



**HEARING DECISION
JUDGEMENT**

Name: Michael Adams, David Donaldson,
Geoffrey Fardell and Oliver Simpson

Rank: Police Constables

Badge Number: 10086, 10120, 9652 and 9878

Case Number: 29/2012, 31, 2012, 32/2012 and 33/2012

Hearing Date: 2015.05.28

Hearing Officer: The Hon. J. Douglas CUNNINGHAM

Prosecutor: STOCKWOODS LLP Barristers

**Defence Counsel:
Or Representative** MR. P. BRAUTI

**IN THE MATTER OF POLICE SERVICES ACT
R.S.O. 1990, C.P. 15, as amended:**

B E T W E E N:

TORONTO POLICE SERVICE

- and -

POLICE CONSTABLE MICHAEL ADAMS (#10086)
POLICE CONSTABLE DAVID DONALDSON (#10120)
POLICE CONSTABLE GEOFFREY FARDELL (#9652)
POLICE CONSTABLE OLIVER SIMPSON (#9878)

DECISION

1. On June 26, 2010, during the course the G-20 protests, Police Constables Michael Adams, David Donaldson, Geoffrey Fardell and Oliver Simpson became involved in the arrest of one Adam Nobody. As a result of that arrest, which for the purpose of this hearing is deemed to have been lawful, these officers stand charged with using excessive force. An Agreed Statement of Fact tendered as Exhibit 7 to this proceeding is appended to these reasons.
2. The process by which these officers came to be charged is as follows:

As a result of the manner in which he alleges he was arrested, Mr. Nobody lodged a complaint. He, along with the subject officers, was interviewed by the Office of the Independent Police Review Director (OIPRD). Following that investigation, the OIPRD recommended to the Chief of Police that these officers be charged with using excessive force against a prisoner contrary to Section 2(1)(9)(ii) of the *Schedule Code and Conduct*

