing their badges around their necks on chains. Both officers stated they identified themselves as Vancouver Police and showed both their badges and police ID. When Yao Wei Wu ("Mr. WU") opened the door, a confrontation ensued when Cst. FLORKOW and Cst. LONDON entered. The versions of Cst. FLORKOW, Cst. LONDON and Mr. WU are considerably different from the point Mr. WU opened the door.

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<sup>1</sup> [REDACTED] actually stated 6216 [REDACTED] but was misunderstood by 911 operator and confirmed the wrong address when it was repeated back.



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Cst. FLORKOW and Cst. LONDON stated that Mr. WU pushed then grabbed Cst. FLORKOW on the threshold of the front door prompting Cst. LONDON to intervene and take Mr. WU to the ground where a struggle ensued, and Cst. FLORKOW administered a total of 5 close handed strikes (3 followed by 2 when first 3 were deemed ineffective) to Mr. WU's upper and lower back in order to gain compliance and restrain Mr. WU by handcuffing him. Both Cst. FLORKOW and Cst. LONDON stated in ordered reports that they believed that the male they were struggling with was the subject of the 911 call and that they were attempting to arrest him based on his assault of Cst. FLORKOW. Once handcuffed Mr. WU was read his charter of rights and warning.

Mr. WU stated that the two plain clothes members showed him badges and verbally identified themselves as Police. Mr. WU stated that when he opened the door he was pulled out of his house and beaten without explanation or provocation. Mr. WU stated that neither officer explained or said anything to him while they were beating him on the ground in front of the door and that the beating lasted 10-12 minutes or a long time.

Once Mr. WU was handcuffed it eventually became apparent that Mr. WU was not associated to the 911 call. EHS was summoned to treat Mr. WU and Mr. WU was released from custody. Mr. WU was taken by ambulance to VGH Emergency. According to hospital records and Dr. FLEMING the treating ER Physician, Mr. WU sustained a significant facial injury to the orbit of his left eye.

## **INTRODUCTION**

### **Background**

On January 22<sup>nd</sup>, 2010 Cst. Nicholas FLORKOW and Cst. Bryan LONDON were dispatched to a 911 call, report of a domestic assault in progress. The members were advised that alcohol was involved, the female caller had been assaulted and that there was a 10 month old baby present at the residence.

The female caller was phoning from a cellular phone, she was evasive and reluctant to provide information to the 911 call taker and stated that she was concerned that social services would apprehend her baby if police were involved. The 911 call taker was eventually able to identify the address as 6216 [REDACTED] St. Vancouver. Upon attendance to 6216 [REDACTED] St. Cst. FLORKOW and Cst. LONDON attended the main entrance to the residence where they contacted Mr. WU. A confrontation ensued and Mr. WU was arrested and injured. It was



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subsequently determined that Mr. WU had nothing to do with the original 911 call.

The location of the 911 call specific to the basement suite, access at rear of the residence became known to the officers after they had already contacted Mr. WU and were engaged in a struggle to control and handcuff him.

### **Subject Members:**

Cst. FLORKOW and Cst. LONDON confirmed that they were on duty and were the officers involved in the incident at 6216 [REDACTED] St. Vancouver. This is also confirmed by Duty Reports of witness members, CAD logs, and available E-comm data.

### **Form 1 Lodged and Characterized**

On January 22<sup>nd</sup>, 2010 Sgt. Ron BEIG of the Vancouver Police, Professional Standards Section received a Form 1 Record of Complaint from Mr. WU. Vancouver Police PSS File: 2010-12497 was assigned. On January 25<sup>th</sup>, 2010 Sgt. Mike McDONALD completed a Notice of Complaint pursuant to S. 52.1(3) of the Police Act and determined the allegation comprised one breach of the code of Professional Conduct regulations, to wit **Section 10 Abuse of Authority**. The matter was identified as a Public Trust Complaint and the OPCC confirmed characterization on January 26<sup>th</sup>, 2010. OPCC File 2010-5034 was assigned.

### **Transfer of Investigation to Delta Police Department**

On February 1<sup>st</sup>, 2010 The Delta Police Department took assumed this investigation from the Vancouver Police Department.

On February 2<sup>nd</sup>, 2010 Sgt. LEESON was assigned as the investigator.

### **Transfer of Discipline Authority**

On February 18<sup>th</sup>, 2010 Chief CHU of the Vancouver Police transferred the duty of Discipline Authority to Chief CESSFORD of the Delta Police Department pursuant to his authority under Section 46(1) of the BC Police Act.

### **Transition of Investigation**

On March 31<sup>st</sup>, 2010 amendments to the Police Act came into effect. Sgt. LEESON received a copy of a letter outlining these amendments and their application to OPCC 2010-5034 from The BC Police Complaints Commissionaire



dated April 8<sup>th</sup>, 2010. A copy of this letter was forwarded to Cst. FLORKOW and Cst. LONDON through Sgt. MITCHELL of VPD PSS.

### **Disciplinary Default Identified**

In relation to the Disciplinary Default of Abuse of Authority this investigation's focus is whether or not the actions of Cst. FLORKOW and Cst. LONDON amount to the disciplinary default of Abuse of Authority:

*77(4)(a) "abuse of authority", which is oppressive conduct towards a member of the public, including, without limitation,*

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

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

*(A) using unnecessary force on any person, or*

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

### **Progress Reports and Extensions**

There have been 8 Progress reports completed with respect to this investigation:

1. March 4<sup>th</sup>, 2010;
2. April 7<sup>th</sup>, 2010;
3. May 6<sup>th</sup>, 2010;
4. June 7<sup>th</sup>, 2010;
5. July 8<sup>th</sup>, 2010;
6. August 4<sup>th</sup>, 2010;
7. August 30<sup>th</sup>, 2010;
8. October 8<sup>th</sup>, 2010.

There have been 2 extensions granted by the Office of the Police Complaint Commissioner with respect to this investigation:

1. July 7<sup>th</sup>, 2010 extending the completion date until September 18<sup>th</sup>, 2010;



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2. September 14<sup>th</sup>, 2010 extending the completion date until October 23<sup>rd</sup>, 2010.

## INVESTIGATION

### Interviews and Duty Reports

#### PRIME Narrative Completed by Cst. FLORKOW

Cst. FLORKOW completed a PRIME narrative related to the incident at 6216 [REDACTED] St, Vancouver. The report was completed January 21<sup>st</sup>, 2010 at 0334 hours. In this report, which forms part of the official Vancouver Police file related to this incident (VA2010-11808), Cst. FLORKOW stated in part that:

1. On January 21<sup>st</sup>, 2010 he was working with Cst. FLORKOW in District 3 and that they were working plain clothes driving an unmarked vehicle;
2. 0220 they were dispatched to a domestic dispute in progress. They were provided a cell site in the 1600 block of E. 41<sup>st</sup> Avenue;
3. As they got closer they were told the call was from 6016 [REDACTED] St;
4. They were advised the female stated she had been hit by her intoxicated husband, and there was a baby at the residence and that the husband has a history of assaulting her;
5. They got into area, of 6000 blk [REDACTED] St. at approximately 0222 hours and informed dispatch that 6016 [REDACTED] St. didn't exist . Dispatch later told them the domestic was at 6216 [REDACTED] St. and they arrived at approximately 0225 hours;
6. Cst. FLORKOW and Cst. LONDON approached the front door and began knocking on the door. After ringing the doorbell and knocking a male (later identified as suspect chargeable WU) began talking to them through the door. WU asked who it was. Both Cst. FLORKOW and Cst. LONDON removed their badges, held them up to the door and repeatedly identified themselves as "Vancouver Police";
7. After identifying themselves 7-10 times as Vancouver Police, WU cracked the door several inches. Cst. FLORKOW held up his badge and Police ID Card to WU's face and loudly stated, "it's the police, we are investigating a domestic



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disturbance and we need you to open your door and let us enter your home.” Cst. FLORKOW repeated this statement several times. However, WU refused to open the door to let Police inside the residence;

8. PC's believed (Cst. FLORKOW and Cst. LONDON) it was important that they be allowed to enter the home to check on the welfare of the victim (who had reportedly been assaulted in the domestic dispute). At this point they also believed that WU could be the suspect in the domestic who was arrestable for domestic assault;
9. Cst. FLORKOW stuck his right foot inside the doorway to ensure that WU could not close the door and deny them access to the residence. WU responded by using both hands to shove Cst. FLORKOW in the chest. WU then grabbed Cst. FLORKOW around the shoulders and began attempting to pull him to the ground;
10. Cst. LONDON grabbed a hold of WU's body and took him to the ground outside the front door. While going to the ground WU's face made contact with the concrete;
11. Once on the ground Cst. FLORKOW and Cst. LONDON told WU he was under arrest and commanded him to lie on his stomach and place his hands behind his back;
12. Instead of complying WU got into a crouched position, began swinging his arms towards Cst. FLORKOW and Cst. LONDON in an attempt to strike them, and was trying to stand up and face them;
13. Cst. FLORKOW and Cst. LONDON gave repeated verbal commands to WU to “stop resisting”. However, WU continued to fight with Cst. FLORKOW and Cst. LONDON;
14. Cst. FLORKOW employed 3 close-handed tactical strikes to WU's upper shoulder in an attempt to create a physical motor dysfunction that would facilitate follow-up control. These strikes were unsuccessful and WU continued to attempt to pull away from Cst. FLORKOW and Cst. LONDON and get back on his feet;
15. Cst. FLORKOW and Cst. LONDON started to press WU down on the ground in an attempt to take him into custody. They continued to identify themselves as Police and give WU loud professional verbal commands. WU refused to comply and continued to resist arrest;



16. Cst. FLORKOW employed 2 close-handed tactical stuns to the meaty portion of WU's upper back. These strikes along with the actions of Cst. LONDON allowed them to press WU on his stomach and wrestle his hands behind his back. They were finally able to place WU in handcuffs;
17. Once WU was in custody they learned the domestic was actually in the basement suite of the residence. They learned this later from other people in the basement suite, including WU and MAN (WU's wife);
18. WU had a bleeding nose and swelling to his left eye as a result of the struggle;
19. They called for EHS to medically treat WU;
20. Cst. FLORKOW arrested and Chartered and Cautioned Mr. WU for assaulting a Police Officer and obstructing a Police Officer at 0231 hours;
21. MAN and several members of WU's family exited the residence and were visibly upset with Police;
22. Sgt. DANIELS attended the scene to assist with dealing with the incident;
23. They found WU spoke limited English and WU claimed that he did not understand that Cst. FLORKOW and CSt. LONDON were Police;
24. They called for a Cantonese speaking member to attend the scene;
25. EHS attended and treated WU. EHS informed them that Mr. WU would need to be transported to VGH as a precautionary measure;
26. As WU was not involved in the original domestic, and they believed WU's assaultive and obstructive behavior was likely the result of a limited grasp of the English language they did not believe it was in the public interest to proceed with charges against him. WU's handcuffs were removed;
27. Cst. FLORKOW attempted to explain to WU why the situation had developed, however WU and MAN refused to listen began screaming at him;
28. Cst. LEUNG attended the scene to speak to WU and MAN in Cantonese. Cst. LEUNG spoke to WU and MAN at length about why Police were attempting to gain access to the residence and how Police were responding to an emergency situation. Cst. LEUNG explained the Police Complaints process to





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WU and MAN and provided WU an MAN with a Vancouver Police Pamphlet describing how to file a complaint against the Police;

29. WU was transported by EHS to Vancouver General Hospital.

**Interview of Yao Wei WU:**

On January 22<sup>nd</sup>, 2010 Sgt. Ron BIEG and Sgt. Terry YUNG conducted a digitally audio and video recorded interview with Yau Wei WU ("Mr. WU"). The interview commenced at 0950 and concluded at 1122 hours.

The Vancouver Police PSS section had the interview transcribed. Sgt. LEESON upon taking custody of this investigation had the transcript reviewed by a Cantonese interpreter who works for the Combined Forces Special Enforcement Unit ("CFSEU"). CFSEU advised that the generated transcript appeared to be a summary and not a true transcript. Sgt. LEESON requested a new transcript be generated from scratch to accurately reflect what was said by all participants of this interview.

Sgt. LEESON reviewed the transcript of Mr. WU's January 22<sup>nd</sup>, 2010 interview generated by CFSEU transcriber number 2066. Mr. WU stated in part that:

**Pure Version:**

1. At 2 o'clock in the morning or around 2 o'clock in the morning as he didn't check the clock someone rang his bell and was banging on his door;
2. He walked downstairs;
3. He turned on the light and walked to the door and looked through the peep hole in the door;
4. He asked, "who's it" in English. He responded "police", Mr. WU stated he had a tag on him;
5. He stated that he didn't know if it was the same tag (Sgt. YUNG showing him his badge in interview);
6. Mr. WU stated that it "looked like a police badge";
7. There were 2 people;



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8. Mr. WU stated he forgot to turn on the light outside, he just turned on the light inside;
  9. Mr. WU stated they told him they were Police;
  10. Mr. WU stated that he opened his door after they said Police;
  11. Mr. WU stated he opened the door (indicated how much of a gap he opened the door);
  12. He stated that the door was pushed and he was pulled outside;
  13. The door opens inwards and is a double door;
  14. He stated that he was grabbed right away;
  15. Once he was grabbed, 2 people just held him down and beat him;
  16. He thought the beating lasted 10-20 minutes;
  17. The beating went on a very long time, they beat him to point that he cried hysterically, He cried for help hysterically, He didn't know how long the beating went on;
  18. After the beating. They handcuffed him and held him on the floor;
  19. As soon as he was outside they were beating him. As soon as he touched his eye it was wet and he knew it was bleeding, his hand was wet;
  20. He was alone while he was being beaten;
  21. His wife and others came down;
  22. They didn't ask his name until his wife came down, then they asked his last name. It was then that they realized they got the wrong guy;
  23. His clothes were ripped, his mother brought him a blanket;
  24. The ambulance came and he was still handcuffed. They took off the handcuffs when he was in the ambulance;
  25. More officers came, one of them could speak some Cantonese. They said sorry;



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**Q & A:**

26. When he heard the door bell and knocking he didn't hear anyone calling out;
27. When he looked out the door he said police and he showed the tag by waving it (demonstrated on video how he waved it);
28. He didn't say Vancouver Police, he just said police;
29. There wasn't much conversation through the door, "we didn't talk. He said Police and I saw that it was the police, I opened the door. We didn't talk"<sup>2</sup>;
30. When he opened the door he opened it 8-18 inches;
31. After he opened the door he didn't say anything, and the officers didn't say anything either. He (officer) "pushed the door and walked in. Pushed the door, then pulled me";<sup>3</sup>
32. When he(officer) pushed the door, he pushed it inward;
33. When they pushed the door, "I didn't hear they say anything. I didn't hear anything at all. Under my impression, not a word";<sup>4</sup>
34. He stated, "Normally, a police would knock at the door and you open the door. He would ask you...we are the police. The reason for us to be here is whatever, whatever the purpose"<sup>5</sup>;
35. When the door was pushed open, one person grabbed him first;
36. The officer that pulled him reached in with his right hand;
37. When he was pulled outside he didn't know what was going on. "they started beating. I didn't know what was going on";<sup>6</sup>
38. He didn't remember how he ended up on the ground. When he (officer(s) beat him, pressed him he screamed for help hysterically;

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<sup>2</sup> Interview of Yao Wei WU. 20100122. p. 18, line 2.

<sup>3</sup> Interview of Yao Wei WU. 20100122. p. 19, line 15.

<sup>4</sup> Interview of Yao Wei WU. 20100122. p. 20, line 13.

<sup>5</sup> Interview of Yao Wei WU. 20100122. p. 21, line 3 & 6.

<sup>6</sup> Interview of Yao Wei WU. 20100122. p. 22, line 20-22.



39. He screamed for help in Chinese;
40. The door was only open a short time before the police officer grabbed him. It was very quick;
41. When asked if the police officers tried to push the door open to get in and whether or not he stopped the door from letting them in he stated, "that I'm not, I'm not clear on that. I remember that I was pulled outside and being beaten up";<sup>7</sup>
42. When he was pulled out, he didn't know where the officer grabbed him on his body, he stated somewhere on his body;
43. The right hand door opens, the left door is fixed (from the outside looking at the house, the left side door opens);
44. Before he was thrown outside he doesn't remember if he was surprised or how he felt;
45. As soon as he was grabbed, he was pulled outside;
46. He was pressed on the ground and beaten;
47. When asked if he was scared, surprised, or his emotions of how he felt prior to being pulled out he stated, "It was quick. It was very quick when I was outside. He pulled me in a flash. At that time, I didn't know whether I was scared or what. When he beat me I cried. Cried hysterically for help."<sup>8</sup>
48. When asked if it was possible that he pushed back or was stiff(while going down to the ground or was first put down to the ground) because he was scared he stated, "No. He beat me. I covered my head. As he hit me in the eye, I covered my head";<sup>9</sup>
49. When asked if he hurt his eye when his face hit the ground or if he was hit in the face first he responded, "I really have no recollection. It was very chaotic. It was very chaotic";<sup>10</sup>

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<sup>7</sup> Interview of Yao Wei WU. 20100122. p. 24, line 15-21

<sup>8</sup> Interview of Yao Wei WU. 20100122. p.31 Line 4-26 & P. 32 line 1-9.

<sup>9</sup> Interview of Yao Wei WU. 20100122. p. 33, line 14-15.

<sup>10</sup> Interview of Yao Wei WU. 20100122. p. 33, line 24-26 & P. 34 line 1-9.



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50. Once on the ground he was covering his face with his hands. He doesn't remember if he was standing, and crying hysterically while he was covering. His back and whole body was hurting from the beating;
51. He stated that he didn't know how he was held down by them (officers) but that 2 areas of his back were beaten by them (reference to bruises on his back in interview);<sup>11</sup>
52. he is having difficulty sleeping because of his injuries;
53. When asked if the policeman were trying to grab his hands he stated that he didn't know when they pulled his hands out;
54. He didn't know if they (officers) punched him in the back when he was covering his eye. He stated that the felt the beating was excessive, he was beaten to the point that he didn't know what happened;
55. He stated that when his father(WU Sr) came out he was already handcuffed and his face pressed into the ground;
56. The left side of his face was pressed into the ground when he was handcuffed;
57. His pajamas were ripped in the struggle;
58. He stated that the beating lasted for approximately 10 minutes;
59. He stated that once he was handcuffed the beating stopped. "Once handcuffed, I was pressed down. I don't know if he pressed me down and then handcuffed or. I don't know. I really don't remember. I really don't remember."<sup>12</sup>
60. When asked if the police were hitting him so they could get the handcuffs on him he stated he didn't know, "at that time, I was covering my face, covering my face, I remember I was covering my face because of the beating"<sup>13</sup>;

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<sup>11</sup> Interview of Yao Wei WU. 20100122. p. 35, line 7-10.

<sup>12</sup> Interview of Yao Wei WU. 20100122. p. 44, line 23-25.

<sup>13</sup> Interview of Yao Wei WU. 20100122. p. 46, line 2.



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61. He was already sitting up in handcuffs when the ambulance came;
  62. One of the 2 officers asked him his name while he was handcuffed and sitting on the ground;
  63. A Cantonese police officer came later and said sorry and explained why they came to the house. He stated he understood now why they came but stated he doesn't understand how they can mix up the downstairs and upstairs and that when they came in they should have explained what is going on. He stated "you can't just grab and beat people up";<sup>14</sup>
  64. He stated that he agreed that there was a misunderstanding at the door and the location;
  65. He stated that he didn't know if the officers could have thought that his attempts to cover his eye was resistance to being arrested;

**(See statement transcript of Mr. WU's January 22<sup>nd</sup>, 2010 interview)**

Interview of [REDACTED] [REDACTED]

Sgt. Mike McDONALD and Sgt. Terry YUNG of the Vancouver Police Professional Standards Section conducted a digitally audio recorded interview with [REDACTED] [REDACTED] ([REDACTED]) on January 25<sup>th</sup>, 2010. [REDACTED] is the downstairs tenant at 6216 [REDACTED] St. that called 911 to report a domestic assault on January 21<sup>st</sup>, 2010. The interview commenced at 1041 hours and concluded at 1106 hours. This interview was reviewed by Sgt. LEESON, [REDACTED] stated in part that:

Pure Version:

1. Her and her husband had an argument and started shouting. They always do that;
2. He had been drinking and was drunk;
3. She didn't want her baby to wake up and she told him if he didn't stop, she would call 911;
4. She didn't want her baby to wake up, he didn't stop, so she called police;

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<sup>14</sup> Interview of Yao Wei WU. 20100122. p. 53, line 21-25.



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5. He heard that she called police and took off, she stated she told the them that he's not here anymore(911 dispatcher);
  6. She didn't want to discuss details of the domestic dispute;
  7. She was waiting for the police to come and heard some shouting so she walked towards the front of her suite (towards front of house);
  8. She stated she was still on the phone to the police and that she didn't know what really happened but remembered telling the lady, "oh they got the wrong guy, they got the wrong guy but I didn't see what happened but I heard shouting";
  9. The first thing that occurred to her was that they would make her move and they didn't want to move because they've already been living here for a year;
  10. She told the dispatcher, what will happen now, that's my landlord;
  11. She opened the window (front of the house) and reached her hand out to try and grab (pat) the officer, but she couldn't. She continued to say "you've got the wrong guy" and try and get their attention by saying "Mr. Policeman";
  12. The policeman told her that he needed her to keep quiet or shut up;
  13. She heard him (Mr. WU) talking Chinese, and she heard like, "were the policeman, you're on, you're on the floor, like that..."<sup>15</sup>;
  14. They had a friend [REDACTED] over, he went outside to tell them they had the landlord, they ended up handcuffing him;

**Q&A:**

15. She heard a bang at the front of the house;
14. The police were shouting and not shouting. Mr. WU kept shouting but she thinks in Chinese. He subsequently told her that he was shouting help in Chinese and he told her the word and she thinks it sounded familiar;
15. She didn't know how long between the bang and the shouting;

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<sup>15</sup> Statement of [REDACTED] 20100125. P. 1, line 47-62.  
See also time index 5minutes 40 seconds on [REDACTED] audio statement.



16. She knew they had the wrong guy because they were suppose to take her husband and she had heard Mr. WU shouting;
17. It was dark outside, so she couldn't see anything but she could hear the voices and see some movement;
18. She doesn't know if the policeman heard her when she was saying you got the wrong guy because there was a lot of shouting going on;
19. She doesn't know who told her to shut up or be quiet but could tell it was someone who spoke English;
20. She never did see the policeman who dealt with Mr. WU, she initially though the police in uniform who came to talk to her about her husband were the officers that were with Mr. WU;
21. Her friend [REDACTED] stated to her that when he got out front, Mr. WU was already handcuffed.

**(Note: [REDACTED] interview should be reviewed together with the 911 call transcript and enhanced audio of the 911 "phone\_42" file. Her entire interaction with the E-comm operator was recorded, in addition some of the background shouting and her attempts to communicate with police are recorded.)**

**(See transcript and audio file of [REDACTED] statement for full details)**

#### **Interview of Chi Nan (Jennifer) MAN:**

Sgt. Mike McDONALD and Sgt. Terry YUNG of the Vancouver Police Professional Standards Section conducted a digitally audio recorded interview with [REDACTED] ("MAN") on January 25<sup>th</sup>, 2010. MAN who also goes by Jennifer is the wife of Mr. WU. The interview commenced at 1122 hours and concluded at 1141 hours. MAN stated in part that:

1. She was sleeping when there was a knock of the door;
2. She heard her parents calling her name in Chinese;
3. She went down to the door and saw her husband (MR. WU) hands locked and bleeding;





4. She saw a male standing behind her husband, she didn't know it was a policeman, but assumed he was. She said "call the Police" and the male stated that he was the Police;
5. She asked the policeman to call an ambulance and they told her they already had;
6. When she went downstairs there were 2 policeman, one standing by the door and one by the front window., The cousin of her tenant was also outside;
7. Her son went in the ambulance with Mr. WU and she drove separately to the hospital;
8. A Cantonese speaking officer spoke to her and tried to explain what had happened.

(See interview transcript and interview audio of MAN's interview for complete details)

**Interview of [REDACTED] WU (WU Sr.):**

Sgt. Mike McDONALD and Sgt. Terry YUNG of the Vancouver Police Professional Standards Section conducted a digitally audio recorded interview with [REDACTED] WU (WU Sr.) on January 25<sup>th</sup>, 2010. WU Sr. is the father of Mr. WU. The interview commenced at 1157 hours and concluded at 1210 hours.

On August 10<sup>th</sup>, 2010 Sgt. LEESON requested a review of the audio on the [REDACTED] WU interview and that a new transcript be prepared On September 8<sup>th</sup>, 2010 Sgt. LEESON was advised by CFSEU that the transcript of [REDACTED] WU's statement had been completed and was available for pick-up. At 0930 hours Sgt. LEESON picked up these items from the CFSEU offices.

Sgt. LEESON reviewed the statement transcript of WU Sr. who stated in part that:

1. He heard the door bell ring about 2 or 3 times;
2. When he got up to look, his son (Mr. WU) was already downstairs;
3. When he got downstairs, "his son was already beaten";



4. When he got downstairs his son was kneeling at the front door and he was holding his face with his hands;
5. His son said, "my eye is burst";
6. He saw a person on the right side by the window;
7. After the beating had stopped he lied prostrate, he lied there like that. Kneeled there;
8. He saw his son on his knees, when inside his face was not touching the floor, but when he was dragged further outside, his face touched the ground and they pressed his head down;
9. He saw his son dragged further out away from the door towards the road;
10. He saw his son's hands bent and head held down, and they took handcuffs out and handcuffed him;
11. Once handcuffed, they dragged him to the ambulance;
12. When his son was inside the ambulance they took the handcuffs off;
13. He didn't know what happened to the man he saw standing by the tenants window;
14. At the beginning he saw 2 policeman, then later on the side or sidewalk there were 2 more – there were 4;
15. The 4 of them were maybe Caucasian;
16. Another officer who came, he seemed to be able to speak some Chinese and came to explain and say sorry and so on. He spoke a little Cantonese.

(See interview transcript of the Mr. WU Sr. interview for complete details)

**Interview of** [REDACTED]

Sgt. Mike McDONALD of the Vancouver Police Professional Standards Section conducted a digitally audio recorded interview with [REDACTED] on January 26<sup>th</sup>, 2010. [REDACTED] was a visitor to the suite at 6216 [REDACTED] St. on January 21<sup>st</sup>, 2010. The interview commenced at 0948 hours and concluded at 1010 hours. [REDACTED] stated in part that:



1. His friend and his friends wife had a fight, he didn't see the fight but just heard it;
2. He heard someone outside trying to get help and he went outside and around to the front;
3. He saw the landlord sitting by the door handcuffed;
4. He was told to sit down and was handcuffed. He was sitting next to the landlord (Mr. WU);
5. He told the policeman, two of them, both in plainclothes, that they had the wrong guy that they had the landlord;
6. He stated the Police didn't say anything when he told them this, they told him to sit down and shut up. They were talking to the Landlord's wife;
7. After about 15-20 minutes, they took off the handcuffs and told him to go back inside;
8. He saw that the landlord was bleeding. They kept the landlord sitting and in handcuffs until the ambulance came.

(See interview transcript and interview audio of [REDACTED] interview for complete details)

**Witness Officer Duty Reports and Notes:**

Witness Officers Sgt. DANIELS, Cst. FOLKESTAD, Cst. YABLONSKI, Cst. LEUNG and Cst. WONG-MOON were not present for the initial encounter between Mr. WU, Cst. FLORKOW and Cst. LONDON.

**Sgt. DANIELS:**

Sgt. LEESON reviewed the Duty report of Sgt. DANIELS that was dated February 5<sup>th</sup>, 2010. Sgt. DANIELS stated in part that:

1. Sgt. DANIELS was the NCO for District 3, Team 3 on January 21<sup>st</sup>, 2010;
2. Sgt. DANIELS was called to attend the scene at the request of Cst. LONDON and Cst. FLORKOW;



3. Sgt. DANIELS stated that when he arrived on scene, the BC Ambulance was already on scene treating Mr. WU;
4. Mr. WU was sitting in the rear of the ambulance, holding an ice pack to his left cheek;
5. Sgt. DANIELS stated that he spoke to members at the scene who briefed him about what had occurred;
6. Sgt. DANIELS stated that he briefed Cst. LEUNG by telephone prior to his arrival giving Cst. LEUNG some circumstances of the event. Sgt. DANIELS requested that Cst. LEUNG:
  - a. Explain to the male in the ambulance (Mr. WU) and all the family members what had occurred;
  - b. To apologize to them for the error that had taken place;
  - c. Provide information on the complaints process;
7. He spoke to Cst. YABLONSKI and Cst. FOLKESTAD regarding the investigation into the domestic in the basement suite;
8. He advised Insp. GRUMMISCH, the Duty Officer about the incident.

On September 9<sup>th</sup>, 2010 Sgt. LEESON requested clarification on two issues. Sgt. DANIELS responded in writing on September 9<sup>th</sup> and advised the following;

1. No, he did not observe any identifiable scene such as blood on the concrete or pathway that identified where the struggle with Mr. WU took place when he attended 6216 [REDACTED] St to assist Cst. FLORKOW and Cst. LONDON;
2. He is not aware of any photos being taken of the scene of this incident on January 21<sup>st</sup>, 2010.

**Cst. LEUNG:**

Sgt. LEESON reviewed the Duty report of Cst. LEUNG that was dated January 28<sup>th</sup>, 2010. Cst. LEUNG stated in part that:

1. Cst. LEUNG was called in to assist with translating and communicating with Mr. WU and family;
2. Cst. LEUNG is not completely fluent in Cantonese – he stated that he understands the language better than he can speak it;



3. Cst. LEUNG was called to the scene at the request of Sgt. DANIELS;
4. Cst. LEUNG arrived at the scene at approximately 0255 hours on January 21<sup>st</sup>, 2010;
5. Cst. LEUNG observed and spoke to Mr. WU for several minutes while he was sitting in the ambulance;
6. Mr. WU had an ice pack over the left side of his face;
7. Cst. LEUNG showed Mr. WU his Police Badge and asked if the member who knocked on his door showed ID. Cst. LEUNG stated that Mr. WU advised him the member did show him something but he couldn't really tell if it was a real badge;
8. Cst. LEUNG stated that during his conversation with Mr. WU, Mr. WU stated that:
  - a. The member (Cst. FLORKOW) was not in uniform;
  - b. It was dark out, so he couldn't easily see the badge that was produced;
  - c. He was woken up and was not yet fully awake or alert;
  - d. He does not speak English well, and did not completely understand what was being said to him.
9. Cst. LEUNG stated that during his conversation with Mr. WU's father (Wu Sr.) trying to explain how the incident happened that WU Sr. stated that he had heard the sounds of fighting coming from the basement suite;
10. Cst. LEUNG's role was to attempt to explain to the WU family the Police purpose for being at the residence and how this incident that resulted in Mr. WU's injuries had occurred. Cst. LEUNG also provided information on the Police Complaint Process and supplied some literature in Chinese (Cantonese – Copy of pamphlet saved to file) that also explained how to file a complaint and provided contact phone numbers for obtaining assistance.

(See Duty report of Cst. LEUNG for complete details)

**Cst. WONG-MOON:**

Sgt. LEESON reviewed the duty report of Cst. WONG-MOON dated January 28<sup>th</sup>, 2010. Cst. WONG-MOON doesn't speak Cantonese. He was present with



Cst. LEUNG on January 21<sup>st</sup>, 2010 while Cst. LEUNG spoke in Cantonese with the family.

(See Duty report of Cst. WONG-MOON for complete details)

**Cst. YABLONSKI:**

Sgt. LEESON reviewed the Duty Report of Cst. YABLONSKI dated February 5<sup>th</sup>, 2010. Cst. YABLONSKI's Duty Report stated in part:

1. He was working with Cst. FOLKESTAD on January 21<sup>st</sup>, 2010;
2. They responded to a domestic dispute in progress call that came in at approximately 0217 hours as a cover car to the attending unit (Cst. FLORKOW and Cst. LONDON);
3. As they were making their way they heard dispatch trying to raise Cst. FLORKOW and Cst. LONDON on the radio. They realized Cst. FLORKOW and Cst. LONDON were in trouble and unable to answer the radio. They increased their speed and arrived moments afterwards;
4. 6216 [REDACTED] St. was a 2 storey building and the front door was open on their attendance;
5. He observed 2 males in custody, one male standing on the grass [REDACTED] and the other sitting on the residence walkway (Mr. WU);
6. An update on the call from radio advised that the domestic was in the basement suite located at the rear of the residence;
7. He went to the rear of the residence with Cst. FOLKESTAD and spoke to the female [REDACTED];
8. He stated that [REDACTED] was being very deceitful with her information providing only 1-2 word answers;
9. They established that [REDACTED] was a roommate of the basement suite and may have observed the domestic. The accused (MERCADO) had fled the scene prior to police arrival;
10. He went to the front and advised Cst. FLORKOW and Cst. LONDON that [REDACTED] was not the suspect;



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11. He had no dealings with Mr. WU.

(See Duty report of Cst. YABLONSKI for complete details)

**Cst. FOLKESTAD:**

Sgt. LEESON reviewed the duty report of Cst. WONG-MOON dated February 6<sup>th</sup>, 2010. Cst. FOLKESTAD's Duty Report stated in part:

1. Cst. FOLKESTAD was working with Cst. YOBLONSKI on January 21<sup>st</sup>, 2010 and responded to the scene as a cover unit and arrived at approximately 0240 hours;
2. When Cst. FOLKESTAD arrived, two males were in handcuffs. A male later identified as Mr. WU was sitting on the ground, the other male [REDACTED] was standing on the front lawn;
3. Cst. FOLKESTAD and Cst. YOBLONSKI continued to the back of the residence to investigate the domestic dispute call.

(See Duty report of Cst. FOLKESTAD for complete details)

**Inspector Cumberworth –Duty Officer:**

Sgt. LEESON reviewed the Duty Report of Insp. CUMBERWORTH concerning his involvement with the WU family. Insp. CUMBERWORTH stated that:

1. He was briefed by Insp. GRUMMISCH regarding VA2010-11795 (WU incident);
2. At 0915 hours, I attended the daily briefing with the VPD Executive and related the circumstances of this event;
3. At approximately 1145 hours, he received a telephone call from Cst. Houghton (Public Affairs Section) and he advised me that Mr. Wu's family was in the lobby of 2120 Cambie St. Cst. Houghton stated that members of the Asian media were also present in the lobby and that Cst. McGuinness (Public Affairs Section) was on her way to speak with the media that were present.
4. He informed Cst. Houghton that he would advise the Professional Standards Section and then would attend the 2<sup>nd</sup> floor to meet with the family.



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5. At approximately 1200 hours, he attended the media room on the 2<sup>nd</sup> floor of 2120 Cambie St. He entered the room and noted four people present: an elderly male and female, a middle-aged female and an adolescent female. All four were Asian. These four were later identified as:
    - Mrs. [REDACTED] 1968-07-13 (wife);
    - Jessica Wu 1999-05-18 (daughter);
    - Mr. Quan De Wu 1932-02-24 (father of Mr. Wu);
    - Mrs Zhou Jiao 1933-12-28 (mother of Mr. Wu);
  
  6. It was very obvious that Mrs. Man was upset about what happened to Mr. Wu and she wanted to know why he had been "beaten";
  
  7. After locating Sgt. YEE to translate he explained:
    - the circumstances as to why the police originally attended her home in response to a 911 call of a family trouble;
    - He explained the risk involved in family violence situations and the necessity of the police to intervene;
    - He explained that the officers who attended her home did not realize until afterwards that they were at the wrong part of the home;
    - Mrs. Man eventually understood our duty to respond and that we had made a mistake in attending to the wrong portion of the home but she did not understand how her husband could have been as badly injured as he was;
    - He apologized a number of times to her for the injury to her husband;
    - He explained her right to file a formal complaint and I explained the role of the Professional Standards Section and the oversight of the OPCC. Before making a decision, she opted to discuss with her husband whether or not they should file a formal complaint.
    - He provided to Mrs. MAN a Form 1 package and through Sgt. Yee, and explained the process.
  
  8. Mrs. MAN produced a digital camera and showed me a picture of her husband. Mr. Wu's face was bloodied and he was lying in a hospital bed;
  
  9. Mrs. MAN also brought with her the clothes Mr. Wu was wearing during his interaction with the police. The shirt was torn and there was a slight amount of blood on it;
  
  10. He asked Mrs. Man if I could retain the camera and the clothes as evidence but she was reluctant to turn them over. He asked that she retain





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the photo and the clothes in case we needed them at a later time. Mrs. Man said she would email the photo to him, which she later did.

11. He spent approximately 30 to 40 minutes with Mr. Wu's family;
12. Following his interaction with Mr. Wu's family, he sent an email of what occurred to Insp. Giardini. Included in this email was an electronic attachment of the photo that had been sent to him.

**Sgt. YUNG:**

Sgt. LEESON received and reviewed a written report from Sgt. Terry YUNG. The original report was dated January 22<sup>nd</sup>, 2010. Sgt. YUNG's report stated:

1. Sgt. YUNG was requested by the Public Affairs Section at 1700 hrs on 10-01-21 to assist in a translation detail for an address in District Three;
2. At Around 1800 hrs Sgt. YUNG attended 6216 [REDACTED] St. with Insp. GIARDINI and C/C CHU. Mr. WU was home with his parents, wife and daughter. C/C CHU apologized for the police incident where WU was injured earlier that morning. C/C CHU stated there would be a thorough investigation into this matter;
3. WU stated he was awoken in the early morning when two people in plainclothes were at his front door. They wore a small badge on the front of their chest and grabbed WU through the partially open front door. WU stated he was taken to the ground without any explanation and sustained injuries to his eye, back and legs. According to WU, he was alone with the police members when the arrest occurred. Wu's farther came to the front door later when he was taken into custody;
4. WU's wife was emotionally upset over WU's injuries. She became calmer after C/C CHU reiterated there would be a thorough investigation and WU would be picked up on 10-01-22 to be interviewed by the Professional Standards Section (PSS);
5. Sgt. YUNG, Insp. GIARDINI and C/C CHU left 6216 [REDACTED] St. at 1820 hrs.



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**BC AMBULANCE SERVICE:**

On March 4<sup>th</sup>, 2010 Sgt. LEESON received a copy of the BCAS crew report and the 2 names of the paramedics that attended to Mr. WU on January 21<sup>st</sup>, 2010. The Paramedics were identified as Grant BURGESS (#03887) and Greg STUBBS (#77090).

On March 9<sup>th</sup>, 2010 Sgt. LEESON reviewed the BCAS report received on March 4<sup>th</sup>, 2010. The BCAS report stated in part that:

1. The attending Paramedic #03887 and Second Paramedic #77090 were enroute to scene January 21<sup>st</sup>, 2010 at 0237 hours;
2. They arrived at scene and were at Mr. WU's side at 0242 hours;
3. They transported Mr. WU from the 6216 [REDACTED] St. at 0310 hours and arrived at VGH at 0325 hours;
4. History section on report stated:
  - a. Patient was taken to ground by police;
  - b. Patient's face hit concrete sidewalk;
  - c. There was no loss of consciousness
  - d. Left eye swollen over;
  - e. Sore ribs, both sides – no obvious injury;
  - f. Denies neck and back pain
5. Mental status – normal;
6. Head/Neck – there is a notation regarding Left eye and lip(note not legible on form and will need to be canvassed during interviews);
7. Chest – not legible;
8. Abdomen – N or V;
9. Back – trauma;
10. Extremities – abrasion knees, elbows;
11. Neuro – N
12. Neuro assessment – normal



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13. Glasgow Coma Score – E-4, V-5, M-6 for a total of 15;

**Interview BCAS Paramedic Greg STUBBS:**

On March 11<sup>th</sup>, 2010 at 1257 hours Sgt. LEESON met with BCAS Paramedic Greg STUBBS ("STUBBS") at the Delta Police Office. An audio/video statement was obtained from 1300 to 1322 hours. STUBBS stated in part that:

1. STUBBS was the driver of the ambulance dispatched to attend to Mr. WU on January 21<sup>st</sup>, 2010;
2. STUBBS was working with Paramedic Grant BURGESS;
3. This was the first time STUBBS has ever worked with BURGESS;
4. When they arrived on scene, Mr. WU was handcuffed and in a cross legged sitting position on the sidewalk of the residence not far from the front door;
5. STUBBS described the sidewalk as a paved path leading from the boulevard;
6. STUBBS stated that on arrival there were 2 plainclothes officers and several uniformed officers on scene. One of the plain clothes officers was standing with Mr. WU, the other came around from the back of the residence;
7. STUBBS described the plain clothes officer standing with Mr. WU as 5'11", short light brown hair, 170-180lbs wearing a dark hoodie;
8. STUBBS stated that the plain clothes officer with Mr. WU advised him that he had been involved in a confrontation with Mr. WU and asked STUBBS and his partner to check Mr. WU out because he stated that "we or I had to take him down";
9. STUBBS could not recall what the other plain clothes officer looked like but does recall that both plain clothes officers had badges on chains visible hanging around their necks;
10. STUBBS was advised by a uniformed officer who he believed was the Sergeant that:
  - a. There was a 911 at the residence;
  - b. Plain clothes officers knocked on Mr. WU's door;



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- c. They told Mr. WU that there was a 911 call from his house;
  - d. They told him they were Vancouver Police and they had their badges around their necks and they asked to gain entry;
  - e. Mr. WU denied them, tried to shut the door, and one of the officers put his foot between the door and the door frame to prevent the door from being shut;
  - f. Mr. WU pushed an officer and the officer grabbed Mr. WU and extricated him from his residence;
11. STUBBS stated there were a total of 2 plain clothes officers at the scene;
  12. On arrival Mr. WU, his wife, mother and son were all outside. Mr. WU was only a matter of a few feet from his front door;
  13. STUBBS stated there was grass or garden beside the walkway;
  14. STUBBS stated that Mr. WU looked like he just got out of bed;
  15. STUBBS could not identify the top but recognized the shorts when shown photographs by Sgt. LEESON;
    - a. STUBBS could not recall specifics but stated that he can recall a rip in the shirt but wasn't sure where the rip was located;
  16. STUBBS stated he recalled the officer he described in detail above ( 5'11" , 170-180 lbs ect.) so well because he stated he was impressed at how the officer remained calm and disengaged from the family when the family began yelling at him;
  17. STUBBS stated that by looking at Mr. WU's injuries it appeared there had been a struggle but he did not recall any blood on the ground or see any weapons on the ground;
  18. STUBBS stated that there was an obvious hematoma on Mr. WU. There may have been some superficial cuts on Mr. WU but nothing that required their intervention to deal with;
  19. Mr. WU's eye's left eye was puffy from hitting something, it could have been broken, STUBBS stated they couldn't tell because of the swelling;
  20. Mr. WU may also have had a lip injury;



21. Mr. WU was treated in the jump seat chair by Grant (BURGESS), and he tried to get more information about Mr. WU from the family using the son as an interpreter;
22. The family did not provide him any details of what led up to the incident;
23. Once Mr. WU was treated at the scene, they took him to VGH by ambulance for x-rays. They were at scene for 45 minutes, it took approximately 10 minutes to drive to hospital and they were likely at hospital for another ½ hour. Total time, STUBBS stated he was with Mr. WU for approximately 2 hours;
24. The officer that had told him what lead up to the incident, also told him that they had knocked on the wrong door;
25. STUBBS stated he had reviewed the crew report when it was forwarded to him by his supervisor:
  - a. He stated he did not recognize any of the handwriting on the report as belonging to him;
  - b. He stated the text in the "Chief Complaint" area of the Crew Report is filled in by the attending paramedic and in his experience comes from the actual patient either by what the paramedic observes or what they are told by the patient.

(See transcript and audio file of STUBBS interview for complete details of interview)

(See also BCAS Crew Report for written record of Mr. WU's treatment and assessment)

On March 15<sup>th</sup>, 2010 Sgt. LEESON met with BCAS Paramedic Grant BURGESS ("BURGESS") at 1251 hours. Sgt. LEESON obtained a digitally audio recorded statement from BURGESS. BURGESS stated in part that:

1. When they arrived there were 4 or 5 people in the front yard of the address, 2 of the people were in handcuffs. Some of the people present appeared to be family members including some 2 children standing around;
2. On initial arrival, it was not clear to BURGESS who was who, as there were some undercover Police present, so they stood back to be approached;



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3. On arrival the front yard was dark, and there still appeared to be some confusion;
  4. The male later identified as Mr. WU was the obvious patient. He was sitting in handcuffs, conscious and alert and had injuries to his face;
  5. The police identified the patient (Mr. WU), the only patient and they began their assessment;
  6. Before they moved Mr. WU they were provided a story of what happened:
    - a. The undercover police officers knocked on the door;
    - b. The patient came to the door;
    - c. There was a language barrier but Mr. WU said he looked through the peep hole and didn't know they were police officers because they were under cover (plain clothes) and it was dark;
    - d. Mr. WU stated that he was afraid it may be burglars so didn't want to let them into the house;
    - e. There was some time where the Police were trying to gain access to the house but he wasn't letting them;
    - f. BURGESS wasn't sure if he was told Mr. WU opened the door or the Police officers opened the door, but a Police officers foot was put into the door and Mr. WU was trying to close the door on the Police officers foot;
    - g. The police officer told him that when Mr. WU was pulled out of the house he tripped and went face first down onto the concrete sidewalk located outside the front of the door. Mr. WU fell to the ground on his face, where he was handcuffed;
      - i. When asked by Sgt. LEESON to clarify the source of this information (was it from Mr. WU or the Police Officers), BURGESS stated he got the above story from the police officer of what happened to the patient;
    - h. BURGESS stated the PATIENT was very upset and told him he was dragged out of the house and thrown to the ground – BURGESS stated that this was not the exact language used as there was a language barrier but he was dragged out and thrown to the ground;
    - i. Mr. WU did not state how he sustained his injuries. Mr. WU said he was pulled out and thrown to the ground but did not go into any more detail or state if he was kicked or punched or what not;



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- j. Mr. WU was angry and would not answer specific questions by BURGESS of what happened and how and where he was injured;
  - k. BURGESS stated he did not get any story of punches or kicks other than he was thrown to the ground;
7. When asked about the information contained in the Chief Complaint section of the BCAS report BURGESS stated it was from his observations. BURGESS stated that it was clear that Mr. WU struck his face on the ground and had gone face first into the ground;
  8. Mr. WU's Left eye was swollen over completely;
  9. Mr. WU was bleeding from a lip;
  10. Mr. WU reported having sore ribs on both sides – there was no obvious trauma to the ribs observed;
  11. Mr. WU had some small superficial injuries or abrasions to his knees, hands and elbows;
  12. Mr. WU denied neck or back pain and was reluctant to be treated or have BURGESS do anything for him;
  13. There was no obvious trauma to his neck or back;
  14. BURGESS dealt with injuries to Mr. WU and treated Mr. WU in the ambulance jump seat;
  15. They were with Mr. WU a total of 1.5 hours;
  16. Mr. WU's English didn't appear to be good and he didn't want to talk;
  17. There was nothing obvious at the scene that led him to believe there was a struggle. There was no obvious blood on the sidewalk that he observed;
  18. BURGESS was not sure if Mr. WU required any sutures to treat his cuts;
  19. BURGESS stated his opinion was that it seemed unusual that he could sustain the injuries he observed by just falling, although BURGESS stated he guessed anything was possible;



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20. BURGESS stated he first encountered Mr. WU about 20 feet from the door, (but then stated he was at least 10 feet from the door), sitting on the lawn. There was a step walkway across the lawn, sitting in handcuffs. The surface was lawn with those paved or concrete stones with grass in between so you can walk on the cement stones;
  21. On approach BURGESS stated that it was one of the undercover officers that briefed him;
  22. BURGESS stated it was mainly 1 officer that briefed him;
  23. BURGESS could not recall the name of the officer and stated it wasn't the officer that actually dragged Mr. WU out and put him down to the ground;
  24. BURGESS stated the officer that dragged Mr. WU out was young, 5'9" with a shaved head;
    - a. When asked by Sgt. LEESON how he could differentiate between the officer that dragged Mr. WU out and the other officer, BURGESS stated that after the fact he asked his partner Greg and he clarified that the officer that he believed dragged him out, later came to sit in the ambulance while Mr. WU was being treated at the scene;
  25. BURGESS stated that he never observed any injuries on the officers nor was he asked to treat any such injuries;
  26. BURGESS stated the 2 undercover officers were wearing dark clothing. He stated "...I think the, the one with the shaved head had the bling, bling, ah, the, the big chain with the, the badge hanging off the chain. Uhm, but I mean if they came to my door in the, the middle of the night, I wouldn't, ah, I wouldn't know they were police and I wouldn't trust that they were police either."<sup>16</sup> BURGESS stated he did not recall seeing anything on the other officer. BURGESS stated that initially there was no uniformed officers on scene and there was confusion and it wasn't clear to him who was Police and who wasn't;
  27. BURGESS stated he dealt with Mr. WU and his partner Greg was out dealing with the patients wife and the Police;

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<sup>16</sup> Statement Transcript of Grant BURGESS. P. 9. Line 215-218.





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(See transcript and audio file of BURGESS interview for complete details of interview)

(See also BCAS Crew Report for written record of Mr. WU's treatment and assessment)

## **RESPONDENT OFFICERS – REPORTS and INTERVIEWS**

### **Request Made for Voluntary Statements**

Sgt. LEESON requested through the agent for Cst. FLORKOW and Cst. LONDON a voluntary statement with respect to this incident involving Mr. WU. Tom STAMTAKIS, the Agent for Cst. FLORKOW and Cst. LONDON advised that neither member would provide a voluntary statement with respect to this incident but would provide Duty Report if ordered to do so.

### **Duty Report of Cst. FLORKOW**

On March 29<sup>th</sup>, 2010 Sgt. LEESON received the Ordered Duty Report of Cst. FLORKOW dated March 25<sup>th</sup>, 2010. Cst. FLORKOW stated in part that:

1. On January 21<sup>st</sup>, 2010 he was working with Cst. LONDON in plainclothes, driving an unmarked police vehicle, operating as Unit 3E21 in Vancouver's District 3;
2. At approximately 0220 hours heard over radio a domestic in progress call and a request for an echo unit to take the call. They were in the area and were one of or the only echo Unit available. The original location was a cell site 1600 blk E. 41 Ave, they were at 56<sup>th</sup> Ave and Victoria, and advised dispatch they would attend;
3. As they approached 1600 blk E. 41 Ave, they received an updated location of 6016 [REDACTED] St. They were also advised:
4. There was a female on scene;
5. Female stated her intoxicated husband had hit her;
6. That there was a baby present at the residence;



7. That the husband had a history of being intoxicated and hitting the wife;
8. He felt the situation required urgent attention in relation to the safety of the victim and baby;
9. They arrived in the 6000 blk of [REDACTED] St. at approximately 0222 hrs. and immediately noticed that 6016 [REDACTED] St. was not a valid address and did not exist. He informed dispatch of this fact, and asked to have the address of the domestic property verified. Dispatch then came over the air and stated that the domestic disturbance was actually occurring at 6216 [REDACTED] St.;
10. Upon hearing this they immediately drove to 6216 [REDACTED] st. and arrived on scene at approximately 0225 hrs.;
11. When we approached the front of 6216 [REDACTED] St., we still had no information as to the names of any of the parties involved or descriptions of either the suspect of the victim, As they approached the front door he observed a light on in the second story of the house;
12. It was his belief, based on his observations and dispatch's verification of the address, that the domestic was occurring inside this residence;
13. Once at the door, they began knocking and ringing the doorbell. The front door of this house had windows on both sides. Eventually, I observed through these windows a male (later identified as "Mr. WU"), approach the front door and begin talking to them through the windows adjacent to the door;
14. They could see Mr. WU still looking through the window, and they repeatedly identified ourselves loudly as "Vancouver Police";
15. They stated that they we were responding to a domestic disturbance, and we need to get into the house; After he identified himself approximately 7-10 times as "Vancouver Police", Mr. WU cracked the door open approximately ten inches;
16. He held his badge and police ID card up to Mr. WU's face and loudly stated, "It's the police, we are investigating a domestic disturbance and they needed him to open the door and let them enter the home." He repeated this statement several times, however, Mr. WU just repeatedly stated. "No" and refused to open the door to allow us inside the residence;



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17. In his four years of policing experience, he has found that often the aggressor involved in domestic violence incidents will refuse to allow police inside the residence in order to prevent police from observing any injuries to the victim, intervening in the dispute, and arresting the aggressor. He believed this was consistent with WU's uncooperative behavior, as WU was refusing to allow them to enter the home;
  18. In light of Mr. Wu's continued refusal and the urgent circumstances, he stuck his foot inside the doorway to ensure that Mr. WU could not close the door and barricade himself inside the house. He learned this technique while enrolled at the Justice Institute of British Columbia Police Academy;
  19. Mr. WU responded by using both of his hands to shove him in the chest. WU then used his hands to grab me by my shoulders and began attempting to take him to the ground. He attempted to step backwards and disengage from Mr. WU's assaultive actions;
  20. Cst. LONDON grabbed a hold of Mr. WU and took Mr. WU to the ground outside of the front door. The left side of Mr. WU's face made contact with the concrete when he was taken to the ground;
  21. Once Mr. WU was on the ground he loudly informed him that he was under arrest. He commanded Mr. WU several times to lie on his stomach and place his hands behind his back;
  22. Instead of complying with his commands, Mr. WU got up to his feet in a crouched position and began swinging his arms towards them in an attempt to strike him and Cst. LONDON;
  23. He knew Mr. WU attempted to strike him because Mr. WU repeatedly swung his closed fist towards him. Mr. WU was also trying to stand up out of his crouched position and face them;
  24. He attempted to press Mr. WU back down towards the ground while trying to avoid WU's attempts to strike him. He continued to give repeated verbal commands for Mr. WU to "Stop Resisting";
  25. He believed Mr. WU was a violent party in need of immediate control, He employed three close-handed tactical strikes to Mr. WU's upper shoulder. He employed these strikes in the attempt to create a physical motor dysfunction that would facilitate follow-up control. This was consistent with the training I received at the JIBC Police Academy. These strikes were unsuccessful however as WU continued to resist arrest;



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26. He continued attempts to press Mr. WU back down to the ground in an attempt to take him into custody. He also continued to identify himself as "Police" and by giving WU loud professional verbal commands;
  27. Mr. WU continued to physically resist control. He then employed two close-handed tactical strikes to the meaty portion of Mr. WU's upper back. These strikes, along with the actions of Cst. LONDON allowed them to finally press Mr. WU on his stomach and wrestle his hands behind his back;
  28. Once they had Mr. WU's hands behind his back they were able to place him into handcuffs;
  29. After Mr. WU was in handcuffs several people, including witness MAN, came out of the house. He observed a male (later identified to be Mr. WU's father), coming towards us with a wooden broomstick raised above his head. Worried that Mr. WU's father was going to strike us with the broomstick, He identified himself as "Police", took the broomstick out of his hands, and told WU's father to step back. Mr. WU's father complied and stepped away;
  30. MAN and these family members were visibly upset and were yelling at us that the parties involved in the domestic disturbance actually lived in the basement of the residence. We were approached by a male (non-white, 20-25 years old) who yelled "What the fuck are you guy's doing? It was us downstairs!". Believing that this male was possibly involved in the domestic disturbance, He immediately placed him into handcuffs and sat him on the ground. I did not have time to question this male as I was busy dealing with Mr. WU and the angry family members outside the residence;
  31. PCs 2598 YABLONSKY and 2689 FOLKESTAD arrived on scene, took custody of the young non-white male, and attended the basement suite to investigate the original domestic dispute;
  32. He observed that Mr. WU had a swollen left eye and a bleeding nose as a result of the struggle. He called EHS to attend the scene and medically treat him;
  33. After attempting to speak with Mr. WU, he realized that he had limited grasp of the English language, but spoke fluent Cantonese. He requested a Cantonese speaking officer attend the scene and also requested that Sgt. DANIELS attend the scene;



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34. Mr. WU's young son was outside and attempted to help translate. He attempted to speak through Mr. WU's son to explain to him what had happened, but he refused to listen to his explanation. MAN brought a ski jacket and wrapped it around Mr. WU to keep him warm;
  35. At Cst. FLORKOW's request, Mr. WU's son went inside and got a blanket for Mr. WU;
  36. At 0231 hrs he arrested and chartered WU for assaulting a police officer and obstructing a police officer;
  37. He learned that Mr. WU claimed he did not understand that him and Cst. LONDON were Police and claimed that he did not understand their purpose at the residence, or when they gave him repeated verbal commands during the physical struggle;
  38. EHS attended the scene and began to medically evaluate Mr. WU;
  39. EHS informed them that Mr. WU would be transported to Vancouver General Hospital as a precautionary measure;
  40. As Mr. WU was not involved in the original domestic incident, and WU's assaultive and obstructive behavior was likely a result of his limited grasp on the English language, he did not believe it was in the public's interest to proceed with criminal charges against WU. After consulting with Sgt. DANIELS, Mr. WU was taken out of handcuffs and told that he was no longer under arrest;
  41. He attempted several times to explain to Mr. WU and Mrs. MAN that they were at the house for an emergency situation and why they had acted the way they did. He also attempted to apologize several times for the misunderstanding. Mr. WU and Mrs. MAN refused to listen to him and instead just screamed and yelled;
  42. Cst. LEUNG attended the scene to speak with WU and MAN in Cantonese:

**(See ordered Duty Report of Cst. FLORKOW)**



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**Duty Report of Cst. LONDON**

On April 12<sup>th</sup>, 2010 Sgt. LEESON received the Ordered Duty Report of Cst. LONDON dated March 20<sup>th</sup>, 2010. Cst. LONDON stated in part that:

1. On January 21<sup>st</sup>, 2010 he was working with Cst. FLORKOW in District 3 and that they were working plain clothes driving an unmarked vehicle;
2. 0220 they were dispatched to a domestic dispute in progress. They were provided a cell site in the 1600 block of E. 41<sup>st</sup> Avenue. As they got closer they were told the call was from 6016 [REDACTED] St.;
3. They were advised the female stated she had been hit by her intoxicated husband, and there was a young child in the residence and that the husband has a history of assaulting her;
4. They got into area, 6016 [REDACTED] St. did not exist and they advised dispatch of this and were then advised the address was 6216 [REDACTED] St.;
5. They were not provided with the complainants name, suspects name or any descriptions;
6. Cst. FLORKOW and himself knocked on the door and rang the doorbell. A person was observed through the window in the door coming down the stairs. This person was later identified as Mr. WU;
7. Mr. WU asked who it was. Cst. LONDON identified himself as Vancouver Police in a loud clear voice. Cst. LONDON was holding his badge up in his right hand. Mr. WU had his face up against the door window. Cst. LONDON held up his badge to the window approximately 1" from the window surface while repeatedly saying in a loud voice, "Vancouver Police";
8. Cst. LONDON could also hear Cst. FLORKOW saying "Vancouver Police" numerous times;
9. Mr. WU opened the door very slightly. Cst. LONDON stated to Mr. WU several times "Vancouver Police" while holding up his badge in his right hand. Cst. LONDON also heard Cst. FLORKOW saying "Vancouver Police";



10. He heard Cst. FLORKOW inform Mr. WU that they were there to investigate a domestic dispute and they needed to come inside;
11. Cst. LONDON stated Cst. FLORKOW placed his foot inside the door and Mr. WU then pushed Cst. FLORKOW. Cst. LONDON stated that Cst. FLORKOW stepped towards Mr. WU and Mr. WU grabbed Cst. FLORKOW by the shoulders;
12. He believed Mr. WU was the suspect in the domestic in progress and in his view Mr. WU had assaulted Cst. FLORKOW;
13. Cst. LONDON clasped his hands together, interlocked his fingers, and placed his hands on the back of Mr. WU's head and pulled him outside of the doorway and onto the ground in front of the door. Cst. LONDON stated that he told Mr. WU several times to put his hands behind his back and that he was under arrest;
14. Mr. WU did not comply and resisted by swinging his arms and attempting to stand up;
15. Cst. LONDON stated he told Mr. WU several times to stop resisting. While attempting to secure Mr. WU he could hear a female behind him yelling at him, "that's the wrong guy". Mr. WU was still resisting trying to get up and "not being allowed to be handcuffed.";
16. Cst. LONDON stated that Cst. FLORKOW and himself were able to get Mr. WU to lie flat on his stomach and place him in handcuffs;
17. Once handcuffed, Mr. WU was sat up and he could see that Mr. WU's had a swollen eye and that his nose was bleeding;
18. He stated that Cst. FLORKOW immediately called dispatch to have EHS attend;
19. Mr. WU's family exited the residence and were visibly upset with Police;
20. They learned from the female yelling, as well as another male who was on the front lawn that Mr. WU was not the suspect in the domestic. Cst. FLORKOW requested Sgt. DANIELS attend the scene;
21. EHS arrived on scene and attended to Mr. WU. EHS advised that Mr. WU would have to go to VGH;



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(See Ordered Duty Report of Cst. LONDON)

**Ordered Interview of Cst. FLORKOW**

On May 12<sup>th</sup>, 2010 Sgt. LEESON conducted a digitally audio recorded, ordered interview with Cst. FLORKOW pursuant to S. 101 of the Police Act. Agent for Cst. FLORKOW, Tom STAMATAKIS was present for the interview. The interview commenced at 1515 hours and concluded at 1606 hours. Cst. FLORKOW stated in part that:

**Regarding Ordered Duty Report:**

1. He had no additions or changes corrections he wished to make;
2. His ordered duty report was true and accurate to the best of his recollection;

**Regarding working plain clothes on January 21<sup>st</sup>, 2010:**

3. He was working plain clothes wearing a sweatshirt and a pair of jeans;
4. He was wearing his badge on a chain around his neck that he could pull out and his Police identification card in his wallet in his pocket;
5. Their patrol shift generally puts out a 2 man plain clothes car every shift. This detail is spit evenly amongst the squad;
6. The purpose of the plain clothes unit is to attend "ten calls" or calls that require a covert response such as robberies or in progress calls (some clarification provided by Tom STAMATAKIS);
7. No, he was not aware of any directive on how to dress for this detail;
8. No, he was not aware of any policy that regulated what they wear when they work this type of shift;
9. He was issued a police raid jacket that says police on it but could not recall if he had it with him on January 21<sup>st</sup>, 2010;
10. In 4 years of service he has worked this plain clothes detail 50-70 times;





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11. He stated that he had received basic "footing training" when asked if he had received any specialized training in how to operate in a plain clothes capacity;

**Regarding the Scene of the Incident:**

12. On approach to 6216 [REDACTED] he could see a light on the second floor (photo 3) – could recall specific location of light;
13. He couldn't recall if there was any exterior lights on;
14. (reference photo 3 and 5) - On initial approach to the door he was on the left and Cst. LONDON was on the right;
15. On contact he would have been "squared up on the door" with Cst. LONDON to his right, "squared up on the door" trying to put their badges against the window;
16. From the time they were given the correct address of 6216 [REDACTED] to the time they made contact by knocking on the door was approximately 30 seconds;
17. He estimated from the time they knocked on the door until someone actually came to the door wasn't very long, possibly under a minute;
18. When Mr. WU came to the door he was looking out the right window located in the door (photo 7);
19. Through the window he could see the outline of his face and head and could tell it was a male;
20. After identifying themselves as Police, he wasn't exactly sure how long it took for Mr. WU to open the door, "I can't be clear about whether it was , you know, ten seconds or thirty seconds or a minute";
21. When the door opened it was the left door that opened. His left as he was facing it (photo 7);
22. When the door opened he was to the left of the door and the door opened inward;



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23. He held his badge up about 1-2 feet from Mr. WU's face and told him "It's the Police, we're investigating a domestic disturbance and we need you to open your door and let us into your home;
  24. He added that he was clearly identifying himself as a police officer verbally as well as showing his badge and ID card and that he was making these statements over and over;
  25. Mr. WU's response to this was just to shake his head no and repeatedly say "no";
  26. He could not recall if Mr. WU said anything to them besides "no";
  27. He stated that he was a) concerned that Mr. WU was the suspect in the domestic and wasn't going to let them in to investigate the domestic and b) that he could barricade himself inside the residence – this is the reason he stepped in to block the door with his foot;

**Upon Contact with Mr. WU:**

28. He could not recall with what foot (left or right) he blocked the door;
29. Mr. WU responded to him blocking the door with his foot by pushing him. The push was described as , a 2 handed "hard violent push" to his upper chest;
30. Immediately following the push, he wasn't trying to gain entry when he was pushed he wasn't trying to gain entry his upper body leaned back from the push, and he was trying to keep his foot in the door so he wasn't dislodged;
31. Mr. WU immediately followed up to the push by grabbing his shoulders and trying to take him down to the ground;
32. Mr. WU grabbed him around the shoulder area of his hoodie. He stated that he knew that Mr. WU had grabbed him around his hood because the draw string from his hood was had ripped out and was broken as a result of being grabbed. When he was grabbed he was pulled forward, so his body position was off and Mr. WU was trying to take him to the ground;
33. When Mr. WU grabbed him, this was occurring outside the door, to the left of the doorway (if facing the door)(photo 3 & 5);



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34. After Mr. WU grabbed onto him, "I was trying to disengage, I was trying..., at that point I was making a concerted effort to get back and sort of turn away and get away from him, so I wasn't getting thrown on, ...onto the ground. However, he continued to hold me and trying to take me to the ground";
  35. Cst. LONDON was able to intervene and take Mr. WU to the ground;
  36. Mr. WU's face made contact with the ground when he was going down to the ground. This occurred outside the door in the area of the doorway, not on the pathway;
  37. He saw Mr. WU's head hit the ground;
  38. He could not recall if Mr. WU's head hit concrete or brick on the ground and stated that it was very dark outside the door;
  39. When Mr. WU went down, he ended up on the right;
  40. He applied 3 strikes to Mr. WU's shoulder area, right side, top of shoulder;
  41. He applied 2 strikes to Mr. WU's upper back, right side, shoulder blade area;
  42. The first 3 strikes to Mr. WU's back were not effective in gaining control;
  43. He gave commands to Mr. WU during this confrontation;
  44. He doesn't recall Mr. WU saying anything during the struggle;
  45. He did not recall whether or not there was any blood on the ground;
  46. He sustained no injuries;
  47. Mr. Wu didn't say anything in Cantonese or any other foreign language that would have led him to believe he didn't speak English. At the door he was just repeatedly saying, "no";
  48. Other than the 3 strikes to Mr. WU's shoulder area, and 2 strikes to Mr. WU's upper back he did not strike Mr. WU in any other location;
  49. He did not have any notes specific to this incident because he was on the "box" or assigned to work the computer and complete all the associated



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reports. The general occurrence report was completed by him following the event;

50. After reviewing a copy of the GO report he stated it was true and accurate to the best of his recollection;
51. Their reason for taking this call was that it was a high priority call and their proximity as well as the fact that they were one of the only or the only Echo unit available;
52. When they were on the ground attempting to handcuff Mr. WU, his demeanor was extremely resistant and extremely violent. He had immediately sprung to a crouching position and was swinging his arm at them in a striking motion over and over;
53. His impression was that Mr. WU was being combative as opposed to trying to get away from him;
54. "This was an emergent situation and that he was very violent, ah, from, you know, the minute I put my foot in the door. He was completely obstructive. And, ah, I believed he was the suspect."

**(See transcript and audio file of Cst. FLORKOW's interview for full details).**

**Ordered Interview of Cst. LONDON**

On May 12<sup>th</sup>, 2010 Sgt. LEESON conducted a digitally audio recorded, ordered interview with Cst. LONDON pursuant to S. 101 of the Police Act. Agent for Cst. LONDON, Tom STAMATAKIS was present for the interview. The interview commenced at 1618 hours and concluded at 1655 hours. Cst. LONDON stated in part that

**Regarding Ordered Duty Report:**

1. True and accurate to the best of his recollection. He had no changes he wished to make;

**Regarding Working Plain Clothes:**

2. He had worked plain clothes prior to this shift, but not often as he was relatively new to the department;
3. He was issued a jacket that says "Police" but he wasn't wearing it that night;



4. He didn't remember exactly what he was wearing other than it wasn't his normal uniform;
5. He was wearing his badge around his neck on a chain;
6. He never received any specific training on operating in plain clothes;
7. On approach to 6216 [REDACTED] St. his badge was on the outside of his clothing and visible;

**Regarding the Scene of this Incident:**

8. At the time they were dispatched they didn't have an actual address;
9. First they were advised the call was at 6016 [REDACTED] and eventually were told 6216 [REDACTED] St;
10. It was dark, I remember a light in the window depicted in photo 11 (facing house, lower left) and another light on upstairs but didn't recall exactly what light;
11. They were advised 6216 [REDACTED] they were never told there was a basement suite;
12. They knocked on the front door of the residence;
13. He could not recall if he was positioned to the left or right of the door;

**Regarding Contact with Mr. WU;**

14. They knocked several times and could see a male coming down the stairs, he saw this male through one of the windows in the door;
15. He recalls seeing the male's eye up against the window but couldn't provide a description of the male at that point;
16. When he saw the male's eye, he put his badge right up to the window where his eye would be;
17. He could hear the male saying something but couldn't make it out but he said Vancouver Police. He stated that he said "Vancouver Police" so many times he can't tell how many times he said it;



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18. He couldn't tell if the male was speaking English or another language, he could just hear a sound;
  19. He believed it was a short time between when they were showing their badges to the male and saying "Vancouver Police" and when the male opened the door;
  20. He couldn't recall what door opened (of the double front door);
  21. Once the door opened he held his badge up and he was saying Vancouver Police, and he heard Cst. FLORKOW say "Vancouver Police";
  22. He observed Cst. FLORKOW place his foot in the door and appeared to attempt to step inside and it appeared that Mr. WU shoved Cst. FLORKOW;
  23. It appeared to him that Mr. WU shoved Cst. FLORKOW in the chest (Cst. LONDON indicated a 2 handed shove). This was Cst. LONDON's recollection that it was a 2 handed shove. Cst. LONDON stated that he was behind Cst. FLORKOW on an angle. He couldn't recall if he was on Cst. FLORKOW's left or right, but stated that the door had an overhang, and was under the overhang;
  24. He stated it was dark in door area and he was on an angle from Cst. FLORKOW;

**Regarding Use of Force:**

25. After he saw Cst. FLORKOW step back after being pushed and then step back in, he saw Mr. WU bring up 2 hands on Cst. FLORKOW. The grab was described as 2 handed, grabbing the top of his biceps and shoulder area, not a bear hug, grabbed the top of his shoulders on the right and left side;
26. After Mr. WU grabbed Cst. FLORKOW, they became separate and he was able to grab Mr. WU "by the head and pulled him out from the doorway onto the ground";
27. They ended up in front of the doorway, definitely outside of the doorway ... "maybe like right on that mat, maybe right in front of it" (referencing mat in photo 5 and 7);
28. He described the take-down as "...pretty textbook to what I've been trained as. Just interlocking my fingers, put them behind his head, and just



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- pulled him with..., pulled him down to the ground while putting my body weight on top of his head”;
29. He didn't know for sure if Mr. WU impacted the ground but stated he took him to the ground so he believed Mr. WU did impact the ground;
  30. When they went to the ground Mr. WU's head was in his sternum area;
  31. Once on the ground Mr. WU was trying to get up as they were trying to handcuff him;
  32. On the ground they were trying to handcuff Mr. WU. They were verbally telling him to stop resisting, that he's under arrest;
  33. Mr. WU was locking his arms and wouldn't allow himself to be handcuffed;
  34. Mr. WU was putting his hands on the ground and trying to push up so he believed Mr. WU was trying to get back up;
  35. He believed he was on the left side of the path (left side in front of the left door-reference to photos);
  36. Both him and Cst. FLORKOW were yelling commands to Mr. WU;
  37. He recalled the women saying "you have the wrong guy" but this was in the middle of the fight, Mr. WU was still resisting and isn't under control and he didn't know why he (Mr. WU) is fighting with them and he believed they still needed to gain control of him. He did not recall anyone saying to him that "that's the landlord”;
  38. He remembered hearing this women's voice and looking back and seeing her in the window to the left of the door (Photo 11, pointed to window on far right side of the photo);
  39. He recalled first hearing the women say "you got the wrong guy" while they were outside the front door wrestling with Mr. WU;
  40. He never learned anything about the call being in the basement suite until after the confrontation was over. He recalled going back to his MDT after it was done and saw that it was the basement. It wasn't anything that was broadcast before we knocked on the door;
  41. He did not recall Mr. WU saying anything to them during the confrontation on the ground;



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42. He believed Cst. FLORKOW handcuffed Mr. WU;
  43. They weren't very far down the path when they gained control of Mr. WU;
  44. He didn't recall any blood on the sidewalk;
  45. Once Mr. WU was turned over to the paramedics he had no further contact with him;
  46. He observed Mr. WU had a swollen eye and a bleeding nose;
  47. Besides the take down where he interlocked his hands and pulled Mr. WU to the ground he did not strike Mr. WU with any part of his body;
  48. He recalled Cst. FLORKOW using his hand to strike Mr. WU. He could not recall details of where Cst. FLORKOW struck Mr. WU;
  49. He believed that they were dealing with the suspect from the domestic. There was a small child inside, that these people had a previous history of domestics. That a domestic dispute is a very volatile situation, there can be any type of weapon in there. His impression that they don't know who this person was, what kind of weapon he had on him. He'd already fought the police and he's not letting the police arrest him. He believed they needed to gain control of him as fast as they could to ensure their safety, so that we could also ensure the safety of the people inside the house;
  50. He described Mr. WU's demeanor from the point he interlocked his fingers and took him to the ground as actively resisting being arrested by them. He was interlocking his arms, trying to get up, not allowing them to handcuff him, and he believed Mr. WU was trying to get away from them;
  51. Cst. LONDON sustained no injuries in the confrontation with Mr. WU;
  52. When he interlocked his fingers and pulled Mr. WU to the ground his intent was to bring him to the ground and gain control of him and arrest him;

**(See transcript and audio file of Cst. LONDON's interview)**





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### AREA CANVASS

Sgt. LEESON reviewed the notes of Sgt. MITCHELL and Sgt. McDonald of VPD PSS concerning the area canvass conducted around 6216 [REDACTED] St. Vancouver following the incident. The following addresses were canvassed:

6215	[REDACTED]	St.
6125	[REDACTED]	St.
6130	[REDACTED]	St.
6141	[REDACTED]	St.
6157	[REDACTED]	St.
6170	[REDACTED]	St.
6175	[REDACTED]	St.
6186	[REDACTED]	St.
6191	[REDACTED]	St.
6229	[REDACTED]	St.
6230	[REDACTED]	St.
6238	[REDACTED]	St.

The canvass resulted in no additional witnesses or sources of CCTV video being identified.

This incident generated considerable media attention both in mainstream and Asian Media. This media attention generated calls from concerned citizens but identified no witnesses to the incident. The fact that the Delta Police assumed this investigation was also widely publicized in the Media. Since assuming the investigation, the Delta Police have received no calls or tips from potential witnesses not already identified.

### SCENE PHOTOS

There were no photographs taken by the Vancouver Police at 6216 [REDACTED] St. Vancouver on January 21<sup>st</sup>, 2010 or immediately following the incident. Sgt. LEESON was advised by VPD PSS Sgt. MCDONALD on February 8<sup>th</sup>, 2010 that no photos were taken. Sgt. LEESON also confirmed this with Sgt. DANIELS the NCO on scene following the incident on January 21<sup>st</sup>, 2010 that he was not aware of any photos being taken.

#### **Photos of 6216 [REDACTED] St. by DPD FISS:**

On April 26<sup>th</sup>, 2010 at 1026 hours Sgt. LEESON along with Cst. WARREN of DPD FISS attended area of 6216 [REDACTED] St. Vancouver. The exterior of the WU residence was photographed by Cst. WARREN from the street and sidewalk.



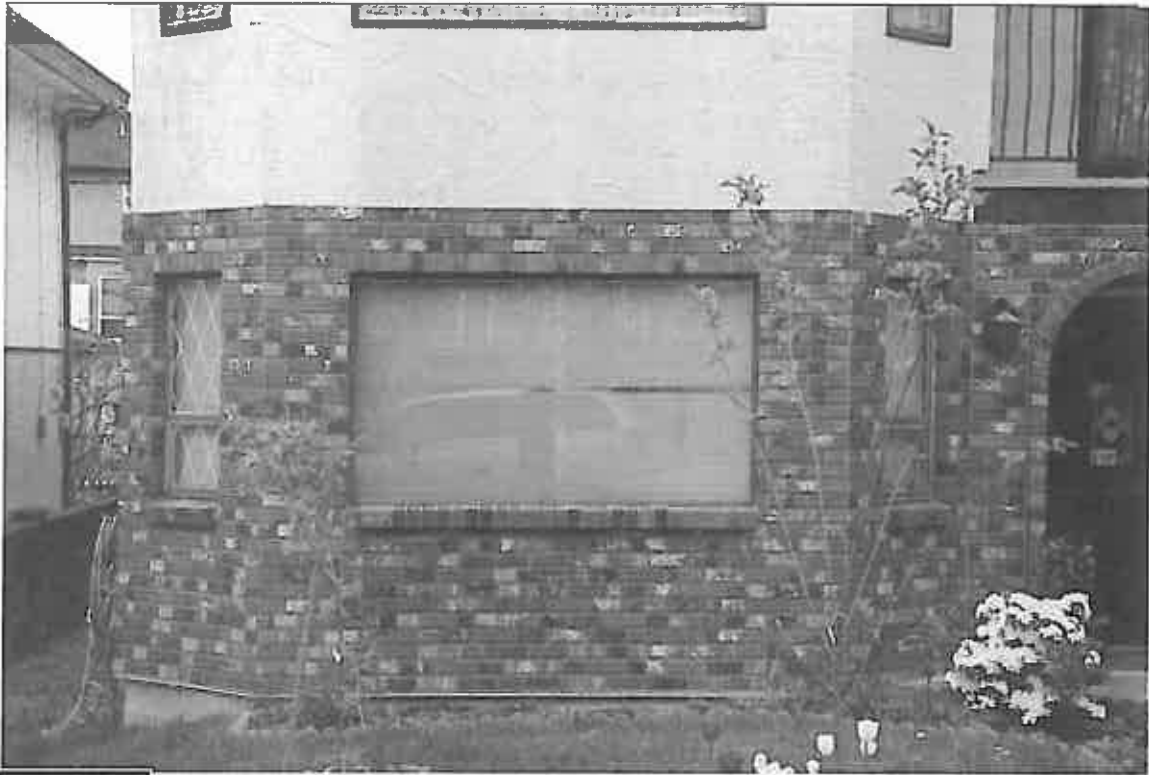
Cst. WARREN also obtained photographs of the street including the location of street lights located on [REDACTED] St.



View of Front of 6216 [REDACTED] St.



Close-up of Pathway to Front door of 6216 [REDACTED] St.



Suite located to Left of Front Door - Accessed at rear of residence.

(See Photo Folder for additional views and street)

### **EXAMINATION OF MR. WU's CLOTHING**

On February 16<sup>th</sup>, 2010 Sgt. LEESON spoke with Sgt. McDONALD at VPD. Sgt. LEESON inquired about the clothing seized from Mr. WU during the VPD/PSS investigation. Sgt. LEESON was advised the clothing was in the VPD Exhibits. Sgt. LEESON requested the clothing be turned over to the DPD for investigative purposes as soon as practical (tentative meet set for February 18<sup>th</sup>, 2010). Sgt. LEESON also inquired if a 5.2 Report to Justice had been completed and detention ordered. Sgt. McDONALD to look into and advise.

On February 18<sup>th</sup>, 2010 at 1513 hours Sgt. LEESON received WU's clothing from Sgt. McDONALD. Individually packaged items:

1. VPD 1012497-1 - PJ Top
2. VPD 1012497-2 – PJ Bottoms

On February 22<sup>nd</sup>, 2010 Sgt. LEESON attended FISS with:



- VPD 1012497-1 - PJ Top
- VPD 1012497-2 – PJ Bottoms

Sgt. WINBERG from FISS examined and photographed the exhibits. The exhibits were photographed front and back, and areas of interest were numbered and photographed with a reference marker.

Sgt. LEESON made the following observations:

**VPD 1012497-1 - PJ Top**



**Front**

General Description; Old looking, well worn light grey t-shirt. Cotton

Front: graphic design and Chinese characters on front:

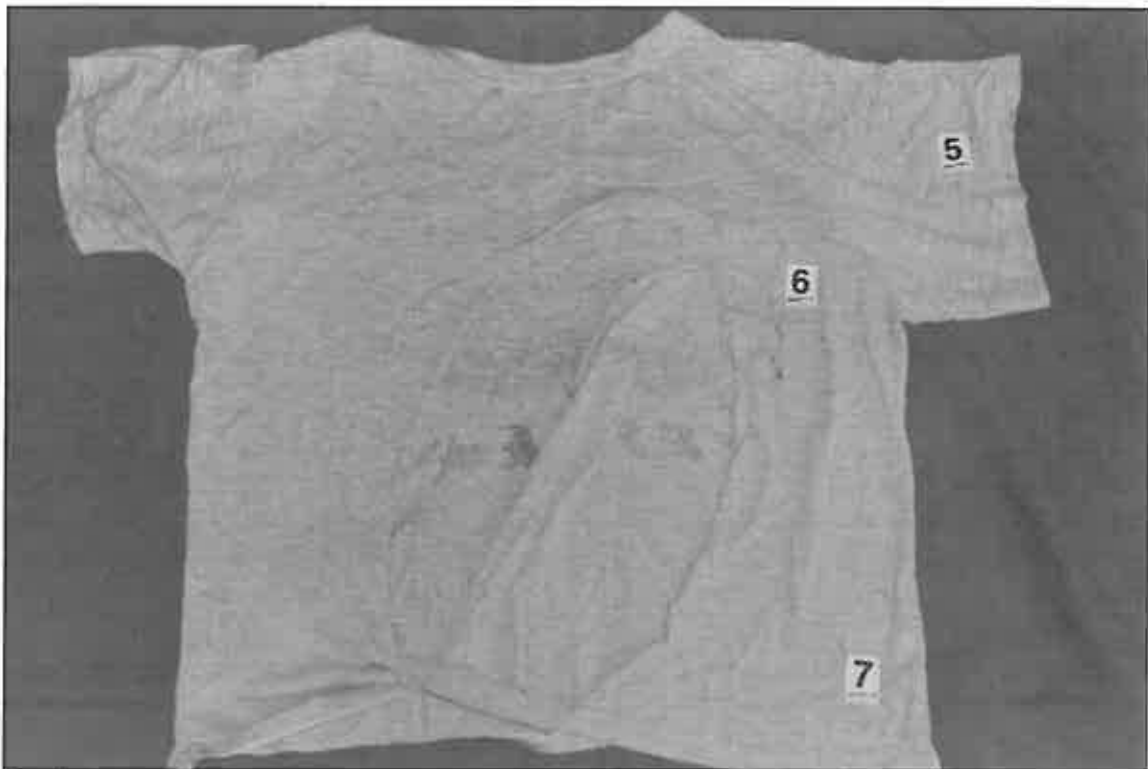
1. Several stains in form of droplets or discolorations under crew neck (marker These appear consistent with blood;
2. small tear in right side armpit area (Marker 2 - unknown if old or from incident);



3. A few stains and smears were observed along the front waist area of shirt that appear consistent with blood (markers 3 & 4).

Note: there is not a significant amount of blood on Mr. WU's shirt, rather a small number of small droplets and smears.

Rear:



**Back**

1. Several droplets, stains and smears that appeared consistent with blood (Markers 5, 6 & 7). These were located along the right side of the exhibit as photographed, and would have been on Mr. WU's rear right side (assuming he was wearing the shirt in the appropriate manner).
2. Large elliptical tear in the middle of the shirt (top to left of marker 6). The length extended from between the shoulder blade area to the waist band of the shirt. The width encompassed approximately half the rear of the shirt.



**VPD 1012497-2 – PJ Bottoms**



**Front**

General Description: older worn light grey shorts with black trim along leg band

Front:

1. Two stains or smears that appeared consistent with blood (markers 8 & 9);



**Rear**

Rear: Nothing noted on the rear of the shorts.

**Disposition of Exhibits:**

The above exhibits have been retained in their original packaging and are currently being held in Delta Police Exhibits.

A 5.2 Report to Justice was completed by Sgt. LEESON concerning the seizure of these exhibits. A detention order was granted on February 22<sup>nd</sup>, 2010.

**(Note; the Detention Order on these exhibits has now expired. These exhibits are being held for safekeeping pending the completion of this investigation).**





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## INJURIES

### **Medical Records:**

Mr. WU sustained the following injuries during the incident January 21<sup>st</sup>, 2010:

1. Injury to his left eye (left medial wall fracture);
2. Minor abrasions to both knees;
3. Bruising to upper back;
4. Sore Ribs.

Medical records were first requested from Mr. WU on January 22<sup>nd</sup>, 2010 by VPD PSS members in the form of a signed consent for release of medical records. This signed consent was subsequently revoked by Mr. WU.

Sgt. LEESON first requested consent for release of medical records related to Mr. WU's assessment and treatment at Vancouver General Hospital ("VGH") on February 8<sup>th</sup>, 2010.

Sgt. LEESON received two medical reports concerning Mr. WU's follow-up care on April 6<sup>th</sup>, 2010. These reports by Dr. ROSSMAN were dated February 12<sup>th</sup>, 2010 and March 4<sup>th</sup>, 2010.

Medical records pertaining to Mr. WU's assessment and treatment at VGH were eventually received May 11<sup>th</sup>, 2010 through Legal Counsel retained by Delta Police, and forwarded to Delta Police on June 1<sup>st</sup>, 2010. **(Note: VGH Records management staff had advised Sgt. LEESON that the turn around time for dealing with Law Enforcement consent for release of records was 30 days).**

**(See medical records and reports concerning Injuries to Mr. WU).**

## INTERVIEW OF VGH EMERGENCY ROOM PHYSICIAN

On July 19<sup>th</sup>, 2010 Sgt. LEESON met with Dr. Bruce FLEMING and obtained a digitally audio recorded statement. The interview took place from 1102 to 1114 hours and Dr. FLEMING stated in part that:

1. He treated Mr. WU at VGH emergency on January 21<sup>st</sup>, 2010 with the assistance of one of his residence. Dr. FLEMING was responsible for Mr. WU's care and the records associated to Mr. WU;



2. Mr. WU's English was limited and that he utilized family members to interpret. Through family and the EHS attendants he gathered that the mechanism of injury was Mr. WU's face striking the cement surface of the ground during an altercation with Police;
3. It was Dr. FLEMING's understanding through family members and EHS attendants that plain clothes officers attended Mr. WU's home in the early morning hours and showed ID trying to gain entry. There was a language barrier and Mr. WU attempted to close the door and prevent the entry and a struggle ensued. Dr. FLEMING stated the events after the initial confrontation were not entirely described. He understood that the officer who was being pushed away reached in, pulled Mr. WU out, and pulled him forward, and that Mr. WU struck the ground, the cement. There was no record or verbal account of an actual blow to the face or punch, per se;
4. He stated that the injury to Mr. WU's eye was consistent with Mr. WU's face contacting the ground;
5. When asked to comment on the amount of force required to cause such an injury to Mr. WU's eye, Dr. FLEMING stated it was consistent with being forcibly pulled while resisting and thrown forward and striking the ground;
6. When asked to comment on the injuries to Mr. WU's back and knees, Dr. FLEMING stated that these injuries were consistent with the same mechanism of injury and stated that there was no account of an ongoing assault provided to him;
7. Mr. WU had an injury to the left orbit, that is the lining, the socket around the eye had a fracture. This was considered significant but not serious, but significant enough to warrant the opinion of an ophthalmologist;
8. Dr. FLEMING reviewed the records supplied by Mr. WARD through Delta Police's legal counsel and advised that these records accurately reflect the VGH file and appeared complete. Dr. FLEMING commented that the records actually contained follow-up reports from specialists that would not form part of the VGH hospital file;

(See completed transcript and audio recording of Dr. FLEMING's interview for further details.)

(See Medical Records of Mr. WU)



**Photos of the injuries to Mr. WU:**



**Taken at VGH by MAN on 2010-01-21**



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DE2010X-11  
OPCC2010-5034



**Taken 2010-01-22 by Sgt. BIEG**



Delta Police Department  
Major Crimes Section

DE2010X-11  
OPCC2010-5034



**Taken 2010-01-22 by Sgt. BIEG**



**Taken 2010-01-22 by Sgt. BIEG**



Delta Police Department  
Major Crimes Section

DE2010X-11  
OPCC2010-5034



**Taken 2010-01-22 by Sgt. BIEG**



Taken January 22<sup>nd</sup>, 2010 by Sgt. BIEG

### **REVIEW OF E-COMM 911 Audio, RADIO and CAD**

Sgt. LEESON reviewed the following source material related to this investigation:

1. Transcript of 911 Call reporting domestic Assault on January 21<sup>st</sup>, 2010;
2. Source Audio files for item 1, in .wav format. Reviewed both the 911 phone call and the radio transmissions associated to this incident;
3. CAD records for call to 6216 [REDACTED] St. on January 21<sup>st</sup>, 2010;
4. MDT messages sent and received by 3E21 (Cst. FLORKOW and Cst. LONDON on January 21<sup>st</sup>, 2010 for period 0220 hours to 0700 hours;
5. Color Coded Timeline of this incident produced by Sandi GREENFIELD of Lesandz Concepts (compiled and synced data from multiple sources onto a unified timeline presenting information as it occurred);





6. Legend for color codes used to generate the timeline (item 4);
7. Enhanced phones\_42 file produced by the RCMP Audio and Video Analysis Unit to attempt to raise the level of the background conversation captured on the 911 audio between the 911 operator and [REDACTED]

#### **Overview of E-comm Data:**

The incident that led to this investigation was initiated by a call by [REDACTED] to 911 on January 21<sup>st</sup>, 2010 at 0216 hours that was routed to the E-Comm center. The call originated from a cell phone, 778-889-5388 and was routed to E-comm VPD Call Taker #1581. The result was a 14 minutes and 29 second call captured by the E-comm system.

E-comm records incoming 911 lines, the internal operational phone lines and the communication between E-comm dispatchers and units over both radio channels and the CAD system.

#### **Organization and Presentation of E-comm Data:**

Upon initiating their investigation, VPD PSS requested that the information associated to the call to 6216 [REDACTED] St. Vancouver on January 21<sup>st</sup>, 2010 be downloaded, transcribed and disclosed for investigative purposes.

VPD PSS also commissioned Sandi GREENFIELD through Lesandz Concepts to take the source data and generate a color coded timeline incorporating the E-Comm information from all sources and present it in a unified timeline that presented information from multiple sources as it occurred or became known.

- **The WU Incident timeline should be reviewed in it's entirety.**

**(See WU Incident Timeline)**



Sgt. LEESON reviewed the timeline and source audio. The following times of significance were noted:

Time	Observation/Remark	Source Audio
02:16:35	911 call routed to E-comm VPD Call taker #1581	Phones_42
02:16:43	Husband is drunk	Phones_42
02:16:52	Her, husband, a friend and baby at residence	Phones_42
02:17:09	Knight and [REDACTED]	Phones_42
02:17:48	Male voice in background of 911 call	Phones_42
02:18:11	He says he's going to leave. If he's really drunk, he hits people	Phones_42
02:18:12	CAD call created. Domestic In Progress, female on line, refusing to give info, husband intoxicated, female there with 10 month old.	RMS CAD
02:18:19	Female stated, "He hit me". Male heard in background.	Phones_42
02:19:24	Female caller stated, "I don't want the social worker to take my baby" – refusing to provide address- repeated requests prior to this statement.	Phones_42
02:19:12	CAD Update – Cell site only, She is scared Social Worker will take baby	Phones_42
02:19:36	Female caller discloses history with husband drinking, involvement with social services	Phones_42
02:20:08	First Broadcast – Requested echo unit for Domestic. Cell site 1600 blk E. 41. Female on line, refusing to give info, husband intoxicated, 10 month old with female.	Vap3_43
02:20:18	Female stated he's throwing me some clothes. My face.	Phones_42
02:20:23	Arguing in background of 911 call	Phones_42
02:20:26	3E21 (Cst. FLORKOW and Cst. LONDON) advise dispatch they will respond to call.	Vap3_43
02:20:32	6216 [REDACTED] St. (repeated back and confirmed as 6016 [REDACTED] St.) Accent of caller makes difficult to here. Arguing in background.	Phones_42
02:21:11	Dispatch advised over radio 6016 [REDACTED] St. – Negative for history.	Phones_42
02:21:12	CAD Update – no history new address (6016 [REDACTED])	RMS CAD
02:22:20	CAD update: Husband still there. Female stated to husband that he hit her, female talking to husband, no weapons, only com and baby in residence with	CAD RMS



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	the husband.	
02:22:52	Female caller stated, he just pushed my head when asked if she was hurt.	Phones_42
02:23:04	CAD update from 3E21 – On scene	CAD RMS
02:23:13	CAD UPDATE Dispatch – social services has been involved, husband drinking problem, she confirmed he pushed her head, trying to get names.	CAD RMS
02:23:19	Dispatch updates via radio: only husband, wife and baby in the house – apparently he tried to hit her. Acknowledged by 3E21.	VAP3_45
02:23:48	3E21 over radio requesting address confirmation	VAP3_46
02:24:48	3E21 over radio – 6016 doesn't exist, gives addresses that do exist in area.	VAP3_47
02:25:02	Caller stated address is 6216 [REDACTED]	Phones_42
02:25:15	Dispatch updated address as 6216 over radio. (Acknowledged by 3E21 at 02:25:22)	VAP3_48
02:25:49	CAD Update: Com now stating address is 6216 [REDACTED] St. IHL is neg (No history)	CAD RMS
02:27:18	Female caller identifies husband as Mark MERCADO	Phones_42
02:27:35	Female caller stated, "we are in the basement"	Phones_42
02:27:43	Female caller stated access is around the back	Phone_42
02:27:50	Female caller stated she heard them already, clarified it was Police she heard when asked by call taker at (02:27:55)	Phone_42
02:27:52	CAD Update – Location is going to be basement suite, rear of residence.	CAD RMS
02:28:03	Dispatch Update over air: It's actually going to be a basement suite, rear of the residence.	VAP3_4A
02:28:03	Yelling in background. Female saying no, they got the wrong guy to call taker.	Phones_42
02:28:20	Police heard yelling commands in background. Female caller stating "you've got the wrong guy" in foreground.	Phone_42
02:28:21	Dispatch calling 3E21 over radio: Asking if they are out with a male – No Response	VAP3_4B
02:28:30	Commotion in background. Female caller heard saying "hello Mr. Policeman you've got the wrong guy, that's the landlord. We're in the basement" in the foreground. Police heard acknowledging female caller.	Phones_42



02:28:30	Dispatch called 3E21 on radio – Not response	VAP3_4B
02:28:52	Dispatch called 3E21 on radio.	VAP3_4C
02:29:05	3E21 over radio. There's been a mix up, requests another unit to sort things out.	VAP3_4C
02:29:10	Dispatch to 3E21 over radio: cover unit is really close. Advised them they are with the landlord, not the suspect. Acknowledged by 3E21 at 02:29:18	VAP3_4C
02:30:07	E71 advised via radio they were on scene.	VAP3_4D
02:30:56	Call taker asking caller if police are dealing with her husband. She stated no.	Phones_42
02:31:36	3E21 requested EHS routine for male, 45 years with laceration to face.	VAP3_4E
02:31:49	3E21 requests NCO to scene. Acknowledged by 3E51 at 02:31:57	VAP3_4E
02:35:28	3E21 requested a Cantonese speaking member to their location. (Dispatch advised negative city wide at 02:37:11)	VAP3_51

**Playable Audio Timeline:**

Sgt. LEESON requested that Cst. Ray WARREN from the DPD FISS section combine the audio source files in order to hear what was occurring in time sequence utilizing available E-comm 911 audio, radio transmissions, and the operational phone data related to the WU investigation. Since all source files were obtained from the E-comm system, the times are consistent.

The phones\_42 file was used as a base file because it captures the 911 call from the point of origin to the point where members physically arrive in HILLARIO's suite to investigate the domestic assault. The subsequent radio transmissions and phone calls overlaid on the audio timeline to play in the sequence they occur which are synchronized with the phones\_42 file.

**(See E-comm Audio Timeline)**

**CAD/MDT Messages:**

Sgt. LEESON requested and obtained the MDT communications to and from unit VA3E21 for January 21<sup>st</sup>, 2010. The text file containing the message content was reviewed on March 3<sup>rd</sup>, 2010. There were 14 messages to or from VA3E21 on January 21<sup>st</sup>, 2010 from 0216 (start time of 911 call from HILLARIO) and 0346



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hours (time of last MDT message). The following is a summary of a review of these messages:

1. There was no MDT message activity from VA3E21 on January 21<sup>st</sup>, 2010 from 0221 to 0254 hours;
2. The 5 messages from 0216 to 0221 hours are unrelated to the incident and are social in nature;
3. The messages at 0254 and 0255 appear to be other units checking on Cst. FLORKOW and LONDON's welfare;
4. The message at 0312 states that, "No the file is not an in custody";
5. The message at 0317 is thanking VA7Z42 for translating;
6. The remaining 5 messages from 0341 - 0344 relate to interactions between the NCO Sgt. DANIELS and Cst. FLORKOW and Cst. LONDON related to where they are writing their report and arranging a meet;

(See MDT Message Data in Disclosure Tree for further details).

#### **Analysis & Enhancement of Phones 42 File**

On May 13<sup>th</sup>, 2010 Sgt. LEESON contacted the RCMP Audio/Video Analysis Unit requesting their assistance with analysis of the "phones\_42" file on the E-comm disclosure disk.

On May 17<sup>th</sup>, 2010 at 1146 hours Sgt. LEESON spoke to David LUKNOWSKY of the RCMP Audio/Video Analysis Unit in Ottawa. Sgt. LEESON discussed Phones\_42 file – Audio captured during 911 call on January 21<sup>st</sup>, 2010 and viability of analysis/enhancing the background contact captured on the audio. LUKNOWSKY advised that is what their section does and that they would do their best with the file provided. Sgt. LEESON was advised that the return time for analysis was approximately 2 months but would be reviewed upon receipt.

Sgt. LEESON completed a form C-414 and couriered it along with a CDrom containing wav file "Phones\_42" to the RCMP Audio/Video Analysis Section.

On May 26<sup>th</sup>, 2010 Sgt. LEESON received and reviewed a Form 3950 from RCMP Audio and Video Analysis Unit. The assigned diary date for the requested analysis was August 19<sup>th</sup>, 2010.

On June 8<sup>th</sup>, 2010 Sgt. LEESON contacted Andy MANDEL, the Crime Scene Liaison officer attached to the RCMP Forensic Lab regarding the audio file submitted to the RCMP Audio/Video Analysis Unit in Ottawa. Sgt. LEESON advised we were seeking to have the August 19<sup>th</sup>, 2010 diary date expedited on the basis of public interest. On June 9<sup>th</sup>, 2010 Andy MANDEL advised that the diary date for the Audio Video Analysis Unit has been changed to July 15<sup>th</sup>, 2010.



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On June 15<sup>th</sup>, 2010 Sgt. LEESON received and reviewed via courier the enhanced audio of "Phones\_42" file from the RCMP Audio and Video Analysis Unit (completed prior to diary date). On July 28<sup>th</sup>, 2010 Sgt. LEESON reviewed the enhanced audio file phones\_42 to attempt to generate a transcript of the background interaction audible in the background of the 911 call. Sgt. LEESON listened to the enhanced audio from time index 1130 to 1237 and identified the following audible events or commands:

- 1130 start of yelling in background;
- 1131 yell (Mr. WU yelling?)
- 1143 yell (Mr. WU yelling?)
- 1146 Get on your stomach;
- 1148 Get on your stomach;
- 1153 Get on your stomach now;
- 1204 Put your hands behind your back sir;
- 1210 Put your hands behind your back;
- 1211 put your hands behind your back;
- 1214 Start cooperating or stop talking;
- 1215 yell (Mr WU?)
- 1227 Stop talking.

On July 30<sup>th</sup>, 2010 Sgt. LEESON sent a request via email to Tom STAMATAKIS, the agent for Cst. LONDON and Cst. FLORKOW to arrange for a follow-up interview in order to listen to the enhanced audio of 911 call to attempt to identify which member giving what commands (if possible). Sgt. LEESON had subsequent discussions with David CROSSIN (legal counsel for Cst. FLORKOW and Cst. LONDON) regarding how best to present this audio file to the members individually, to obtain the best and most accurate result. Sgt. LEESON subsequently disclosed to Mr. CROSSIN a copy of the enhanced 911 audio along with the draft transcript generated by Sgt. LEESON in order to:



1. Confirm or correct what Sgt. LEESON has identified on the audio file;
2. Attempt to identify who uttered the commands identified;
3. Attempt to identify anything in the background contact that Sgt. LEESON had missed;
4. Respond in writing based on the findings of Cst. Florkow and Cst. London.

On August 10<sup>th</sup>, 2010 Sgt. LEESON sent via courier to Mr. CROSSIN a package that contained:

1. A cover letter with instructions;
2. CDrom containing 3 files:
  - a. Enhanced phones\_42 file;
  - b. Draft transcript of background conversation created by Sgt. LEESON;
  - c. Copy of the RCMP A/V Section report concerning how the audio file was generated and how best to listen to it.

On August 30<sup>th</sup>, 2010 Sgt. LEESON received a response via email from David CROSSIN, legal counsel for Cst. FLORKOW and Cst. LONDON. Mr. CROSSIN provided a response in writing as requested on August 9<sup>th</sup> and 10<sup>th</sup>, 2010. Mr. CROSSIN provided the following (reference to enhanced phones\_42 file supplied):

Mr. CROSSIN stated: It may be helpful to set out opposite the transcription our instructions as to identification. We are instructed as follows:

1130	start of yelling in background	Unknown
1131	yell	Unknown
1143	yell	Unknown
1146	Get on your stomach	Cst. Florkow
1148	Get on your stomach	Cst. Florkow
1153	Get on your stomach now	Cst. Florkow



1204	Put your hands behind your back sir	It is the belief of Cst. Florkow that it is him speaking.
1210	Put your hands behind your back;	It is the belief of Cst. London that It is him speaking.
1211	Put your hands behind your back;	Cst. Florkow
1214	start cooperating or stop talking?;	It is unclear whether these are the words uttered but Cst. Florkow is certain it was not his voice.
1215	yell	Unknown
1227	Stop talking.	Cst. London

While there appear to have been other utterances, it is exceedingly difficult to make anything else out.

(See original email from Mr. CROSSIN)

**REQUEST FOR FOLLOW-UP INTERVIEW MR. WU**

On August 4<sup>th</sup>, 2010 Sgt. LEESON sent a registered letter to Mr. WU's legal counsel Cameron WARD requesting a follow-up interview with Mr. WU to address areas that Sgt. LEESON believed required clarification based on Sgt. LEESON's review of the original interview conducted by Sgt. BIEG and Sgt. YUNG and based on the subsequent investigation to date. Sgt. LEESON also wanted to provide Mr. WU an opportunity to meet and discuss any other issues of concern that he may not have raised in the original interview.

On August 30<sup>th</sup>, 2010 Sgt. LEESON reviewed a letter from Cameron WARD dated August 23<sup>rd</sup>, 2010. Mr. WARD stated that he would be pleased to arrange a meeting between Mr. WU and Sgt. LEESON on condition that the original transcript and interview audio recording were provide to Mr. WARD for review with his client. Mr. WARD stated he would suggest a date and time for the meeting once he had an opportunity to review the transcript with Mr. WU.

On August 30<sup>th</sup>, 2010 Sgt. LEESON forwarded via courier to Mr. WARD 1-DVD containing the January 22<sup>nd</sup>, 2010 interview with Mr. WU and a hardcopy of the





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transcript for his review. Sgt. LEESON requested Mr. WARD make contact once he had reviewed the interview with Mr. WU.

On September 8<sup>th</sup>, 2010 Sgt. LEESON received a letter from Cameron WARD that stated that Mr. WU had been interviewed for almost 2 hours on January 22<sup>nd</sup>, 2010 and requested disclosure of the enhanced 911 audio and statements made by Cst. FLORKOW and Cst. LONDON as it was his understanding we wished to interview him based on the enhanced 911 audio and Cst. FLORKOW and Cst. LONDON's statements.

On September 9<sup>th</sup>, 2010 Sgt. LEESON responded to Cameron WARD via fax at and registered mail. Sgt. LEESON stated in part the following:

1. Sgt. LEESON had identified areas within Mr. WU's original statement and based on the subsequent investigation that require clarification;
2. Sgt. LEESON was interested in Mr. WU's recollection of the events, not recollections based on other witnesses and investigation;
3. Requested Mr. WU advise whether or not he will participate in an interview by September 16<sup>th</sup>, 2010;
4. Requested that Mr. WARD suggest dates in the near future if Mr. WU decides to participate;
5. Advised that if Mr. WU chose not to participate, Sgt. LEESON would unfortunately have to complete the FIR without further input from him.

#### **Enhanced Phones 42 Reviewed for Cantonese**

On August 10<sup>th</sup>, 2010 Sgt. LEESON forwarded the enhanced phones\_42 file to CFSEU to have a Cantonese transcriber review the period from time index 11 minutes 30 seconds to 12 minutes 37 seconds to determine if there are any audible Chinese or Cantonese words being spoken or yelled.

**Transcriber#2066 reported 1 incident during this time period where the Cantonese equivalent of "ouch" was heard.<sup>17</sup>**

This doesn't mean that Mr. WU didn't yell help in Cantonese as he reported, just that it wasn't captured in the 911 call audio (Enhanced phones\_42 file).

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<sup>17</sup> Review of Enhanced Phones\_42 for Cantonese. August 12<sup>th</sup>, 2010. P. 2. Line 3



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**(See review of enhanced phones\_42 by Cantonese transcriber)**

**Interview of Mr. WU – September 28<sup>th</sup>, 2010**

On September 28<sup>th</sup>, 2010 at 1020 hours Sgt. LEESON met Anna WONG, an employee of BC Professional Legal Interpreters, at the Quality inn located at 1335 Howe St. at 1020 hours. At approximately 1120 hours Mr. WU arrived along with Cameron WARD and Gabriel YIU. YIU's purpose was to monitor the interpreter (WONG) to ensure that her translation was accurate.

Sgt. LEESON obtained a digitally audio recorded statement from Mr. WU. The statement commenced at 1123 hours and concluded at 1242 hours. During the interview 3 groups of photographs were shown to Mr. WU:

1. Scene Photos labeled S1-S6;
2. Injury Photos labeled I1-I5;
3. Clothing Photos labeled C1-C5.

These photographs have been included in the disclose tree under the September 28<sup>th</sup>, 2010 interview of Mr. WU described as interview aids.

During this interview, Mr. WU stated in part the following:

**Photos of Scene:**

1. If looking at photo(S2). The right side door opens. The left side door is pinned and doesn't open;
2. At the time of the incident Mr. WU looked out the peephole (Photo S3), hole in the door you can look out. Mr. WU pointed out the peephole (circled by Sgt. LEESON);
3. The right door opens inward(S3);
4. The windows in the door – He could not see clearly out these window on the night because the outside light wasn't turned on;
5. During the incident, there would have been 2 lights (night lights)that were located in the hallway that would have been turned on;
6. The basement suite is located on the lower left side of the residence (photo S1);



7. The basement suite tenants access their suite from rear of the residence. They access the suite through the back lane;

**Injury Photos:**

8. When shown photo I1 and asked how he sustained this injury, Mr. WU stated "He hit me. He dragged me outside the door and I think I was assaulted at the entrance of the door because he pushed the door and hit me and I covered my face with both hands";
9. When asked to be specific about what cause the injury, Mr. WU stated "I was assaulted, I was hit, my face was all bloody, and my right eye has some problems." ;
10. When asked what part of officers came into contact with his left eye, Mr WU responded, "I cannot say. He pushed the door and hold onto me and assault me";
11. When asked if Mr. WU recalled being taken to the ground, Mr. WU stated "he pushed my head forward on the ground and put the handcuffs on me";
12. When asked when he was pushed or pulled from the residence if he recalled hitting his head on the ground, Mr. WU stated "No";
13. His father came out of the house when they were handcuffing him;
14. When asked if when he was pushed or pulled out of the ground if he went immediately to the ground, Mr. WU stated, "the moment I was being dragged out of the door and I was assaulted a few times and even this flower pot was knocked over (pointed out area by blue mat in photo S2). The moment the door was pushed in and he was pulled out he was assaulted in front of the front door;
15. He used both his hands to cover his face, he doesn't know how many police assaulted him. Initially there was 2 officers that entered the front door, but then doesn't know how many assaulted him;
16. He couldn't see the people clearly outside to say who assaulted him;
17. When asked where he felt the blows. Mr. WU stated later he had a bump left side of forehead, inside left forearm he had a red mark, inside his right thigh he had a red mark, the right side around his waistline he had pain from being punched, in the middle area of his vertebra (back) was swollen;



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18. I2 and I3 shown – these were the areas Mr. WU felt pain;
  19. When Mr. WU was asked to tell more about the source of the blows, he stated he covered both his eyes and it was dark, he couldn't see;
  20. Mr. Wu was unable to say if the blows felt like a kick or a punch;
  21. Mr. WU asked about photo 5 and asked how they were injured. Mr. WU stated that this probably happened when he was being dragged forward while being handcuffed on the concrete;

**Clothing Photos:**

22. Mr. Wu confirmed this is what he was wearing on January 21<sup>st</sup>, 2010 (photo s C1-C5);
23. When asked about damage to the clothing, Mr. WU stated the clothing was quite old so he had no idea whether there were holes or not. He stated there were small holes;
24. Mr. WU stated that he didn't pay particular attention but stated that marker 2 on photo C2 was there but can't recall if it was that big;
25. Mr. WU stated that the big tear (Photo C3, marker 6) was caused when he was dragged out;
26. Mr. Wu doesn't think that the BC Ambulance damaged any of his clothing while treating him, he believes his clothing was damaged during the incident;

**Incident Clarification:**

27. He heard the banging sound on the door. The rest of family was all sleeping;
28. He went down the stairs, as he arrived at the bottom of the stairs, he asked, "who is it";
29. The people outside responded, "police, open the door";
30. He looked through the glass hole and saw the identification card;
31. He could not see clearly because outside was dark. There were streetlights but it was quite dark at that time;
32. He undid the lock and opened the door 7-8 inches;
33. He saw 2 persons, the person used his hand to push the door, and then got hold of him and hit him;



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34. He stated at the point he thinks that he called out "burglar" in Cantonese;
  35. When outside he called out loud in Cantonese, "help, help";
  36. When asked what the word in Cantonese is for "help", Mr. WU stated, "Gow Man"(ph). (Ms. WONG added the direct translation is "save life");
  37. Mr. Wu stated he had no idea how long they (Police) were outside, but as he walked to get door he heard lots of heavy banging on the door;
  38. Mr. Wu stated that when he said, "who is it" as he was coming down the stairs the banging stopped and he heard "Police Open the door" from outside;
  39. Mr. WU stated he heard nothing before being awoken by the ringing of his door bell, and then he heard the "bang bang bang" on the door;
  40. Mr. WU stated he didn't hear any argument or fighting coming from downstairs prior to the door bell ringing;
  41. Mr. WU stated that neither police officer said anything to him at the door, after it was open, prior to him being pulled out;
  42. Mr. WU stated the handcuffs were put on after his father and mother came out;
  43. When Mr. WU was being handcuffed Mr. WU doesn't recall trying to stand up he just sat down covering his face with his hands;
  44. Mr. WU described that he was in a sitting position in front of the front door to the residence (Mr. WU demonstrated on ground: his rear end was on the ground with his feet in front of him, shoulder width apart);
  45. Mr. WU thinks that his mother embraced and covered him before he was handcuffed;
  46. When asked how he got from a sitting position to being handcuffed, Mr. Wu stated he could not recall;
  47. Mr. WU stated that when he was being handcuffed the police officers did not say anything to him, did not issue any commands or directions to him;



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48. Mr. WU said there was lots of people there at the time he was being handcuffed. Mr. WU stated that his family members and a few policeman, and a Pilipino there who was being handcuffed that lived in the basement. Later on he learned this male was a cousin of the tenants in the basement;
49. At the time he was handcuffed, Mr. WU has no idea how many police officers were there;
50. Mr. WU stated that he doesn't recall one of the officers putting his foot in the door to block the door;
51. Mr. WU stated that the officers entered his entrance way approximately 1 step after they pushed the door and dragged him out;
52. Mr. WU was asked if he pushed back on the door when the officers tried to enter, he stated he could not recall exactly and he was behind the door and the door was being pushed;
53. Mr. Wu was asking if he was standing behind and blocking the door, he stated that he was standing in the middle between the 2 doors (photo S2);
54. Mr. Wu stated he did not say, "no" when the officers tried to enter;
55. Mr. Wu stated that he did not review his statement with Mr. WARD prior to this interview;
56. Mr. WU stated "no", there wasn't anything that hasn't been discussed either in the original interview by Vancouver Police PSS or in the current interview (September 28<sup>th</sup>, 2010) that he felt was important and wanted to discuss.

(See audio and transcript of Mr. WU's September 28<sup>th</sup>, 2010 interview for full details)

### **EXPERT OPINION – USE OF FORCE**

On June 28<sup>th</sup>, 2010 Sgt. LEESON confirmed with the Calgary Police Service that S/Sgt. Chris BUTLER would assist as a Police Use of Force Expert on this investigation. A/Insp. BUTLER had some other commitments but would be available starting at the end of July to review this investigation.



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On August 11<sup>th</sup>, 2010 Sgt. LEESON prepared an electronic disclosure package of items requested by A/Insp. BUTLER for use in the Use of Force review. The disclosure was generated on a USB flash drive and was 5.15 GB in size. Disclosure included:

1. All statement transcripts;
2. Audio or audio and video of interviews conducted;
3. All duty reports;
4. 911 transcripts, timeline, and audio
5. Enhanced phones\_42 file generated by the RCMP Audio and Video Lab;
6. Medical records;
7. Photos of scene, injuries and exhibits.

Sgt. LEESON sent this disclosure disk via courier to A/Insp. BUTLER.

Sgt. LEESON has continued to provide updated information as it became available to A/Insp. BUTLER in the even this effected his opinion on the incident as reviewed. This has included:

1. VPD Use of Force Policy;
2. Revised transcript of Mr. WU Sr;
3. Statement summary of Mr. WU from September 28<sup>th</sup>, 2010 interview;
4. Interview Transcript of Mr. WU from September 28<sup>th</sup>, 2010.

On September 23<sup>rd</sup>, 2010 Sgt. LEESON received a PDF copy of A/Insp. BUTLER's report titles, "Wu Use of Force Review Butler Final". Sgt. LEESON has reviewed this report. The report of A/Insp. BUTLER should be read in it's entirety.

**(See A/Insp BUTLER'S report on his review of the Police Use of Force)**

Based on his review of the material provided him, A/Insp. BUTLER concluded that:

*The use of force consisting of the application of a balance displacement takedown, physical control / handcuffing and the use of stunning techniques was consistent with their training and with VPD policy governing the use of force. While perhaps certain organizational practices (such as the use of untrained covert operators in overt policing roles) contributed to the string of unfortunate events that led to force being applied, this is not rationale to find fault in the specific officers conduct.*



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*They were deployed as directed and responding to an emergency call for service as was required.*

*In the final review of this case it is my opinion that a very unfortunate error occurred. However if the officers evidence and the forensic evidence is to be believed then the officers actions in this case were predicated on their properly held perception based upon the totality of the circumstances which they faced. The difficult task is before the adjudicator of this case to determine whether Mr. Wu's evidence or the subject officers evidence is to be preferred; both cannot be accurate. The independent forensic evidence should be of immense assistance in this regard. If the officers view of how the incident unfolded is accurate then it is this reviewers opinion that the use of force on Mr. Wu by Constables Florkow and London was consistent with properly trained police tactics and not excessive.<sup>18</sup>*

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<sup>18</sup> A/Inst. BUTLER. WU Use of Force Review Final. P. 19-20





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### **Criminal Code Considerations**

Sgt. LEESON consulted with Insp. Lorne PIKE the Team Commander assigned to this investigation regarding whether or not the actions of Cst. FLORKOW and Cst. LONDON warranted the submission of a Report to Crown Counsel. Sgt. LEESON and Insp. PIKE reviewed the most appropriate sections of the *Criminal Code* as follows:

1. Section 349 (1) CCC – Unlawfully in a dwelling house  
(1) Every person who, without lawful excuse, the proof of which lies on that person enters or is in a dwelling-house with the intent to commit an indictable offence in it is guilty of an indictable offence.
  - Investigators do not believe Cst. FLORKOW and Cst. LONDON intended to commit an indictable offence within the residence of Mr. WU and as such, this section of the Code does not apply.
  
2. Section 267 (b) Assault Causing Bodily Harm  
Every one who, in committing an assault,
  - (a) carries, uses or threatens to use a weapon or an imitation thereof, or
  - (b) causes bodily harm to the complainant,is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years or an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months.
  - Investigators believe the use of force involved in this incident came about through Cst. FLORKOW and Cst. LONDON's attendance to 6216 ██████ St. Vancouver as on duty police officers responding to a 911 call exercising their duties at common law to protect life and enforce the law;
  - Investigators believe that Cst. FLORKOW and Cst. LONDON's use of force in these circumstances falls within the parameters of S. 25 (1) of the Criminal Code;
  - Investigators believe that based on the totality of circumstances and corroborating evidence to the contrary that there is insufficient evidence to support a charge of Assault CBH or warrant the submission of a Report to Crown Counsel in this matter.



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**ANALYSIS AND DETERMINATION OF ISSUES:**

It is now clear that Mr. WU was not directly involved in the domestic assault that prompted the 911 call to the basement suite of 6216 [REDACTED] St. Vancouver in the early morning hours of January 21<sup>st</sup>, 2010. In looking at the available material gathered during this investigation, this was not the case during the response to this incident.

It is tragic and unfortunate that Mr. WU sustained injuries while in his own home as a result of his contact with Police during their response to this incident. However, the focus of this investigation isn't the injuries sustained by Mr. WU but whether or not the actions of Cst. FLORKOW and Cst. LONDON on their attendance to the residence on January 21<sup>st</sup>, 2010, constitute police misconduct.

In relation to Police Misconduct and the Police Act, this investigation's focus is whether or not the actions of Cst. FLORKOW and Cst. LONDON amount to the disciplinary default of Abuse of Authority:

*77(4)(a) "abuse of authority", which is oppressive conduct towards a member of the public, including, without limitation,*

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

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

*(A) using unnecessary force on any person, or*

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

*(iii) when on duty, or off duty but in uniform, using profane, abusive or insulting language to any person including, without limitation, language that tends to demean or show disrespect to the person on the basis of that person's race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation, age or economic and social status;*



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**Issue 1 - Lawfulness of Entry into 6216 [REDACTED] St.:**

In order to determine if Cst. FLORKOW and Cst. LONDON had the lawful authority or were justified to enter 6216 [REDACTED] St. Vancouver (WU residence) on January 21<sup>st</sup>, 2010 the following will need to be examined:

1. The purpose for the officers attending the residence;
2. What was known by the officers upon attending the residence;
3. Relevant Legal Authorities and Case Law;
4. The actions of the officers;
5. The actions of Mr. WU;

**Purpose for Attending the Residence:**

On January 21<sup>st</sup>, 2010 at 0220 hours Cst. FLORKOW and Cst. LONDON were dispatched to a 911 call of a domestic disturbance.

A 911 call was placed at 02:16:35 originating from a Rogers Wireless Inc. Cellular Phone, 778-889-5388. The caller was later identified as [REDACTED]. The 911 call resulted in audio recordings, transcripts and timelines described in this report. The source files are included in this disclosure and are available for review and scrutiny.

The caller [REDACTED] was initially reluctant to identify her location. Upon review of all available evidence (911 audio and transcripts, statements) it is clear she was concerned her child would be apprehended by Social Services if Police attended her location. Despite this fear, she was concerned enough about the situation in her home on January 21<sup>st</sup>, 2010 to call 911 for assistance. The 911 operator worked with [REDACTED] to identify the location of the incident. This took some time and progressed in the following manner:

- Knight and [REDACTED]
- Cell site located 1600 blk. of East 41;
- 6016 [REDACTED] (didn't exist)<sup>19</sup>;
- 6216 [REDACTED] St;
- Basement 6216 [REDACTED] St. - entrance around back.

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[REDACTED] actually stated 6216 [REDACTED] but was misunderstood by the 911 operator. [REDACTED] confirmed the wrong address when it was repeated back to her by the 911 operator.



It was when the location was identified at 6216 [REDACTED] St. that Cst. FLORKOW and Cst. LONDON came into contact with Mr. WU;

It should be noted that the address of 6016 [REDACTED] St. was actually stated by [REDACTED] on the 911 audio (phones\_42) at 02:20:32 as 6216 [REDACTED] (the correct address). The address was heard incorrectly by the 911 operator as 6016 [REDACTED] St. [REDACTED] confirmed the incorrect address when 6016 [REDACTED] was repeated back to her.

There is nothing in the investigation to suggest that either Cst. FLORKOW or Cst. LONDON has had any previous contact with Mr. WU, or had attended his address prior to January 21<sup>st</sup>, 2010.

**It is clear from this investigation and a review of the available evidence that the sole purpose of Cst. FLORKOW and Cst. LONDON's attendance to 6216 [REDACTED] St., Vancouver was to respond to a 911 call of a domestic dispute in progress.**

**Information Known by Cst. FLORKOW and Cst. LONDON:**

Through the E-comm 911 and CAD system we have an accurate record of:

1. The information conveyed by [REDACTED] to the 911 operator and the exact time that it was provided;
2. The information passed on to Cst. FLORKOW and Cst. LONDON, the time this occurred, and through what medium (radio broadcast, CAD update, MDT Message) it was transmitted;

From a review of the 911 Audio, transcripts, timelines, CAD records as well as statements and interviews conducted with Cst. FLORKOW and Cst. LONDON, the following information was known at the point the officers knocked on the front door to 6216 [REDACTED] St. and ultimately encountered Mr. WU:

1. Domestic in Progress;
2. Female caller;
3. Husband intoxicated;
4. Female refusing to provide information;
5. 10 month old child at residence;
6. Call originating from a cell phone;
7. No Prime history at residence (6216 [REDACTED] St.);
8. Husband still on scene;



- 
9. Female stating the male had assaulted her;
  10. No weapons;
  11. Only the complainant, her baby and the husband in the residence;
  12. History of involvement with social services because of husband drinking and hitting her;
  13. Address confirmed as 6216 [REDACTED] St.

(See E-comm Timeline, and/or the table discussed in the "E-comm Data and Presentation" section of Investigation portion of this FIR)

### **Legal Authorities and Relevant Case Law:**

#### **Common Law Duty:**

Sworn Police Officers have a Common Law Duty to prevent crime, protect life and property and enforce the laws.

In the case of a 911 call reporting a domestic dispute in progress, Cst. FLORKOW and Cst. LONDON would be expected by virtue of their employment to respond to such an emergency call, check on the welfare of those involved, investigate to determine if a criminal act or omission had occurred and take whatever enforcement action is required based on the circumstances.

#### **Did the Officer's Enter 6216 [REDACTED] St:**

In determining whether or not Cst. FLORKOW and Cst. LONDON entered 6216 [REDACTED] St. Vancouver, it may be useful to examine the Criminal Code of Canada definition concerning Entrance:

- 350.** *For the purposes of sections 348 and 349,*
- (a) *a person enters as soon as any part of his body or any part of an instrument that he uses is within any thing that is being entered; and*
  - (b) *a person shall be deemed to have broken and entered if*
    - (i) *he obtained entrance by a threat or an artifice or by collusion with a person within, or*
    - (ii) *he entered without lawful justification or excuse, the proof of which lies on him, by a permanent or temporary opening.*

In applying the above definition to this incident and investigation it is clear that Cst. FLORKOW and Cst. LONDON **did enter** Mr. WU's residence on January 21<sup>st</sup>, 2010. This conclusion is arrived at by reviewing the following reports and statements:



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**Prime Report Submitted by Cst. FLORKOW(VA2010-11808):**

*After loudly identifying themselves approximately 7-10 times as "Vancouver Police", WU cracked open the door several inches. PC 2538 held up his badge and police ID card to WU's face and loudly stated "It's the police, we are investigating a domestic disturbance and we need you to open your door and let us enter your home.". PC 2538 repeated this statement several times, however WU refused to open the door to let PCs inside the residence.*

*PCs believed it was important that they be allowed to enter the house to check on the welfare of the victim (who had reportedly been assaulted in the domestic dispute). At this point in the investigation PCs also believed that WU could be the suspect who was arrestable for domestic assault.*

*As WU was refusing to allow PCs to enter the premise (despite PCs identifying themselves numerous times and stating their purpose at the residence) PC 2538 stuck his right foot inside the doorway to ensure that WU could not close the door and deny them access to the residence.*

Duty report of Cst. FLORKOW dated March 25<sup>th</sup>, 2010:

*In light of Wu's continued refusal and the urgent circumstances, I stuck my foot inside the doorway to ensure that WU could not close the door and barricade himself inside the house. This is a technique I learned while enrolled at the Justice Institute of British Columbia Police Academy.*

Ordered Interview of Cst. FLORKOW on May 12<sup>th</sup>, 2010:

*GL Okay. Ah, is it at that point where you put your foot into the, the doorway to block the door?*

*NF Well, at this point, again, like I said in my duty report, because I was concerned that 'A', ah, I believed he was the suspect involved in the domestic disturbance and he wasn't going to be letting us into the, into the house and investigate it. I was concerned that he would close the door and barricade himself inside the residence.*

*GL Okay. Which, which foot did you step in to block the door with?*

*NF I cannot recall.*

*GL Okay.*



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*NF I just know I, I put a foot in there.*<sup>20</sup>

Duty Report of Cst. LONDON dated March 20<sup>th</sup>, 2010:

*After identifying ourselves numerous times, Cst. Florkow informed WU that we were there to investigate a domestic dispute and that we needed to come inside.*

*Cst. Florkow then placed his foot inside the door. At this point, WU pushed Cst. Florkow. Cst. Florkow then stepped towards WU and WU grabbed Cst. Florkow by the shoulders.*

In Mr. WU's January 22<sup>nd</sup>, 210 interview he stated:

YW: *...open on the other side. I have a double door, (indiscernible) door. The handle is on the other side. It should be opened this way. When he pushed and pulled me outside. The clothes, I think the clothes was ripped this way.*

TY: *So, is the door open outward or inward?*

YW: *Inward.*

TY: *So the door, the door opens inward...*

RB: *Mm hmm.*

TY: *...so once he opened the door...*

TY: *Did he push inward?*

YW: *Yeah. He pushed with his hand and then pulled, pulled...*

TY: *So he, one arm pushed door open and one arm he grabbed him.*

TY: *He grabbed you right away?*

YW: *Yes.*<sup>21</sup>

In Mr. WU's interview September 28<sup>th</sup>, 2010, he stated in part that (P. 51):

GL: *Okay. Uh. When the door's first opened, does, does Mister WU recall one of the officers putting his foot inside the door, to block the door?*

AW: *When the door was opened, was opened the first time, as your recall, do you recall a police officer put, put his foot inside the door to block the door so you could not close it? Do you recall?*

YW: *I don't recall.*

AW: *He cannot recall.*

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<sup>20</sup> Interview of Cst. FLORKOW. May 12<sup>th</sup>, 2010. P. 9-10. Lines 219-228.

<sup>21</sup> Interview of Mr. WU. January 22, 2010. P. 12 lines-16-26, P. 13 lines 1-3.



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GL: *Can Mister WU tell me how far the officers got into his front, like into his residence, like inside his entrance way?*

AW: *Do you, do you recall how, how far did the police officers got into your front door and dragged you outside? How far did they got inside...*

YW: *The moment he pushed the door, he dragged, dragged me. The moment he pushed the door, he dragged me.*

AW: *What the, the moment they push in the door...*

YW: *He walked, walked, walked, walked...*

AW: *...they...*

YW: *...walked inside.*

AW: *...and they walked inside the house.*

YW: *Dragged me.*

AW: *Uh, dragged me out.*

GL: *Okay. How far inside did they get? Like, is it one step, two steps?*

AW: *Uh*

GL: *Can Mister WU say?*

AW: *How many steps did they take after they got in and dragged you?*

YW: *Just one step and he was able to drag me.*

AW: *Uh, one step. One step little bit.*

And:

GL: *okay. Does Mister WU recall if he pushed the door back or pushed at the officers as they were forcing their way into the house?*

AW: *As you recall, uh, memory, meaning recall, when you opened the door, when they pushed the door, did you try to close the door?*

YW: *I don't know. I was holding it like that. Like that. Like that. I opened to look like so, he pushed in and entered.*

AW: *Uh, he, he cannot recall exactly...*

YW: *I was holding like this.*

AW: *...he was holding the door.*

YW: *He pushed in and entered.*

GL: *Mm.*

AW: *Like, like that.*

GL: *Mm hm.*

AW: *And then the door was being pushed.*

GL: *Okay.*

YW: *Pushed the door and dragged me.*

AW: *And, and they, uh, got hold of him.*

YW: *I was standing, I was standing there.*

AW: *Because, uh, like, I was standing that way, holding the door.*





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GL: *Hm. So he was blocking the door? Maybe standing behind the door?*

AW: *Were you behind the door? You were standing behind the door?*

YW: *Yes, yes. Standing, standing, the door was like that, I was like that. Yes. Looking like that. He pushed in.*

AW: *Yes. I like, uh, holding, uh, on the door and the, a little gap and then looking like that and then they came in and grab him.*

GL: *Okay. So Mister WU was standing behind this door for, for in photo S-2?*

AW: *You were standing behind the door...*

GL: *He was standing behind...*

AW: *...is that right?*

GL: *...the right door in this side.*

YW: *Not exactly behind. I think I was between the two doors. I think this is what happened.*

*(background - coughing)*

AW: *Well he was not, uh, he say he's not exactly behind this, uh, left side the door...*

YW: *Because I looked out at an angle from there.*

AW: *...he would be like, uh, in, in, in between the, the two door. Right.*

GL: *I understand.*<sup>22</sup>

In the September 28<sup>th</sup>, 2010 interview Mr. Wu stated he did not say, "no" when the officers tried to enter his home (p. 53-54).

Both Cst. FLORKOW and Cst. LONDON stated that Cst. FLORKOW put a foot inside the threshold of the door to block the door and prevent it from being closed. Mr. WU doesn't recall a foot being put in to block the door, but stated that the door was pushed open while he was behind it and that the officers entered his entrance way approximately 1 step. **Despite the differences, entry into the residence has been established.**

Having established that entry was made by Cst. FLORKOW and Cst. LONDON into Mr. WU's residence, the next issue to examine is whether or not the entry was lawful and/or justified by law.

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<sup>22</sup> Mr. WU. Transcript of September 28<sup>th</sup>, 2010 interview. P. 52-53



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## Supreme Court of Canada – R v. GODOY

The Supreme Court of Canada decision in GODOY dealt specifically with the issues of response to 911 calls and the forcible entry into a dwelling house by Police in order to protect life. In GODOY, the Supreme Court of Canada said:

*Public policy clearly requires that the police ab initio have the authority to investigate 911 calls, but whether they may enter dwelling houses in the course of such an investigation depends on the circumstances of each case. If police conduct constitutes a prima facie interference with a person's liberty or property, as it does here, the court must consider two questions: first, does the conduct fall within the general scope of any duty imposed by statute or recognized at common law; and second, does the conduct, albeit within the general scope of such a duty, involve an unjustifiable use of powers associated with the duty. The common law duties of the police (statutorily incorporated in s. 42(3) of the Ontario Police Services Act) include the protection of life. The police duty to protect life is engaged whenever it can be inferred that the 911 caller is or may be in some distress, including cases where the call is disconnected before the nature of the emergency can be determined. The importance of the police duty to protect life warrants and justifies a forced entry into a dwelling in order to ascertain the health and safety of a 911 caller. While residents have a recognized privacy interest within the sanctity of their home, the public interest in maintaining an effective emergency response system is obvious and significant enough to merit some intrusion on a resident's privacy interest. However, the intrusion must be limited to the protection of life and safety; the police do not have further permission to search premises or otherwise intrude on a resident's privacy or property.*

In GODOY, the Supreme Court of Canada also commented specifically on aspects of domestic violence as they relate to the response to 911 calls:

21            *Further, the courts, legislators, police and social service workers have all engaged in a serious and important campaign to educate themselves and the public on the nature and prevalence of domestic violence. One of the hallmarks of this crime is its private nature. Familial abuse occurs within the supposed sanctity of the home. While there is no question that one's privacy at home is a value to be preserved and promoted, privacy cannot trump the safety of all members of the household. If our society is to provide an effective means of dealing with domestic violence, it must have a form of crisis response. The 911 system provides such a response. Given the wealth of experience the*



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*police have in such matters, it is unthinkable that they would take the word of the person who answers the door without further investigation. Without making any comment on the specific facts of this case, it takes only a modicum of common sense to realize that if a person is unable to speak to a 911 dispatcher when making a call, he or she may likewise be unable to answer the door when help arrives. Should the police then take the word of the person who does answer the door, who might well be an abuser and who, if so, would no doubt pronounce that all is well inside? I think not.*

This amounts to a two part test. 1) Does the conduct fall within the general scope of any duty imposed by statute or recognized at common law; and 2) Does the conduct involve any unjustifiable use of powers associated within that duty. Based on a review of the available investigative material, it was the entrance by Cst. FLORKOW into Mr. WU's residence, and Mr. WU's apparent resistance to this entrance that resulted in force being used on Mr. WU. The circumstances surrounding this entrance are therefore critical to this investigation. Like any situation involving multiple persons, there is disagreement on what exactly happened. These discrepancies will be examined and corroborating evidence to the "versions" brought forward from the investigative material gathered.

In applying what the Supreme Court said in GODOY to this investigation it appears to meet the criteria identified. Cst. FLORKOW and Cst. LONDON were responding to a 911 call of a Domestic Dispute in Progress. They were acting in accordance to their established common law duties to protect life and enforce laws. Upon encountering Mr. WU at the door they were aware of the following pieces of information:

- Domestic in Progress;
- Female caller;
- Husband intoxicated;
- female refusing to provide information;
- 10 month old child at residence;
- call originating from a cell phone;
- No Prime history at residence (6216 [REDACTED] St.);
- husband still on scene;
- female stating the male had assaulted her;
- no weapons;
- only the complainant, her baby and the husband were in the residence;
- history of involvement with social services because of husband drinking and hitting her;
- Address confirmed as 6216 [REDACTED] St.



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Cst. FLORKOW and Cst. LONDON's purpose in entering Mr. WU's residence was described by Cst. FLORKOW as:

**GL** *Okay. Ah, just in regards to your duty report, you indicate, ah, pretty clearly, ah, your mind-set when you actually responded to this call. Is there anything you want to add in terms of, uhm, just your frame of mind as you were approaching the front door, knocking, and ah, I guess trying to gain access to, ah, to investigate this complaint?*

**NF** *Ah, I just recognized the, the need that we had a duty to respond, ah, just due to the fact that it was a domestic, that a female had been hit, that there was a baby on the scene. Ah, that..., we had no information that the suspect was intoxicated or had a history of doing this. Ah, I just recognized that there was..., it was an urgent situation and something that needed, ah, immediate, ah, an immediate assessment and this person needed immediate help.<sup>23</sup>*

In assessing the circumstances of Cst. FLORKOW and Cst. LONDON's entry into Mr. WU's residence, Sgt. LEESON was mindful of the fact that this turned out to be the wrong residence. While the street address of 6216 [REDACTED] St. Vancouver was correct, the location of the domestic dispute was actually in the basement suite, the entrance to this basement suite is located around the back of the residence.

#### **LEGAL OPINION SOUGHT:**

Sgt. LEESON sought legal advice regarding disciplinary decisions arising from similar factual circumstances and I was advised by counsel that there were no relevant decisions on point.

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<sup>23</sup> Ordered Statement of Cst. FLORKOW. May 12<sup>th</sup>, 2010. P. 28. Lines 704-713.



Sgt. LEESON believes based on the totality of circumstances that the entry by Cst. FLORKOW and Cst. LONDON into Mr. WU's residence on January 21<sup>st</sup>, 2010 was justified.

**(See R. v. GODOY)**

**Issue 2 – Were Cst. FLORKOW and Cst. LONDON justified in Using Force on Mr. WU:**

It is clear from the investigation that Mr. WU sustained injuries as a result of his contact with Police on January 21<sup>st</sup>, 2010. It is also clear that these injuries to Mr. WU were caused or resulted from the application of force on Mr. WU. The next issue that needs to be examined is the circumstances that this force was used on Mr. WU. These circumstances were examined through the following:

1. Statements of Mr. WU (January 22<sup>nd</sup>, 2010 and September 28<sup>th</sup>, 2010);
2. Statement of [REDACTED]
3. Statement of Mr. WU Sr.;
4. Statement of [REDACTED]
5. Statement of Grant BURGESS – BCAS;
6. Statement of Greg STUBBS – BCAS;
7. Statement of Dr. FLEMING;
8. Prime report submitted by Cst. FLORKOW;
9. Ordered Duty Report of Cst. FLORKOW;
10. Ordered Statement of Cst. FLORKOW;
11. Ordered Duty report of Cst. LONDON;
12. Ordered Statement of Cst. LONDON;
13. E-comm timeline (Color Coded);
14. Enhanced phones\_42 audio from 911 call from [REDACTED]

**Facts or Issues in Agreement:**

In looking at the above material Sgt. LEESON was able to identify the following facts or issues that are in agreement:

1. **Cst. FLORKOW and Cst. LONDON knocked on the door and rang the doorbell of the front door of 6216 [REDACTED] St. in the early morning hours of January 21<sup>st</sup>, 2010;**



2. **Mr. WU upon arriving at the bottom of his stairs in the vicinity of the front door asked “who is it” in English<sup>24 25</sup>. The response was either “police”<sup>26</sup>, “police open the door”<sup>27</sup>, or “Vancouver Police”<sup>28</sup>, we are responding to a domestic disturbance, and we need to get into the house”<sup>29</sup> depending on what statements are referenced.**
  
3. **The Police officers were dressed in plain clothes (not in uniform). Both Mr. WU, Cst. FLORKOW and Cst. LONDON and other witnesses that subsequently became involved, all agree on this point.**
  
4. **Cst. FLORKOW and Cst. LONDON identified themselves as Police Officers and showed Mr. WU Police Identification.**

Mr. Wu stated in his January 22<sup>nd</sup>, 2010 interview:

*YW: He said police. He had a tag. I remember he had a tag over here. I looked through the peep-hole that he had a tag on him.*

*TY: Is this the one?*

*YW: Yeah. I remember there was a tag.*

*TY: Is it similar to this one?*

*YW: I can't tell. I couldn't see clearly. From here. Very far. At night.*

*TY: He said it's around here or here.*

*YW: Here, somewhere around here. I don't know.*

*TY: He wasn't sure if it's exactly the same badge 'cause...*

*RB: Yep, yep.*

*TY: ...it's smaller but he says it's some kind of...*

*TY: Looks like a police badge?*

*YW: Yeah. Looks like a police badge.*

*TY: Looks like a police badge.*

*TY: Were there two people?*

*YW: Two people. Yes.*

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<sup>24</sup> Interview Transcript of Mr. WU. January 22, 2010. P. 9-10.

<sup>25</sup> Ordered Statement of Cst. LONDON. March 20<sup>th</sup>, 2010. P. 1

<sup>26</sup> Interview Transcript of Mr. WU. January 22, 2010. P. 9-10.

<sup>27</sup> Interview of Mr. WU. September 28<sup>th</sup>, 2010. P. 29 line 9

<sup>28</sup> Ordered Statement of Cst. LONDON. March 20<sup>th</sup>, 2010. P. 1

<sup>29</sup> Ordered Duty Report of Cst. FLORKOW. March 25<sup>th</sup>, 2010. P.1



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TY: Two guys.  
YW: I forgot to turn on the light on the outside. I should turn on the outside light. I didn't turn on the light on the outside. I only turned on the light inside.  
TY: You didn't turn on the light on the outside?  
YW: I didn't turn on the light on the outside.  
TY: So the, the lights only on inside the door, he didn't turn on the out-, the light wasn't on on the outside where the two people are.  
YW: I asked (indiscernible) police. And told me they were police.  
TY: They said police.  
RB: Okay, um, so you looked through the peep-hole.  
TY: You looked through the hole, the peephole.  
YW: Uh, the peep-hole.  
RB: Right, and there's two...  
TY: Two people?  
YW: Two people.  
RB: ...standing there.  
TY: Two standing there.  
RB: And they have the badge, you see the badge through the peep-hole?  
TY: You mean here.  
YW: Here. Yeah. Here.  
TY: Yeah.  
RB: And you hear them say police?  
TY: Did they say police ?  
YW: Yes, yes, yes.<sup>30</sup>

In Cst. LONDON's Ordered Duty report he stated:

*WU finally opened the door but only very slightly. I could see WU's face and I stated to him numerous times, "Vancouver Police" while holding my badge in my right hand at WU's face level approximately one foot away from his face. I also could hear Cst. Florkow state, "Vancouver Police".<sup>31</sup>*

In Cst. FLORKOW's Ordered Interview he stated:

**GL** *Okay. What..., once the door opened, what was, ah, what was the exchange of the contact that occurred?*

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<sup>30</sup> Interview of Mr. WU. January 22<sup>nd</sup>, 2010. P 10 line 11 to P. 11 line 26.

<sup>31</sup> Ordered Duty Report of Cst. LONDON. March 20<sup>th</sup>, 2010. p. 1



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**NF** *Ah, like I said on page two of my duty report, ah, I held my badge and police ID card up to Wu's face (inaudible).....*

**GL** *Okay.*

**NF** *...ah, it would have been within..., I'm not sure..., it was maybe a foot or two within..., in front of his face, because he was looking and I, I held it directly out in front of me. Ah, again, my duty report..., I said, I repeatedly stated loudly, ah, it's the police, we're investigating a domestic disturbance and we need you to open your door and let us into your home.*

**GL** *Okay.*

**NF** *And, ah, I was clearly identifying myself as a police officer verbally as well as showing my police badge and my police ID card, and I was making that statement over and over again.<sup>32</sup>*

It appears that Mr. WU was comfortable enough in his belief that the badges; Identification; and verbal statement by Cst. FLORKOW and Cst. LONDON that they were police officers were legitimate, that he opened his door.

The BCAS Paramedics who responded to assist Mr. WU also observed Cst. FLORKOW and Cst. LONDON with Police ID being worn on the outside of their clothing. BURGESS only recalls seeing the ID on one of the plain clothes members, "...the officer with the, the one with the shaved head had the bling, bling, ah, the, the big chain with the, the badge hanging off the chain."<sup>33</sup> BURGESS also commented that he would have a hard time believing that the 2 plain clothes members were actually Police if they knocked on his door in the middle of the night.

BURGESS's partner Greg Stubbs stated that on their arrival, "Ah, every officer, except two, were in their uniforms and the two officers that I saw who were in, ah, plain clothes, had their badges around their necks."<sup>34</sup>

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<sup>32</sup> Transcript, Ordered Interview of Cst. FLORKOW. May 12, 2010. P. 9 lines 199-212

<sup>33</sup> Transcript of interview of Grant BURGESS. March 15<sup>th</sup>, 2010. P. 9 line 215-216.

<sup>34</sup> Transcript of Greg STUBBS. March 11. p.2 lines 31-32.





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**5. No force was used by Cst. FLORKOW or Cst. LONDON after Mr. WU was handcuffed.**

Mr. WU stated:

*RB: And once you were handcuffed, did the hitting stop?*

*TY: Once you were handcuffed, did the beating stop?*

*YW: It stopped. It stopped. It stopped.*

*TY: It stopped.*

*RB: It stopped. Once you were handcuffed, it stopped.*

*TY: Once you were handcuffed, the beating stopped?*

*YW: That's right. That's right.*

*TY: Yes, it stopped.<sup>35</sup>*

**6. Mr. WU opened his front door in response to Cst. FLORKOW and Cst. LONDON stating Police and showing their Police ID to Mr. WU.**

(See previous quotations under point 4).

**7. Cst. LEUNG a police officer who spoke some Cantonese attended the scene following the incident to attempt to explain the mix-up and explain the Police Complaints Process to Mr. WU and his family.**

**8. Mr. WU's received medical attention by EHS at the scene and was taken to Vancouver General Hospital for treatment of his injuries.**

**9. Mr. WU speaks Cantonese, he has a limited command of English.**

During Sgt. LEESON's contact with Mr. WU it was clear that he had a limited command of English. However, he does appear to understand English better than he can speak it. There were several instances during the interview on

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<sup>35</sup> Transcript of Mr. Wu statement. January 22<sup>nd</sup>, 2010. P. 44-45.



September 28<sup>th</sup>, 2010 where Mr. WU answered the question Sgt. LEESON asked prior to the interpreter translating the question. From Sgt. LEESON's review of the January 22<sup>nd</sup>, 2010 interview, this occurred on occasion during that interview as well.

**Facts or Issues in Dispute:**

- 1. Did Cst. FLORKOW and Cst. LONDON explain their purpose for being at the residence to Mr. WU after the door was opened.**

**Mr. WU's version:**

In Mr. WU's September 28<sup>th</sup>, 2010 statement to Sgt. LEESON this issue was explored. Mr. WU was adamant that once he opened the door, nothing was said to him by either Cst. FLORKOW or Cst. LONDON prior to him being pulled out.

In Mr. WU's January 22<sup>nd</sup>, 2010 statement he similarly stated that there was no explanation or conversation:

*YW: We didn't talk. He said police and I saw that it was the police, I opened the door. We didn't talk.*

*TY: We didn't talk actually, as soon as they said police...*

*YW: We didn't talk.*

*TY: ...he opened the door.*

*RB: Okay and how far did he open the door?*

*TY: How far did you open the door?*

*YW: It was open, about that much.*

*RB: About a foot?*

*YW: About that much.*

*TY: A foot.*

*RB: Okay. You indicated about a foot.*

*TY: Yeah. A foot.*

*YW: That much. Yeah. That much.*

*RB: That, that one.*

*YW: That much.*

*TY: I'm going to check to find out how much. Was it that much?*

*YW: Maybe smaller.*

*TY: Small.*

*YW: Smaller. Around there.*

*TY: Around there. Yeah.*

*YW: I don't, just about that much.*

*RB: As much as ten, twelve inches.*

*YW: Yeah. Around there.*



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RB: Ten inches?  
TY: About ten inches?  
YW: Ten inches. Eight inches.  
TY: Eight, eight, eight inches-ish.  
YW: About eight inches.  
RB: Yeah, okay.  
TY: About eight inches.  
RB: Okay, so you opened the door and did you say anything?  
YW: No.  
TY: After you opened the door, did you say anything?  
YW: I didn't say anything. I didn't say anything at all. Didn't even say a word.  
TY: He didn't say anything.  
YW: I didn't say anything. He didn't say anything either.  
TY: They didn't say anything. He didn't say anything.  
YW: Pushed, he pushed the door and walked in. Pushed the door, pushed the door, then pulled me.  
TY: So once he open that door by eight inches, they pushed the door open, grabbed him.  
RB: Okay. He opens the door and right away, did they push the door open?  
YW: Yeah.  
RB: Further?  
YW: Yeah.  
TY: Pushed inward?  
YW: He pushed inward and pushed, pushed the door. Pushed the door and pulled me outside.  
TY: Yeah, they pushed the door, obviously the door opens inside, inward.  
RB: Yes.  
TY: They pushed the door open.  
TY: And pulled you?  
YW: Then pulled me outside.  
TY: And then they grabbed him and yank...  
YW: As soon as they pulled me outside, they beat me. I didn't know what was going on. I didn't know what was going on.  
TY: ...beating him and he didn't know what happened.  
RB: Okay. When the door got pushed open, did they say anything?  
TY: When they pushed the door, did they say anything?  
YW: I didn't hear they say anything. Really. I didn't hear anything at all. Under my impression, not a word.  
TY: I couldn't hear anything, uh, under my impression, I, I couldn't hear anything.



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RB: *Is it possible they said something as they pushed open the door?*

TY: *As they pushed the door open, is it possible that they said something to you?*

YW: *No. I didn't hear anything.*

TY: *You didn't hear it. Is it possible that they said something but you didn't pick up?*

YW: *Under my impression, nothing was said.<sup>36</sup>*

**Cst. FLORKOW's version:**

Cst. FLORKOW is consistent in his Prime Narrative, Ordered Statement and Ordered Interview that he identified himself as a Police Officer and stated to Mr. Wu that they were there in response to a domestic dispute and needed to enter.

From Prime Narrative completed January 21<sup>st</sup>, 2010:

*After loudly identifying themselves approximately 7-10 times as "Vancouver Police", WU cracked open the door several inches. PC 2538 held up his badge and police ID card to WU's face and loudly stated "It's the police, we are investigating a domestic disturbance and we need you to open your door and let us enter your home.". PC 2538 repeated this statement several times, however WU refused to open the door to let PCs inside the residence.*

*PCs believed it was important that they be allowed to enter the house to check on the welfare of the victim (who had reportedly been assaulted in the domestic dispute). At this point in the investigation PCs also believed that WU could be the suspect who was arrestable for domestic assault.*

*As WU was refusing to allow PCs to enter the premise (despite PCs identifying themselves numerous times and stating their purpose at the residence) PC 2538 stuck his right foot inside the doorway to ensure that WU could not close the door and deny them access to the residence. WU responded by using both of his hands to shove PC 2538 in the chest. WU then grabbed PC 2538 around the shoulders and began attempting to pull him down to the ground.<sup>37</sup>*

Cst. FLORKOW's Ordered Duty Report and Ordered Interview statement provide the same details:

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<sup>36</sup> Transcript of Mr. Wu Interview. January 22<sup>nd</sup>, 2010. P. 18-19.

<sup>37</sup> Cst. FLORKOW. Prime Narrative. January 21<sup>st</sup>, 2010, P.1



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*After identifying myself approximately 7-10 times as "Vancouver Police", WU cracked the door open approximately ten inches. I held my badge and police ID card up to WU's face and loudly stated, "It's the police, we are investigating a domestic disturbance and we need you to open your door and let us enter your home". I repeated this statement several times, however, WU just repeatedly stated, "No" and refused to open the door to allow us inside the residence.<sup>38</sup>*

In his Ordered Interview Cst. FLORKOW stated:

**NF** *....ah, it would have been within...., I'm not sure..., it was maybe a foot or two within..., in front of his face, because he was looking and I, I held it directly out in front of me. Ah, again, my duty report...., I said, I repeatedly stated loudly, ah, it's the police, we're investigating a domestic disturbance and we need you to open your door and let us into your home.*

**GL** *Okay.*

**NF** *And, ah, I was clearly identifying myself as a police officer verbally as well as showing my police badge and my police ID card, and I was making that statement over and over again.*

**GL** *Okay. What was his response to that?*

**NF** *Ah, he was just shaking his head, 'no', and he was repeatedly stating 'no', as I said in my duty report on page two.<sup>39</sup>*

#### **Cst. LONDON's Version:**

Cst. LONDON's Ordered Duty report and Ordered Statement are consistent that the members identified themselves both before the door was open and after while speaking at the door. Cst. LONDON also adopted his Duty Report during his Ordered Statement as being true and accurate to the best of his recollection.

In Cst. LONDON's duty report he stated:

*WU finally opened the door but only very slightly. I could see WU's face and I stated to him numerous times, "Vancouver Police" while holding my badge in my right hand at WU's face level approximately one foot away from his face. I also could hear Cst. Florkow state, "Vancouver Police".*

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<sup>38</sup> Cst. FLORKOW. Ordered Duty Report. March 25<sup>th</sup>, 2010. P. 2

<sup>39</sup> Cst. FLORKOW. Transcript of Ordered Interview. May 12, 2010. P. 9



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*After identifying ourselves numerous times, Cst. Florkow informed WU that we were there to investigate a domestic dispute and that we needed to come inside.*

*Cst. Florkow then placed his foot inside the door. At this point, WU pushed Cst. Florkow. Cst. Florkow then stepped towards WU and WU grabbed Cst. Florkow by the shoulders.<sup>40</sup>*

In Cst. LONDON's Ordered interview he stated:

*GL Okay. Uhm, now, from your duty report, uhm, when the door opens, ah, Constable Florkow puts his foot in the door?*

*BL Well, not immediately, no. Ah, once he's....., ah, Mr. Wu opened the door, again, my badge was held up and I kept saying....., and once I heard Constable Florkow saying 'Vancouver Police'. Again, I can't even tell you how many times I said it because I said it that many times.<sup>41</sup>*

#### **Corroboration:**

Cst. FLORKOW and Cst. LONDON's statements corroborate each other. There is no independent corroboration on this issue.

#### **2. Whether or Not Mr. WU resisted efforts by Cst. FLORKOW and Cst. LONDON to enter his residence.**

On the issue of whether or not Mr. WU resisted Cst. FLORKOW and Cst. LONDON when they attempted to enter his residence Mr. WU is vague on detail or cannot recall.

In Mr. WU's January 22<sup>nd</sup>, 2010 interview he stated (p. 24):

*RB: Did the police officers try to push the door open first before they grabbed him and maybe he was in the way?*

*TY: Did the police officers try to push the door open to get in and you stopped the door from letting them in?*

*YW: That I'm not, I'm not clear on that.*

*TY: I'm not clear on that.*

*YW: I remember that I was pulled outside and being beaten up.*

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<sup>40</sup> Cst. LONDON. Ordered Duty Report. March 30<sup>th</sup>, 2010. P. 1-2.

<sup>41</sup> Cst. LONDON. Transcript of Ordered Interview. May 12<sup>th</sup>, 2010. P. 7-8.



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TY: *As, as much as I can remember, I opened the door, they grabbed me and I'm out, I was outside.*

Efforts were made to clarify this issue during Sgt. LEESON's September 28<sup>th</sup>, 2010 interview with Mr. WU. Mr. WU was asked if he pushed back on the door when the officers tried to enter, Mr. WU stated:

GL: *okay. Does Mister WU recall if he pushed the door back or pushed at the officers as they were forcing their way into the house?*

AW: As you recall, uh, memory, meaning recall, when you opened the door, when they pushed the door, did you try to close the door?

YW: I don't know. I was holding it like that. Like that. Like that. I opened to look like so, he pushed in and entered.

AW: *Uh, he, he cannot recall exactly...*

YW: I was holding like this.

AW: *...he was holding the door.*

YW: He pushed in and entered.

GL: Mm.

AW: *Like, like that.*

GL: *Mm hm.*

AW: *And then the door was being pushed.*

GL: *Okay.*

YW: Pushed the door and dragged me.

AW: *And, and they, uh, got hold of him.*

YW: I was standing, I was standing there.

AW: *Because, uh, like, I was standing that way, holding the door.*

GL: *Hm. So he was blocking the door? Maybe standing behind the door?*

AW: Were you behind the door? You were standing behind the door?

YW: Yes, yes. Standing, standing, the door was like that, I was like that. Yes. Looking like that. He pushed in.

AW: *Yes. I like, uh, holding, uh, on the door and the, a little gap and then looking like that and then they came in and grab him.*

GL: *Okay. So Mister WU was standing behind this door for, for in photo S-2?*

AW: You were standing behind the door...

GL: *He was standing behind...*

AW: *...is that right?*

GL: *...the right door in this side.*

YW: Not exactly behind. I think I was between the two doors. I think this is what happened.

(background - coughing)



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AW: *Well he was not, uh, he say he's not exactly behind this, uh, left side the door...*  
YW: *Because I looked out at an angle from there.*  
AW: *...he would be like, uh, in, in between the, the two door. Right.*  
GL: *I understand.*<sup>42</sup>

**Cst. FLORKOW's Version:**

Cst. FLORKOW stated in all 3 of his Statements (Prime Narrative, Ordered Duty Report and Ordered Interview) that when he put his foot into block the door, Mr. WU responded by first pushing him with 2 hands and then grabbing him with 2 hands to dislodge him.

Cst. FLORKOW described this in his May 12<sup>th</sup>, 2010 Ordered Interview as (p. 10):

GL *Okay. Uhm, seeing your duty report, when you did that his response to that was to push you, and I think you say he actually pushed you with two hands.*

NF *Hmm-hmm.*

GL *To what point of your body did he contact?*

NF *My chest.....*

GL *Okay.*

NF *...my upper chest.*

GL *What, uhm, like in terms of your assessment, was it like a, like a hard push? Was he, ah.....*

NF *It was a, it was a hard, violent push.*

GL *Okay. Ah, what was your response to that?*

NF *Ah, I was still trying to keep my foot in the door, that way he wouldn't be able to dislodge me from my positioning. Ah, though my upper body naturally leaned back because there was obviously a lot of force of which pushed me back.*

GL *Okay. So when he pushes you, he pushes you with two hands, uhm, you've still got your foot in the door or you're...., what's your response? How does...., what happens to the door at this point?*

NF *Ah, uhm, I can't recall what happened with the door, I just recall that my upper body was laid back, as a result of being pushed.*

GL *Okay. Uhm, do you recall stepping back, or, or were you trying to gain entry at that point?*

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<sup>42</sup> Mr. WU. Transcript of September 28<sup>th</sup>, 2010 interview. P. 52-53





- NF *Ah, I wasn't trying to gain entry at that point because it all happened so quickly. As soon as he shoved me he immediately followed up by grabbing me around the shoulders and trying to take me to the ground.*
- GL *Okay.*
- NF *So once he pushed me it wasn't..., there wasn't, ah, a struggle in terms of where I was trying to push past him to get into the house, it was more of a concerted, ah, effort on his part, ah, (inaudible). Once he pushed me there wasn't any lull time in there..., as soon as he pushed me that's when he followed up and grabbed me around the shoulders.*

**Cst. LONDON's version:**

Cst. LONDON is consistent in his Ordered Statement and Ordered Interview that when Cst. FLORKOW put his foot inside the doorway to block the door, that Mr. WU responded by pushing and then trying to grab Cst. FLORKOW.

Cst. LONDON stated:

- BL *Sure. After, ah, Constable Florkow had been pushed out by, ah, Mr. Wu, he went to step back in and then, again, my belief..., obviously that's when he was..., that he was going to try and arrests him, uhm, and I saw two hands come up on, ah, Constable Florkow, like right around like that, right up like this on his bicep shoulder area.*
- GL *Okay. So, Mr. Wu's facing Constable Florkow, and is it like a grab around....*
- BL *No, not a bear hug, no.*
- GL *Okay. Can..., I'm just not following. Sorry.*
- BL *Okay. Uhm, again, I'm behind him and I see him..., two hands, like, like that on him.*
- GL *Okay. So grabbed the top of his shoulders on the left and right side?*
- BL *Yes. Yes.*
- GL *Okay. What, ah, like could you tell what Mr. ...., was Mr. Wu trying to drag him back or push him forward, or....*
- BL *Ah, I, I couldn't say what he..., Mr. Wu was trying to do. Uhm, I have no idea what he was trying to do, so.<sup>43</sup>*

**Corroboration:**

Cst. FLORKOW and Cst. LONDON's versions corroborate one another.

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<sup>43</sup> Cst. LONDON. Transcript of Ordered Interview. May 12<sup>th</sup>, 2010. p. 9-10.



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Grant BURGESS, the EHS paramedic who treated Mr. WU stated:

GL *Thinking back to what the patient had to say to you in the ambulance when you were dealing with him, ah, maybe just walk me through the sequence at the door, as he relayed it to you, if he did and if he didn't, just say he didn't and that's...*

GB *Yeah, he said, uhm, that he, he did not know who they were, uhm, that they forced the door open, like, I'm unsure exactly if him, if he opened the door or, and then he tried to close it or if they forced the door open, I can't remember exactly what he said there, but, he didn't want them to come in and they grabbed him and pulled him out, ah, of his house and assaulted him.*<sup>44</sup>

**3. The amount of force used on Mr. WU by Cst. FLORKOW and Cst. LONDON and how Mr. WU's eye was injured.**

**Mr. WU's Version:**

Mr. WU is adamant that he was beaten by police and in some places indicates he sustained the injury to his eye from being "hit". When asked for specifics Mr. WU is unable to provide more specific details. For example:

In Mr. WU's January 22<sup>nd</sup>, 2010 interview:

RB: *Okay, as you're being pulled out on to the front step, um, did he pull back at all from the police or did he just go with them?*

TY: *When the police pulled you, he wanted to pull you outside, did you pull back or avoid him?*

YW: *I don't know. I really don't know. I don't know.*

TY: *I don't know.*

YW: *I was pulled, pulled outside and being beaten up. I didn't know. I was pulled and then I was pressed down and beaten. I really don't know.*

TY: *I just, I just know they, one grabbed me and then they both on me and I was beaten and I was on the ground.*

RB: *And while you were going down to the ground, or when you were first put down on the ground, is it possible that, um, y- you, you were pushing back or you were stiff 'cause you were scared?*

TY: *When he pulled you outside, is it possible that you were pulling back because you were scared and pushed him out?*

YW: *No. He beat me. I covered my head. As he hit me in the eye, I covered my head.*

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<sup>44</sup> Grant BURGESS. Interview transcript. March 15<sup>th</sup>, 2010. P. 10



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TY: *I was hit in the eye and no I didn't push back because both my hands were on my face.*

YW: *I yelled for help.*

TY: *And I was, I was yelling help in, in Chinese.*

YW: *At that point, I knew my eyes were wet, I knew I...*

TY: *And when my eye was wet, I knew I was injured.*

TY: *Did you say you put both your hands there?*

YW: *Yes. The hands were wet (indiscernible).*

TY: *So both, so I was, I was shielding my face with my hands.*

RB: *Did you hurt your eye when your face hit the ground or were you hit in the face first?*

TY: *When your eye was hurt, did you hit the ground first, that's how you hurt your eye or your eye was hurt before you hit the ground from the beating?*

YW: *I really have no recollection. It was very chaotic. It was very chaotic.*

TY: *It was very confusing, I, I, I don't, I don't know.*

TY: *Earlier you said at that time, before you fell, you already...*

YW: *Yeah.*

TY: *Before you fell...*

YW: *As soon as I was pressed to the ground, at that time, during the beating, I cried hysterically.*

TY: *You, you, you, you cried, when you were covering your hand, your eye, were you standing up or were you already on the ground?*

YW: *It's like, it's like what it is right now. Covering like this now. I don't remember. I really don't remember. I was already covering it with my hands.*

TY: *Do you remember, were you standing...*

YW: *No. Standing, standing, covering.*

TY: *Were you on the ground or were you standing? That's what I'm trying to ask you.*

YW: *I don't remember. I was just covering. I cried hysterically while I was covering. I don't remember. My back, my whole body was hurting from the beating.*

TY: *I was asking him his holding on his injured eye, was he stand, or was he on the ground because that will tell whether that he said, he will say I don't remember.*

RB: *Okay.*

TY: *Um, but I do remember I was holding my eye, you know and they grappled my hands behind my back.*

TY: *So when you were covering with your hands, your hands were then held down and they handcuffed you.*



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YW: *Yeah. I don't know how they held me down. Here and here were beaten by them.*

TY: *There are bruises in the back of his, his back.*

RB: *Mm hm. Okay.*

YW: *I don't remember.*

TY: *I don't remember.*

RB: *What side on his back was he hurt?*

TY: *Which side was hurt?*

YW: *This side, this side is worse.*

TY: *The right side.*<sup>45</sup>

In another part of this January 22<sup>nd</sup>, 2010 interview Mr. WU's described the beating as (p. 13):

YW: *I don't know how. Once he grabbed me, the two people just held me down and beat me.*

TY: *And then, and then two people were on, on me.*

TY: *And then beat you?*

YW: *Yeah. Beat...*

TY: *And then they were beating on me.*

YW: *I think the beating lasted for ten to twenty minutes.*

TY: *Beat you for ten to twenty minutes?*

YW: *The beating went on for a very long time. Very long time really. Beat me to the point that I cried hysterically. I cried for help hysterically. I don't know how long the beating went on.*

In Sgt. LEESON's September 28<sup>th</sup>, 2010 interview with Mr. WU, he attempted to clarify issues surrounding how he was injured and what force was used on him during the encounter. Mr. WU stated in part:

1. When shown photo I1 and asked how he sustained this injury (Injury to Left eye), Mr. WU stated "...He hit me, he dragged me outside the door and I think I was assaulted at the entrance of the door because he pushed the door and hit me and I covered my face with both hands"(p. 10);
2. When asked to be specific about what cause the injury, Mr. WU stated "I was assaulted, I was hit, my face was all bloody, and my right eye has some problems." (p. 10);

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<sup>45</sup> Transcript of Mr. Wu Interview. January 22<sup>nd</sup>, 2010. P32-35.



3. When asked what part of officers came into contact with his left eye, Mr. WU responded, "I cannot say. He pushed the door and hold onto me and assault me"(p. 12);
4. When asked if Mr. WU recalled being taken to the ground, Mr. WU stated "he pushed my head forward on the ground and put the handcuffs on me"(p. 12);
5. When asked when he was pushed or pulled from the residence if he recalled hitting his head on the ground, Mr. WU stated "No" (p.12);
6. When asked if when he was pushed or pulled out of the residence if he went immediately to the ground, Mr. WU stated, "the moment I was being dragged out of the door and I was assaulted a few times and even this flower pot was knocked over (pointed out area by blue mat in photo S2). The moment the door was pushed in and he was pulled out he was assaulted in front of the front door" (p.15);
7. He stated that he used both his hands to cover his face, he doesn't know how many police assaulted him. Initially there was 2 officers that entered the front door, but he doesn't know how many assaulted him (p.16);
8. He couldn't see the people (officers) clearly outside to say who assaulted him (p.17);
9. When asked where he felt the blows. Mr. WU stated later he had a bump left side of forehead, inside left forearm he had a red mark, inside his right thigh he had a red mark, the right side around his waistline he had pain from being punched, in the middle area of his vertebra (back) was swollen (p.17);
10. I2 and I3 shown (right side) - Mr. WU stated that these were areas he felt pain (p. 19-20);
11. When Mr. WU was asked to tell more about the source of the blows, he stated he covered both his eyes and it was dark, he couldn't see (p.19);
12. Mr. Wu was unable to say if the blows felt like a kick or a punch (p.21);



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13. Mr. WU was asked about photo I5 (knees) and asked how they were injured. Mr. WU stated that this probably happened when he was being dragged forward while being handcuffed on the concrete (p.22);

**Cst. FLORKOW's Version:**

Cst. FLORKOW stated in all 3 of his Statements (Prime Narrative, Ordered Duty Report and Ordered Interview) that once he was pushed and grabbed that he observed Cst. LONDON take Mr. WU to the ground. Once on the ground and they were attempting to control Mr. WU, Cst. FLORKOW stated he delivered 3 "close-handed tactical strikes", followed by 2 more closed handed tactical strikes when the first 3 were ineffective. Cst. FLORKOW in his March 25<sup>th</sup>, 2010 duty report described the use of force as:

*PC 2699 grabbed a hold of WU and took WU to the ground outside of the front door. The left side of WU's face made contact with the concrete when WU was taken to the ground (p. 2)*

*I employed three close-handed tactical strikes to WU's upper shoulder. I employed these strikes in the attempt to create a physical motor dysfunction that would facilitate follow-up control. This is consistent with the training I received at the JIBC Police Academy. These strikes were unsuccessful however as WU continued to resist arrest.*

*I continued attempting to press WU back down to the ground in an attempt to take him into custody. I was also continuing to identify myself as "Police" and giving WU loud professional verbal commands. WU continued to physically resist control.*

*I employed two close-handed tactical strikes to the meaty portion of WU's upper back. These strikes, along with the actions of PC 2699 allowed us to finally press WU on his stomach and wrestle his hands behind his back. Once we had WU's hands behind his back we were able to place WU into handcuffs.(P.2)*

**Cst. LONDON's Version:**

Cst. LONDON is consistent in both his March 30<sup>th</sup>, 2010 Ordered Duty report and The May 12<sup>th</sup>, 2010 Ordered Interview as stating that he took Mr. WU to the ground. Cst. LONDON described this in his Duty Report as:

*It was my belief WU was the suspect in the domestic in progress that we were called to investigate. In my view, WU had now assaulted and was in*



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*the course of assaulting Cst. Florkow. I then clasped my hands together, interlocking my fingers, and placed my hands on the back of Mr. WU's head and pulled him outside of the doorway and onto the ground in front of his door. I stated to WU several times to put his hands behind his back and that he was under arrest. WU did not comply and resisted by swinging his arms and attempted to stand up.(p.2)*

On Page 11 of Cst. LONDON's interview transcript he described this take-down further as:

GL *Okay. Uhm, would you just...., how would you describe the take-down? Like, when you, when you grab onto Mr. Wu and.....*

BL *I, I think it's pretty text book to what I've been trained as. Just, ah, interlocking my fingers, put them on the back of his head, and just pulled him with..., pulled him down to the ground while putting my body weight on top of his head.*

GL *Okay. Uhm, can you say if Mr. Wu impacted the ground or not?*

BL *I couldn't say for sure but, I mean, I would....., I took him to the ground so I would think he did.*

GL *Okay. Uhm, obviously you're on top of him so you probably wouldn't have a view of.....*

BL *No, I know he was....., like I said, my..., his head was probably about at my sternum area.*

GL *Okay. Ah, what happens once Mr. Wu ends up landing on the ground?*

BL *Ah, basically he's try..., he's trying to get back up and ah, we're trying to put him in handcuffs and I'm verbally..., and so is Constable Florkow..., verbally telling him to stop resisting, that he's under arrest, and he just..., he keeps locking his arms and won't allow himself to be handcuffed. And he, he..., to me it seemed like he was trying to get up as well, so.*

GL *Okay. Did you actually see him try and get up, or?*

BL *Ah, well, you know, he was putting his hands on the ground like that and, like, pushing up, so, to me that made me think that he was trying to get back up, so.*

GL *Okay. When you were on ground and you guys are trying to control Mr. Wu, I guess handcuff him, ah, whereabouts are you? Do you recall?*

BL *I remember..., I think I was on the, the left side of the path here.*

GL *Left side? Okay.*

BL *Yeah.*



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**Corroboration:**

**On Details of Confrontation:**

Cst. FLORKOW corroborates that he observed Cst. LONDON take Mr. Wu to the ground after he was pushed and grabbed by Mr. WU. Cst. LONDON stated that he did recall seeing Cst. FLORKOW use his hand to strike Mr. WU during the struggle on the ground.<sup>46</sup> Cst. LONDON could not elaborate on the location of this strike but stated he believed the purpose of the strike was to assist them in gaining control of Mr. WU and handcuff him.

The enhanced Phones\_42 911 audio captured a portion of the struggle between Cst. FLORKOW , Cst. LONDON and Mr. WU. It is clear from a review of this audio recording that there was a struggle and a period of time where Cst. FLORKOW and Cst. LONDON are attempting to gain control of Mr. WU.

Witness [REDACTED] can confirm that there was a struggle in the area of the front door and her attempts to alert the 2 officers that they had "the wrong guy".

**E-comm Records:**

This was a dynamic and stressful situation. This event could have felt like a long to Mr. WU. In reality, the encounter lasted under 2 minutes (see E-comm timeline).

**Injury Photos:**

**See the injury Photos – Investigation Section.** The photos are not consistent with the long sustained beating Mr. WU described in his statements.

**Medical Records:**

See Medical Records, particularly documentation regarding noted injuries at the VGH Emergency Room. Of note in the VGH records:

1. Left eye injury;
2. Sore ribs;
3. abrasions to knees and elbows.

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<sup>46</sup> Cst. LONDON. Transcript of Ordered Interview. May 12<sup>th</sup>, 2010. P. 15-16.





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### EHS Crew Report:

See EHS Crew report. In terms of injuries, EHS paramedic Grant BURGESS noted the following injuries (EHS Crew Report and Statement):

1. Swollen Left Eye;
2. Sore ribs (both sides) – “No obvious Injury” (noted on report);
3. Small abrasions on knees and elbows;
4. Bleeding from lip;
5. Small abrasions or cuts to his hands;

(See enhanced Phones\_42 audio)

(See Statement of [REDACTED])

### On the Cause of Injury to Mr. WU's Eye:

Both Cst. FLORKOW and Cst. LONDON stated that Mr. WU's head struck the concrete surface in front of the door when he was taken to the ground by Cst. LONDON.

Regarding Mr. WU's injuries, Paramedic Grant BURGESS who treated Mr. Wu and transported him to the hospital stated:

GB *Yeah. You know, and then I tried to go into more detail, what, like, how were you assaulted? Like, were you hit anywhere else, were you hit in the chest, the, the neck, the back? And he was just, he would just very angrily say that, uhm, they pulled me out of my house, they, they beat me, or they, they assaulted me, they, ah, you know, carrying on saying, they are the police, they're, you know, not supposed to, to do this and just things like this. They wouldn't, he wouldn't, it was hard to get any real concrete, ah, mechanism or anything of, of what actually happened to him. Just, he would, he was just, kept repeating that he was pulled out of his house and he was, he was beaten or, I can't, I shouldn't even say the word beaten, I, I don't even know if that's, that's the word that he used, but, you know, pulled out of his house and, and thrown to the ground, for sure, and, uhm...*

GL *I think I asked you this already but, uhm, as far as the injury to his left eye, uhm, did, ah, Mr. Wu indicate how he sustained that?*



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**GB** *Uhm, I, I just ass..., I don't remember him actually telling me, like, clearly, exactly how it was sustained, uhm, but he told me that he was, he was thrown to the ground, like, thrown face first into the ground so that's, ah, or I assumed it's from being thrown to the ground.<sup>47</sup>*

Sgt. LEESON subsequently interviewed Dr. Bruce FLEMING regarding Mr. WU's injuries. Dr. FLEMING assessed and treated Mr. WU's injuries on January 21, 2010 at the Vancouver General Hospital Emergency Room. Dr. FLEMING stated in part that:

**GL** *And I'll refer to these as we go along. I'll just leave them there. I believe that's probably the..., that's one of..., taken of Mr. Wu while he was at VGH. Uhm, the injuries you observed and you documented, would they, ah, would they be consistent, I believe you said, with, ah, what you sort of gathered from all the sources, which would be Mr. Wu, from his family, from the ambulance..., is that he appeared to have struck his face on the ground?*

**BF** *Ah, that was our, ah, understanding of the mechanism of the injury, I think. And we do put a lot of, as much as we can, ah, weight on how something actually happens in terms of the kinds of injuries that are likely to occur. Uhm, so, again that was the story on arrival and that was the story to the interpreter all the way through. Ah, there was no other mention of any, uhm, event other than the..., being pulled from the home and being thrown to the ground. Ah, I should have mentioned that addition, in addition to the facial injuries there was a, uhm, chest wall injury, but there was no sign of any serious internal bleeding or anything like that. And I believe there were some abrasions to Mr. Wu's knees as well. All of those injuries could be consistent with the, uhm, with that, you know, that interaction, that con..., physical confrontation that was described.*

**GL** *Okay. So the injury to his eye, the orbit injury, that would be consistent, in your opinion, with contacting the ground?*

**BF** *It's certainly consistent. I should say that a blow out type fracture, that is to say that when the, when the socket of the eye is ruptured. We do see that also, when someone takes a direct injury to the eye..., either a blunt instrument..., ah, typically a very hard object like a rock or a squash ball or something like that, will cause an orbital injury where the pressure is increased and the wall breaks. So, that's not very commonly seen with a fall to the ground, but it, again, the..., there was no reason*

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<sup>47</sup> Grant BURGESS. Interview transcript. March 15, 2010. P. 11



- to suspect it wasn't a fall to the ground and then..., so that was, again, ah, the, the expectation of that's how this had occurred.*
- GL** *Are you able to comment or form an opinion as to just the amount of force that would be required to cause such an injury?*
- BF** *Ah, it was consistent with being, being forcibly pulled while resisting and thrown forward and striking the ground. It, it, you know, it certainly was consistent with that, the extent of injuries.*
- GL** *Ah, with reference to some of these other injuries that I've got pictured here, ah, I believe there's some, some red marks on Mr. Wu's side or back.*
- BF** *Yes.*
- GL** *Uhm....*
- BF** *And his knees.*
- GL** *And his knees. Ah.....*
- BF** *Yeah. Again, consistent with, ah, with the same mechanism. Uhm, ah, again, ah, there was no account, given there was a language barrier, there was no account of any subsequent, ah, ongoing assault, per se. Uhm, one could imagine, again, I didn't have a description of the front doorway, but if there was any stairway, if there was any potted plants, if there was a railing or anything like that, this could be all part of the same fall.*
- GL** *Ah, and I think you indicated there was a significant language barrier when you were dealing with Mr. Wu?*
- BF** *Correct.*
- GL** *Were you, ah, did you utilize an interpreter with the hospital or was it just his family?*
- BF** *His family was very helpful.*
- GL** *Okay. Uhm, was Mr. Wu able to communicate at all with you in English, at all?*
- BF** *Ah, very..., very limited<sup>48</sup>.*

Dr. FLEMING stated that while an orbit injury can be sustained in other ways, it was his understanding based on the sources of information he had available (Ambulance paramedics, family and Mr. WU) that Mr. WU was pulled from his home and struck his face on the ground. The injuries he observed were consistent with this mechanism of injury and consistent with Mr. WU being forcibly pulled while resisting and thrown forward and striking the ground.

<sup>48</sup> Dr. Bruce FLEMING. Interview transcript. July 19<sup>th</sup>, 2010. P. 3-5.



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**4. Whether or not anything was said to Mr. WU or commands were issued to Mr. WU by Cst. FLORKOW and/or Cst. LONDON while he was being handcuffed.**

In reviewing the transcript of Mr. WU's interview on January 22<sup>nd</sup>, 2010 (p. 47) Sgt. BIEG asked Mr. WU if when the officers were pulling him and trying to put him down if Mr. WU heard them say anything Mr. WU answered "no". Mr. WU answered Sgt. BEIG directly and it wasn't clear from the subsequent exchange if he actually understood the question and the "no" was a response to Sgt. BEIG's question or something else.

During the September 28<sup>th</sup>, 2010 interview with Mr. WU this issue was clarified. Mr. Wu stated to Sgt. LEESON that while the officers were trying to handcuff him the officers did not say anything to him, yell commands at him or give him any direction (p. 48).

Mr. WU indicated in both his January 22<sup>nd</sup>, 2010 and September 28<sup>th</sup>, 2010 statements that he was yelling for help in Chinese.

**Cst. FLORKOW's Version:**

Cst. FLORKOW has been consistent (Prime Narrative, Ordered Duty report, and Ordered Interview) that while attempting to control Mr. Wu and handcuff him, that he was identifying himself as a police officer and giving "loud professional verbal commands".<sup>49</sup>

**Cst. LONDON's Version:**

Cst. LONDON has been consistent through his Ordered Duty report and Ordered Interview that he issued verbal commands to Mr. WU while attempting to control and handcuff Mr. WU.

*I stated to WU several times to put his hands behind his back and that he was under arrest. WU did not comply and resisted by swinging his arms and attempted to stand up.*

*I stated numerous times to WU to stop resisting. At the same time, I could hear a female behind me yelling. While attempting to secure WU, I looked*

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<sup>49</sup> Cst. FLORKOW. Ordered Duty Report. March 25<sup>th</sup>, 2010. P. 2



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*over and the female said to me, "That's the wrong guy". At this point WU was still resisting by trying to get up and not being allowed to be handcuffed.*

*Cst. Florkow and I were able to get WU to lie flat on his stomach and place him in handcuffs.*

*Once in handcuffs, WU was sat up and I could see that WU had a swollen eye and his nose was bleeding.<sup>50</sup>*

**Corroboration:**

There is independent corroborative evidence to support Cst. FLORKOW and Cst. LONDON's versions that loud professional commands were issued to Mr. WU while they were attempting to control him. This corroboration is present in:

**Statement:**

In her statement to Police on January 25<sup>th</sup>, 2010 [REDACTED] reports when she approached her front window while still on the phone to 911, that she "...can hear him talking Chinese (Mr. WU), talking, and then I heard like, we're the policeman, you're on, you're on the floor, like that, it's like I heard something like that so..."(P. 1, lines 51-52). This would corroborate both Mr. WU's statements that he was yelling while being handcuffed, and Cst. FLORKOW and Cst. LONDON's claims that they were identifying themselves as Police and issuing commands while trying to handcuff Mr. WU.

**Enhanced Phones\_42 Audio:**

As discussed in the Investigation portion of this report, Sgt. LEESON sent the Phones\_42 file (the 911 audio of [REDACTED] phone call to E-Comm) to the RCMP Audio and Video Analysis Unit to see if the background "conversation" or "confrontation" could be enhanced. The result was the enhanced phones\_42 file.

When Sgt. LEESON reviewed this file, the interaction with Mr. WU can be heard at time index 11 minutes and 30 seconds. Sgt. LEESON identified the following commands or event on the audio file and generated a transcript of what Sgt. LEESON believed was audible on this file. This transcript along with the enhanced audio file was sent to David CROSSIN, legal counsel for Cst. FLORKOW and Cst. LONDON to confirm or correct what Sgt. LEESON had

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<sup>50</sup> Cst. LONDON. Ordered Duty Report. March 30<sup>th</sup>, 2010. P. 2



identified, and to see if the officers could identify what officer spoke the identified commands. The following is the result of this action:

1130	<i>start of yelling in background</i>	<i>Unknown</i>
1131	<i>yell</i>	<i>Unknown</i>
1143	<i>yell</i>	<i>Unknown</i>
1146	<i>Get on your stomach</i>	<i>Cst. Florkow</i>
1148	<i>Get on your stomach</i>	<i>Cst. Florkow</i>
1153	<i>Get on your stomach now</i>	<i>Cst. Florkow</i>
1204	<i>Put your hands behind your back sir</i>	<i>It is the belief of Cst. Florkow that it is him speaking.</i>
1210	<i>Put your hands behind your back</i>	<i>It is the belief of Cst. London that it is him speaking.</i>
1211	<i>Put your hands behind your back</i>	<i>Cst. Florkow</i>
1214	<i>Start cooperating or stop talking?</i>	<i>It is unclear whether these are the words uttered but Cst. Florkow is certain it was not his voice.</i>
1215	<i>yell</i>	<i>Unknown</i>
1227	<i>Stop talking</i>	<i>Cst. London</i>

*While there appear to have been other utterances, it is exceedingly difficult to make anything else out.*

The enhanced phones\_42 file is available for review and scrutiny and has been included in the disclosure tree. Sgt. LEESON upon review can hear the above statements clearly.



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**5. Whether or not Mr. WU was resisting efforts to handcuff him.**

Building on the issue identified in item: 4 on whether or not Cst. FLORKOW and/or Cst. LONDON said anything to Mr. WU, issued any commands or instructions while they were attempting to gain control of him, is the issue of whether or not Mr. Wu was resisting the efforts of the two officer's to control and handcuff him.

**Mr. WU's version:**

In Mr. WU's January 22<sup>nd</sup>, 2010 statement he indicated when he was on the ground before he was handcuffed he was being beaten and had his hands on his face. Sgt. BIEG questioned Mr. Wu on whether the officers were hitting him to get his hands so they could handcuff him (P. 46):

*RB: So does he think that the police officers were hitting him so that they could get the handcuffs behind him?*

*TY: Do you think when the police officers were beating you so that they could move your hands and handcuffed you?*

*YW: I don't know. I really don't know. I don't know.*

*TY: I don't know.*

*RB: Sorry, you don't know?*

*TY: I don't know.*

*RB: Okay.*

*YW: At that time, I was covering my face, covering my face. I remember that I was covering my face because of the beating.*

During Mr. WU's September 28<sup>th</sup>, 2010 statement Mr. WU was asked about the events prior to him being handcuffed in front of his front door. Mr. WU stated:

*He didn't recall trying to stand up, he just sat down covering his face with his hands. Mr. WU described that he was in a sitting position in front of the door (demonstrated on ground: rear end on ground with feet in front of him shoulder width apart), covering his eyes (p. 44);*

In both these interviews Mr. WU stated that he is covering his face, and in the September 28<sup>th</sup>, 2010 interview he puts himself in a sitting position before being forced to the ground and handcuffed.



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**Cst. FLORKOW's Version:**

In Cst. FLORKOW's May 12<sup>th</sup>, 2010 Ordered Interview with Sgt. LEESON he stated:

GL *Ah, I'm just going through my notes real quick, just want to make sure we don't miss anything, or I don't miss anything here. Can you describe, or just elaborate a little bit, on Mr. Wu's, ah, demeanor when he was on the ground, when you were attempting to handcuff him?*

NF *Ah, before or after he had his hands behind his back?*

GL *Ah, just from the point of the take-down by Constable London to the point....*

NF *Ah, he was extremely violent.*

GL *Okay.*

NF *Extremely resistant, extremely violent. He immediately sprung to, ah, to a crouching position and was swinging his arms at us, ah, in a striking motion over and over again, and ah, was absolutely violent (inaudible).*

GL *Can you describe..., when you say he was in a crouching position, what, what do you mean by that, like....*

NF *Ah, I mean he had gotten up to his feet. Ah, his legs were crouched down so he wasn't sitting on his heels but he was close to it, and his upper body was bent over, however, he was spring up and turn and face us and get out of this position. But we were trying to..., or at least I remember I was trying to hold him down, and trying to press him back onto his stomach.*

GL *Okay. Was your impression that he was trying to get away from you or that he was being combative and trying to fight with you?*

NF *Combative. My impression was that he was being combative.*

GL *Okay. Ah, the point he was trying to get up, do you recall him saying anything, or?*

NF *No.*

**Version of Cst. LONDON:**

In his May 12<sup>th</sup>, 2010 Ordered Interview Cst. LONDON described Mr. WU's demeanor following Cst. LONDON taking him the ground as follows (P. 16):

GL *Okay. Can you describe Mr. Wu's demeanor, uhm, I guess from the point you interlock your hands and take him down to the ground? Can you describe how he's behaving?*

BL *He's actively resisting being arrested by us. Uhm, he, he is locking his arms and not allowing us to handcuff him. He appears to try..., be*





*trying to get up (inaudible) in an attempt to get away, that's what I believe, so.*

**GL** *Okay. Did you sustain any injuries in the confrontation with Mr. Wu?*

**BL** *No, I did not.*

**Corroboration:**

Sgt. LEESON reviewed the statement transcript of [REDACTED] WU (Mr. WU Sr.). Mr. WU Sr. stated in part that:

**DW:** *When I was walking down, he was beaten and hurt. He covered his eye, his eye was bleeding due to the beating.*

**TY:** *Yes. Both his hands were on his face. I already see blood coming down.*

**MM:** *Okay. Did he see how his son got the damage?*

**TY:** *Did you see how he was hurt?*

**DW:** *I didn't see the beating. When I was down there, the beating has already stopped.*

**TY:** *I didn't see the beating. When I went downstairs, the beating has stopped.*

**DW:** *The beating has stopped.*

**TY:** *I, yeah, the beating has stopped.*

**DW:** *After the beating has stopped, he lied prostrate, he lied there like that. Kneeled there.*

**TY:** *He. So the time he's on his knees. He's, he's going like this.*

**DW:** *Yes.*

**TY:** *Was his face touching the floor or what? Was it touching the floor? (Bell ringing)*

**DW:** *Not touching the floor yet when he was inside. When he was outside, when he was dragged outside, his face was touching the ground.*

**TY:** *At that time, his face is not on the ground yet but further out when they dragged him further away from the front door, his face was touching the ground.*

**DW:** *They pressed his head down.*

**TY:** *Somebody pushed his head down on the ground.*

Mr. WU Sr.'s statement appears to suggest that at the point he approaches the front door, Mr. WU is covering his face and is on his knees prior to being pushed forward and forced along the ground further away from the front door where he is pressed into the ground and eventually handcuffed. Mr. WU Sr. appears to corroborate both Mr. WU's statement that he is covering his eye with his hands, and Cst. FLORKOW and Cst. LONDON's version that he is on his knees, and not complying with the police officers attempt to control him.

It should be noted that there are differences in the perspectives of the 2 officers at the point the confrontation goes to the ground. Cst. FLORKOW described Mr.



WU as being combative and his perspective was that Mr. Wu was attempting to fight with him. Cst. LONDON described Mr. WU as actively resisting and trying to get away from them. Many of these behaviors described by the 2 officers are the same, however; their belief regarding Mr. WU's intent was different.

#### **Enhanced Phones\_42 911 Audio File:**

As described above, the audio recording captured the audible confrontation between Cst. FLORKOW, Cst. LONDON and Mr. WU. It is clear from the audible statements that commands are being yelled to Mr. WU such as "get on your stomach" and "put your hands behind your back". The statements captured on the 911 audio as well as their tone, and fact that the commands are being repeated appear to corroborate Cst. FLORKOW and Cst. LONDON attempting to overcome resistance in handcuffing Mr. WU.

#### **Use of Force Analysis**

A/Insp. BUTLER of the Calgary Police Service was requested to conduct a use of force review on Cst. FLORKOW and Cst. LONDON's Use of force during their encounter with Mr. WU on January 21<sup>st</sup>, 2010. A/Insp. BUTLER was provided a disclosure package of the investigative file that included:

8. all statement transcripts;
9. audio or audio and video of interviews conducted;
10. all duty reports;
11. 911 transcripts, timeline, and audio;
12. Enhanced Phones\_42-911 file;
13. medical records;
14. photos of scene, injuries and exhibits.

In his report (that should be read in its entirety) A/Insp. BUTLER goes into great detail analyzing:

1. how the incident progressed;
2. the different perspectives of Mr. WU, Cst. FLORKOW and Cst. LONDON that are present in the evidence;
3. mitigating factors such as plain clothes members dressed for covert response responding in an overt capacity;



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4. The force options that Cst. FLORKOW and Cst. LONDON stated they used during the encounter with Mr. Wu;

A/Insp. BUTLER also recognized in his report that how this incident is assessed for "reasonableness" is dependent on the weight afforded the various statements, audio recordings, timelines, and opinions that have been gathered during the course of this investigation.

Based on his assessment of this material A/Insp. BUTLER concluded that:

*The use of force consisting of the application of a balance displacement takedown, physical control / handcuffing and the use of stunning techniques was consistent with their training and with VPD policy governing the use of force. While perhaps certain organizational practices (such as the use of untrained covert operators in overt policing roles) contributed to the string of unfortunate events that led to force being applied, this is not rationale to find fault in the specific officers conduct. They were deployed as directed and responding to an emergency call for service as was required.*

*In the final review of this case it is my opinion that a very unfortunate error occurred. However if the officers evidence and the forensic evidence is to be believed then the officers actions in this case were predicated on their properly held perception based upon the totality of the circumstances which they faced. The difficult task is before the adjudicator of this case to determine whether Mr. Wu's evidence or the subject officers evidence is to be preferred; both cannot be accurate. The independent forensic evidence should be of immense assistance in this regard. If the officers view of how the incident unfolded is accurate then it is this reviewers opinion that the use of force on Mr. Wu by Constables Florkow and London was consistent with properly trained police tactics and not excessive.<sup>51</sup>*

### **S. 25(1) CC Analysis**

As A/Insp. BUTLER commented, a paramount issue in assessing this incident is the degree of difference between the version of Mr. WU and those of Cst. FLORKOW and Cst. LONDON. In the analysis of the issues in dispute, Sgt. LEESON has attempted to draw out of the investigation the different perspectives

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<sup>51</sup> A/Inst. Chris BUTLER. Use of Force Review – OPCC 2010-5034. P.



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of the participants on what Sgt. LEESON believed were the key issues. Sgt. LEESON has also drawn out the corroborative evidence, where it exists, that tends to support one version over the other.

S. 25(1) of the Canadian Criminal Code sets out:

*25. (1) Every one who is required or authorized by law to do anything in the administration or enforcement of the law*

- (a) as a private person,*
- (b) as a peace officer or public officer,*
- (c) in aid of a peace officer or public officer, or*
- (d) by virtue of his office,*

*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.*

*(2) Where a person is required or authorized by law to execute a process or to carry out a sentence, that person or any person who assists him is, if that person acts in good faith, justified in executing the process or in carrying out the sentence notwithstanding that the process or sentence is defective or that it was issued or imposed without jurisdiction or in excess of jurisdiction.*

*(3) Subject to subsection (4), a person is not justified for the purposes of subsection (1) in using force that is intended or is likely to cause death or grievous bodily harm unless he believes on reasonable grounds that it is necessary for the purpose of preserving himself or any one under his protection from death or grievous bodily harm.*

S. 25(1) provides protection for Police officers using force in their duties providing the following 3 criteria are met or satisfied:

1. The police officer was required or authorized by law to perform an action in the administration or enforcement of the law;
2. The police officer acted on reasonable grounds in performing that action;
3. The police officer did not use unnecessary force.



**Required or Authorized by law to perform an action in the administration or enforcement of the law**

In applying this criteria to the investigation at hand, Sgt. LEESON believes it is fairly clear that Cst. FLORKOW and Cst. LONDON were in lawful execution of their duty. Both officers responded to 6216 [REDACTED] St. Vancouver in response to a 911 call of a domestic assault in progress.

Cst. FLORKOW and Cst. LONDON were acting in accordance with their common law duties to protect life and enforce the laws. Based on the information known to them (as set out about), this was an emergency or exigent situation that required Police respond to this location.

There is no evidence to suggest that Cst. FLORKOW or Cst. LONDON's purpose in attending this location was for any other purpose than to respond to the 911 call.

Cst. FLORKOW and Cst. LONDON identified themselves verbally as Police officers, and showed identification supporting they were in fact police officers.

**The Police Officers Acted on Reasonable Grounds**

What was known by the officers at the point they knocked on the door of 6216 [REDACTED] St. and encountered Mr. WU has been clearly laid out both in the analysis above, and in the investigation portion of this final investigation report.

The E-comm timeline, audio recordings of the 911 call, audio recordings of the radio transmissions, and the CAD messages clearly illustrated the flow, time, and content of information as it became known and conveyed to Cst. FLORKOW and Cst. LONDON.

This information, specifically, the following 13 points:

1. Domestic in Progress;
2. Female caller;
3. Husband intoxicated;
4. Female refusing to provide information;
5. 10 month old child at residence;
6. Call originating from a cell phone;
7. No Prime history at residence (6216 [REDACTED] St.);
8. Husband still on scene;
9. Female stating the male had assaulted her;
10. No weapons;
11. Only the complainant, her baby and the husband in the residence;



- 
12. History of involvement with social services because of husband drinking and hitting her;
  13. Address confirmed as 6216 [REDACTED] St.

would form Cst. FLORKOW and Cst. LONDON's reasonable grounds to believe that they are attending the correct location of a domestic dispute in progress and had a lawful authority to enter and deal with the domestic assault that was in progress. It is in this context that they encounter Mr. WU.

Mr. WU, who we now know had nothing to do with this domestic dispute, awoken out of bed, presents resistance to the Police Officers attempts to block the door from being closed and gain entry to his home. What is in dispute is what verbal interaction between Mr. WU and Cst. FLORKOW and Cst. LONDON occurred at the door.

Mr. WU's version asserts that other than "Police Open the Door", nothing was said to him and he was immediately taken out and "beaten". In Mr. WU's statement on January 22<sup>nd</sup>, 2010, it appeared Mr. WU had expectations that when he opened the door the Police would ask him questions, not try and come into his house<sup>52</sup>.

When Cst. FLORKOW did put his foot in the door, Cst. FLORKOW and Cst. LONDON's versions assert that Mr. WU delivered a 2 handed push to Cst. FLORKOW followed by a grab to dislodge Cst. FLORKOW from his doorstep. In Mr. WU's September 28<sup>th</sup>, 2010 statement to Sgt. LEESON he added the detail that when Cst. FLORKOW pushed his door open that he yelled "Burglar" in Cantonese. In Cst. FLORKOW and Cst. LONDON's versions they don't report hearing anything in Cantonese from Mr. WU, just the "who is it" in English before Mr. WU opened the door, and "no" repeatedly said by Mr. WU after the door was opened in response to Cst. FLORKOW explaining that they were there investigating a call of a domestic dispute and that they needed to enter his home.

As previously noted above, there is no independent corroboration on the issue of what happened at the front door once it was opened and what, if anything was actually said. This issue is critical because it is the launch point for the Police use of force that has become the focus of this investigation. Although, there is no independent corroboration on this point, it is important to note that there is corroboration on other points of Cst. FLORKOW and Cst. LONDON's versions that occur very shortly after the interactions at the door.

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<sup>52</sup> Mr. WU. Transcript of January 22<sup>nd</sup>, 2010 interview. P. 22-23.



██████████ corroborates statements by the officers that indicate while struggling with Mr. Wu they identified themselves as Police officers and issued loud professional commands. ██████████ describes something that is likely, "police, get on the ground" being said to Mr. WU during the struggle outside her window. ██████████ also hears Mr. WU yelling in Chinese which may corroborate that he is yelling for help as he stated in his version.

The enhanced phones\_42 file captured what can be described as typical professional police commands that were being given to Mr. WU by Cst. FLORKOW and Cst. LONDON during the struggle on the ground.

In comparing the 3 versions, Sgt. LEESON pondered the question of whether or not it would be reasonable for Cst. FLORKOW and Cst. LONDON to act in a manner totally incompatible with their training and the law at one point in an encounter, and revert back to what could be described as normal professional police tactics later in the same encounter.

Sgt. LEESON also considered obvious discrepancies or vague details in Mr. WU's version in regards to both his inability to supply key details such as whether or not he pushed back on his front door as Cst. FLORKOW either blocked the door or tried to enter, and on details concerning the specifics of how he was injured. Mr. WU also stated that Cst. FLORKOW and Cst. LONDON said nothing to him while they were trying to handcuff him. Mr. WU's perception of time also appeared to be distorted when he recounted the incident describing the beating as lasting for 10-12 minutes or a long time. While some of these factors may be related to the stress of the situation and the dynamic nature of the encounter, they need to be considered when assessing the discrepancies in the respective versions.

If the versions of Cst. FLORKOW and Cst. LONDON of what transpired at the front door are accepted as the more likely, this would constitute reasonable grounds to arrest Mr. WU and use force on Mr. WU in order to control and handcuff him.

Based on what they knew at the time, Cst. FLORKOW and Cst. LONDON describe what would be either an assault or an obstruction by Mr. WU at the front door. Cst. LONDON described an active assault on Cst. FLORKOW that prompted him to intervene and initiate a take down on Mr. WU. This take down took Mr. WU from a standing position by the front door to the concrete in front of the door. Sgt. LEESON believes based on the evidence available (described above) that it was this take down that resulted in the injury to Mr. WU's left eye.



Mr. WU from his perspective may have been defending his property against the entry of these officers. Sgt. LEESON's assessment (described above) was that based on the totality of circumstances the officer's entry into Mr. WU's residence was justified based on what Cst. FLORKOW and Cst. LONDON knew at the time of this encounter with Mr. WU and that they acted reasonably. It will be up to the Disciplinary Authority based on the available evidence and investigative material that has been gathered to determine if they agree with this assessment.

Cst. FLORKOW and Cst. LONDON in the above analysis clearly articulated that based on the facts known to them at the time of their response and encounter with Mr. WU that they believed Mr. WU to be the suspect in the domestic assault and arrestable based on his actions at the door (assault on Cst. FLORKOW).

If the totality of circumstances of what was known by the officers at the time they encountered Mr. WU was viewed by other reasonable people placed in the same situation, Sgt. LEESON believes they would come to the same conclusions. It will also be up to the Disciplinary Authority to determine if they agree with this assessment.

### **The Police Officer Did Not Use Unnecessary Force**

Again on this issue, there is a vast difference between the versions of Mr. WU and those of Cst. FLORKOW and Cst. LONDON.

Mr. WU asserts he was beaten excessively and in his January 22<sup>nd</sup>, 2010 interview stated that this beating went on for 10-12 minutes or a long time. In reality, the entire incident likely took under 2 minutes once the struggle commenced.

The injury photos and medical evidence such as the medical records and statement of Dr. FLEMING support the versions of Cst. FLORKOW and Cst. LONDON that Mr. WU struck his head on the ground while being taken to the ground. The injuries that are documented in the medical records and depicted in the photos are compatible with the force options that Cst. FLORKOW and Cst. LONDON stated that they employed on Mr. WU during the incident, and the environment that the encounter occurred:

1. Balance displacement takedown employed by Cst. LONDON;
2. 3 close fist strikes delivered to Mr. WU's upper shoulders by Cst. FLORKOW;





3. Followed by 2 close fist strikes to Mr. WU's upper back (when the first 3 had no effect).

A/Insp. BUTLER covers in his analysis and assessment of this incident the use of the balance displacement takedown by Cst. LONDON (P.18):

*It was unfortunate that in this circumstance, the balance displacement takedown utilized resulted in Mr. Wu striking his head on the concrete however this result was not intended by constable London nor was it a likely or probable outcome with respect to the takedown technique.*

Cst. FLORKOW and Cst. LONDON stated above that they believed Mr. WU was arrestable based on his actions and they were attempting to gain physical control of him to handcuff him.

A/Insp. BUTLER also commented on Mr. WU's level of injury with regard to the relevance to the issue of excessive force. A/Insp. BUTLER stated (p. 6-7):

I am mindful of the fact that the complainant in this case suffered significant injuries. It is important to understand that the injuries suffered by Mr. Wu, while tragic and unfortunate, do not automatically point to evidence of excessive force in consideration of the circumstances. When police officers choose a particular force option that is neither intended or designed to cause injury, and that option is chosen in good faith and in reasonable light, the injuries that might occur are not particularly relevant with regard to determining the issue of "excessiveness".

For further edification of this point, in *Berntt v. City of Vancouver* the learned judge held that injuries were not consequential to the original intent of the force,

*What a judge must not do in a case such as this is take into account in determining the issue of reasonable grounds what the person injured was in fact intending to do, nor the actual consequences of the force used, no matter how tragic.*

This important philosophy was further supported in *R. v. Kandola* where the judge opined as follows,

*It is important to note that it is the force itself and not the consequence of the force used, which is justified if the limiting conditions of the statute are met....Those consequences are*



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*relevant only to the extent they are intended.*

And in R. v. Weber

It is not the nature of the resulting injury that is determinative of the reasonableness of the force used. The result may provide some evidence of the force employed. But the real question is whether the crown has proven on all the evidence, beyond a reasonable doubt, whether the force used was excessive in relation to the harm it was intended to prevent. That is, whether one was proportionate to the other.

And in R. v. Omand,

It is clear from the established case law that, when conducting an analysis of whether the force used was reasonable in the circumstances, reasoning backward from the nature of the injuries is an error.

It is Sgt. LEESON's assessment based on the gathered investigative material and assuming Cst. FLORKOW and Cst. LONDON's version of events is taken over Mr. WU's (for the reasons described above), Sgt. LEESON does not believe that the use of force in this case constituted excessive force. It will be up to the Disciplinary Authority as to whether to accept or reject this assessment based on their assessment of the evidence.

**Other Relevant Factors:**

**Notification by [REDACTED] that Mr. WU is "The Wrong Guy":**

It is clear from reviewing the timeline that Cst. FLORKOW and Cst. LONDON are at the residence dealing with Mr. WU at 02:27:52 hours. The fact that the location for the call is sent to their CAD terminal at 02:27:52 , at that time Cst. FLORKOW and Cst.LONDON are already out of the police vehicle and at the door with Mr. WU.

At this point [REDACTED] walks to the front of her basement suite and the 911 audio captured the background interaction between Mr. WU, Cst. FLORKOW and Cst. LONDON. A radio call goes to Cst. FLORKOW and Cst. LONDON at 02:28:03 hours attempting to advise the 911 call is in the basement of the residence, accessed around back. At 02:28:05 hours a confrontation involving yelling is heard in the background.



At this point [REDACTED] is trying frantically to get the officers attention and let them know the male they are fighting with is "the wrong guy" and the landlord. This effort goes on from 02:28:03 to 02:29:17 hours. During this time dispatch attempted to raise Cst. FLORKOW and Cst. LONDON (collectively 3E21) at 02:28:21, 02:28:30 and 02:28:52 hours. There was no response to any of these 3 radio calls. The enhanced phones\_42 file covered this period. It was clear that these radio calls occurred as Cst. FLORKOW and Cst. LONDON were in a struggle to control and handcuff Mr. WU.

During the Ordered Interview with Cst. LONDON. Cst. LONDON stated that he could hear [REDACTED] but the male he was dealing with was still fighting with him and at that particular point he needed to control Mr. WU. When asked whether or not he recalled hearing [REDACTED] he stated:

**BL** At the point I probably thought that..., the point that I thought I was not dealing with the right person was when the lady was yelling at me 'you have the wrong guy'. But as I stated earlier, this, this person's obviously still fighting with us for some reason and he won't, uhm, he won't allow us to handcuff him, and so I, you know, can't just leave him there because, again, I don't know why he's fighting us. He may have some weapon with him, or..., whatever..., he's fighting us..., what that's for..., so. We still have to gain control of that person at that time.<sup>53</sup>

During the Ordered interview of Cst. FLORKOW when he was asked about hearing what [REDACTED] was saying to him while they were fighting with Mr. WU, he stated:

**GL** *Okay. Ah, just referring back to the audio clip I played to you. Ah, when the womans yelling, ah, Mister Policeman, over and over again..., do you recall seeing, ah, this woman at all?*

**NF** *No.*

**GL** *Okay. Do you recall where she was yelling from? Like where....*

**NF** *No. No.*

**GL** *Okay.*

**NF** *Ah, it was, like, it was..., he was full-on fighting and I was....*

**GL** *Yeah.*

**NF** *....really worried about..., like, I was trying to avoid him striking me in the head, as well as him trying to stand up, and, you know, where he could square up and start..., see where I am, and I'm trying to get him*

<sup>53</sup> Cst. LONDON. Interview Transcript. May 12<sup>th</sup>, 2010. P.19



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into custody and it was very..., like it was very dynamic. It was a very difficult situation.

GL Okay. And at that time index where I started playing, which is I think eleven twenty-five....

NF Hmm-hmm.

GL ....uhm, as far as you recall, you're essentially full-on.....

NF Hmm-hmm.

GL ....occupied with Mr. Wu on the ground.

NF Yes.

GL Okay. Uhm, you don't recall her leaning out a window, or.....

NF No.

GL Okay. Okay. At what point did you become aware, uhm, in this interaction with Mr. Wu, uhm, that there was, in fact, this call was in fact in the basement suite and ah, you were dealing with, I guess with a person who was not the subject of the, ah, the 911 call?

NF Ah, it was after Wu was in handcuffs.

#### Dispatch Updates:

Sgt. LEESON reviewed the sequence of updates for this incident by referring to the CAD timeline and audio. Particularly the updates at:

02:28:03 - Dispatched advised call was in basement suite;

02:28:21 - Dispatch inquiring if they are out with a male;

02:28:30 - Dispatch calling them;

02:28:52. - Dispatch calling them.

Sgt. LEESON was advised through the Agent for Cst. FLORKOW and Cst. LONDON that on January 21<sup>st</sup>, 2010<sup>54</sup>:

- Cst. FLORKOW does not specifically recall what type of equipment he was using that night but typically he does not use an E-comm earpiece; he normally deploys with our issue radio with the remote 'mike' clipped to his uniform shirt.
- Cst. LONDON does use this earpiece and did deploy with it in his ear that night but it was dislodged sometime during the altercation. He indicated that he only noticed that at the end of the altercation because it was out of his ear hanging in front of him where the cord was clipped to his shirt.

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<sup>54</sup> Response from Tom STAMATAKIS RE: query re: radio earpieces used during incident. Received via email. October 8<sup>th</sup>, 2010.



3E21 is able to respond at 02:29:05 hours and advised that there was a mix-up at their location and requested another unit to assist. At 02:29:10 dispatch further updated Cst. FLORKOW and Cst. LONDON that they were with was the landlord and not the suspect.

It is clear if you listen to the audio timeline that the update regarding the basement suite occurs after the struggle between Mr. WU, Cst. FLORKOW and Cst. LONDON is already in progress. It is unclear if they heard dispatch attempts to reach them and couldn't respond or if they couldn't hear these transmissions over the commotion.

Not specifically mentioned by either Cst. FLORKOW or Cst. LONDON, but relevant none the less, is the fact that it isn't uncommon for the participants in a domestic dispute to turn on the Police once they attend and enforcement action is taken.

(See E-comm Timeline)  
(See Audio Timeline)

**Post Incident Conduct of Cst. FLORKOW and Cst. LONDON**

Sgt. LEESON reviewed the post incident conduct of Cst. FLORKOW and Cst. LONDON to determine if there was anything in what occurred post incident that could be construed as police misconduct. By post incident Sgt. LEESON is referring to the time period when Mr. WU was handcuffed until he was released into the custody of EHS paramedics for transport to Vancouver General Hospital.

Sgt. LEESON identified the period when Mr. WU was ultimately handcuffed as being just prior to 02:29:05 hours, when Cst. FLORKOW is able to answer dispatch and request a cover unit.

This assessment was based on the E-COMM timeline, BCAS Crew Report, the statements of Mr. WU Mr. WU Sr., Mrs. MAN, [REDACTED] Cst. FLORKOW, Cst. LONDON, and the duty reports of Cst. FOLKESTAD, Cst. YOBLONSKY, Cst. LEUNG, Cst. WONG-MOON, Sgt. DANIELS, and BCAS paramedics Grant BURGESS and Greg STUBBS. The following time line was compiled to assist with this assessment:

<b>Time</b>	<b>Event</b>
02:29:05	Mr. WU handcuffed and in control. Advise mix-up, call for cover unit;
02:30:07	3E71 (Cst. FOLKSTAD and Cst. YOBLONSKY) on scene;
02:31:04	Cst. FOLKSTAD and Cst. YOBLONSKY arrive at basement suite;



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02:31:36	Cst. FLORKOW calls for EHS for Mr. WU;
02:31:49	Cst. FLORKOW calls for Sgt. DANIELS to attend the scene;
02:31	Cst. FLORKOW arrested and chartered and warned Mr. WU;
02:31:44 - 02:32:21	Dispatch calling ambulance on phone lines;
02:35:28	Cst. FLORKOW requested a Cantonese Speaking Member attend scene;
02:37:12	Mrs. MANN called 911 for ambulance (already on route)
02:41:10	Cst. FLORKOW on radio, advising language difficulties. Advised dispatch MANN calling 911 for ambulance;
02:41:12	Dispatch on phone – trying to locate Cantonese Interpreter
02:41:47-02:43:00	Dispatch called EHS, EHS advised they are a block away (02:42:47);
02:42	EHS at scene and at Mr. WU's side (BCAS report)
02:45:54	Sgt. DANIELS on radio asking if there is a for Cantonese Speaking member available;
02:46:05	Dispatch advised Cst. LEUNG (ERT member) was logged on and speaks Cantonese. They advised they would try him;
02:46:41	Sgt. DANIELS on radio, advised he is trying to call Cst. LEUNG on phone;
02:46:03 – 02:47:00	Chief Dispatcher on phone trying to reach Cst. LEUNG.
0255	Sgt. DANIELS arrives at scene(from notes);
02:55	Cst. LEUNG(0255 Duty report) and Cst. MOON-WONG (0300 Duty Report) arrive on scene;
02:55-03:10	Handcuffs Removed – Mr. WU un-arrested;
03:10	BCAS began transport of Mr. WU;
03:25	BCAS arrived at VGH with Mr. WU.

It is apparent from reviewing the investigative material from this file including the statements, the E-comm time line, and corresponding audio of the flurry of communication following Mr. WU being handcuffed that there was considerable confusion and misunderstanding as to what was going on.

Mr. WU was in handcuffs and injured. [REDACTED] a male from the basement suite who came out and according to officers was yelling at them, was also in handcuffs. Family members were also emerging from the residence and finding Mr. WU injured and handcuffed in the front yard. It was also unclear in these initial moments what the status was of the original complainant who called 911 to report the domestic in progress in the first place.

In assessing this aspect of the file, Sgt. LEESON examined the issue of whether or not the officers did what would be reasonable and expected of them given the situation.



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**1. The situation at the scene was unstable. They had 2 males in custody, family members emerging and upset, and the original 911 call still not addressed.**

Cst. FLORKOW and Cst. LONDON advise of the mix-up and immediately call for a cover unit. Cst. FOLKSTAD and Cst. YOBLONSKY arrive a minute later (02:30:07).

Cst. FOLKSTAD and Cst. YABLONSKY go directly to the basement suite to deal with the 911 call. They speak to [REDACTED] and determining that [REDACTED] is not related to the incident, and the suspect had fled. Cst. YABLONSKY advised Cst. LONDON, [REDACTED] is released from his handcuffs and escorted back to the basement suite by Cst. YABLONSKY.

**2. Mr. WU is injured.**

Cst. FLORKOW and Cst. LONDON call for EHS and a Supervisor (02:31:36 and 02:31:49).

S. 22 of the Vancouver Police Policy and Procedure requires that when any physical force to a person that causes injury and medical attention is required or requested. That the member shall:

- a. Notify their supervisor;
- b. In the event of injury, report the incident through their Supervisor to the Duty officer;
- c. Consider whether it is appropriate for an assault, assault peace officer and/or obstruction charges against the non-compliant subject;
- d. Offer medical assistance or aid. A member shall have the Emergency Health Services (ambulance) attend the person requests medical attention or if the member believes it is appropriate. If the member believes that medical attention is required, that member will have Emergency Health Services attend even if the subject initially refuses such aid;
- e. Document the incident in their notebook, and submit a GO report. If charges are requested, the member(s) shall document the force used on a Vancouver Jail Arrest Report and submit a GO report to Crown Counsel;



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- f. Complete and submit a VPD840 use of Force Report following the use of the ECD or beanbag Shotgun; and
  - g. Ensure that reports include the following information:
    - i. A description of the incident which led up to the necessity of force being applied;
    - ii. Type of force applied;
    - iii. Type of injury, if any, received by the non compliant subject, or member; and
    - iv. Whether medical attention was requested and the result of the medical attention received.

Cst. FLORKOW and Cst. LONDON complied with the requirements of S. 22 of the VPD Policy and Procedure regarding their handling of Mr. WU. The only deviation from formal policy Sgt. LEESON noted was the failure of Cst. FLORKOW to document the incident in his notebook. Cst. FLORKOW had no notes for January 21<sup>st</sup>, 2010 but did complete a detailed GO Narrative. During the investigation Sgt. LEESON inquired with Sgt. Russ MITCHELL of the VPD PSS section and was advised that it is accepted practice within VPD to accept GO Narratives as notes (discussed later).

Sgt. DANIELS satisfied the requirement to notify their Duty Officer.

Cst. FLORKOW follows through by Charter and Warning Mr. WU for assault at 02:31 hours. This suggests that at this time Cst. FLORKOW is still of the belief that Mr. WU has assaulted him.

While waiting for EHS to arrive, Cst. FLORKOW and Cst. LONDON requested and/or permitted (depending on version) blankets and a jacket to be placed on Mr. WU.

**3. There is a language barrier. Mr. WU has a limited command of English.**

Whether through the Charter and Warning of Mr. WU or their interactions with Mr. WU or family members, Cst. FLORKOW and Cst. LONDON realize they are having difficulty communicating with Mr. Wu and family.





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Cst. FLORKOW requested a Cantonese speaking member attend their location at 02:35:28 hours. It takes until 02:55 hours for Cst. LEUNG to be located and arrive at their location. In reviewing the available records, there was considerable effort put into locating Cst. LEUNG and redirecting him from his normal duties.

#### **4. Issue of what to do with Mr. WU in regards to Charges**

Cst. FLORKOW and Cst. LONDON both state in their Ordered Duty Reports that they consulted with Sgt. DANIELS about whether or not to charge Mr. WU given the obvious mix-up and language barrier. A decision was made that it wasn't in the public interest to charge Mr. Wu, and Cst. FLORKOW subsequently took off Mr. WU's handcuffs and released Mr. WU.

It appears from Sgt. DANIELS notes that he arrived on scene at 02:55 hours. The exact time Mr. WU's handcuffs were removed was not noted (from what Sgt. LEESON can determine). This occurred between 02:55 hours (when Sgt. DANIELS arrived) and 0310 hours (When the ambulance left with Mr. WU.) It likely occurred prior to Cst. LEUNG entering the ambulance to explain the mix-up and Police complaints process to Mr. WU and Mrs. MANN.

Cst. FLORKOW and Cst. LONDON stated that they consulted with Sgt. DANIELS over this issue prior to the release of Mr. WU. Based on what Sgt. LEESON can determine, Mr. WU was in handcuffs for between 25-40 minutes. Given the totality of what had transpired, Sgt. LEESON felt this wasn't an unreasonable length of time.

#### **5. Explaining what happened to Mr. WU:**

At the scene Cst. FLORKOW and Cst. LONDON attempted to communicate the mix-up to Mr. WU and his family. According to statements this wasn't entirely successful because of language issues and the level of anger.

When Cst. LEUNG arrived at 02:55 hours he attempted to communicate both the reason for the misunderstanding and details of the Police Complaints Process to Mr. WU and Mrs. MANN. They were also left with a Chinese language pamphlet that explained how to file a complaint against the Police.

**Sgt. LEESON does not believe there is anything in Cst. FLORKOW and Cst. LONDON's post incident conduct that would constitute misconduct. From what can be gathered from the investigative material, their conduct was professional and appropriate given the circumstances. It will be up to the disciplinary authority to determine if they agree with this assessment.**



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**Other Relevant Factors:**

**Covert Response to an Overt Incident:**

In assessing this incident it became clear to Sgt. LEESON that the fact Cst. FLORKOW and Cst. LONDON were in plain clothes likely contributed to how this incident unfolded.

Although Cst. FLORKOW and Cst. LONDON were wearing badges on the outside of their clothing, produced their issue identification and verbally identified themselves as Police, there is some lingering doubt over whether Mr. WU fully believed they were actually Police, particularly when Cst. FLORKOW and LONDON tried to enter. It is unclear if uniformed police officers would have met with the same resistance by Mr. WU.

The Vancouver Police Department already has policy that addresses this situation:

*Section 5.4.12 of this Policy states:*

*Identification Jackets are issued to clearly identify plain clothes members as police officers and through this identification, enhance the safety of members, the public, and suspects.*

*1. Subject to duty assignment requirements and where practical, plain-clothes members shall wear identification jackets when their duties change from covert to overt operations, these duties may include:*

- a. warrant entry into a premises*
- b. code 5 vehicle stops*
- c. Suspect arrests*
- d. Attending major crime scenes.*

While this policy doesn't specifically state "response to 911 calls", or "response to crimes in progress", the existing Policy does address the covert to overt issue.

In addressing this issue, Sgt. LEESON does not view this issue as one of misconduct, but rather a potential training issue or the identification of an existing Policy that may be in need of review.



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**Officer Notes:**

It was noted during the investigation that Cst. FLORKOW had no notes, or more specifically, he had no hand written notebook entries in his duty notebook related to this incident. Upon inquiry during his ordered statement Cst. FLORKOW articulated that he was "on the box" on January 21<sup>st</sup>, 2010. This term "on the box" refers to Cst. FLORKOW having the responsibility of completing the CAD reports on the mobile data terminal for the shift. Cst. FLORKOW advised that in such a case he would be making contemporaneous reports and entry into the CAD system that would essentially form his notes.

Sgt. LEESON obtained the VPD Policy and Procedure concerning notebooks. The policy states:

S. 1.16.4 (2):

Police members shall keep a daily written record of their activities. Each day's record of activities shall be proceeded by the following: time, date, day of week, shift duty assignment, and weather condition. The issue-type notebook shall be margined for entry, in chronological order, of the time of attendance at and completion of incidents. Members shall use professional language and be prepared to substantiate what they record in their notebooks;

Sgt. LEESON also made inquiries with VPD Professional Standards Section to confirm that this was in fact current practice to allow members to utilize computed generated CAD reports as their notes. Sgt. MITCHELL of VPD PSS made inquiries and confirmed that this was the case.

Sgt. LEESON does not believe Cst. FLORKOW's lack of notes impacted this investigation, his narrative report completed January 21<sup>st</sup>, 2010 was detailed. This factor is mentioned because this practice isn't compatible with the current VPD's policy. Also, in light of court decisions such as R. v. CAMPBELL (2008 BCSC), this practice may be problematic. This is also viewed as a training issue, and not an issue of misconduct.

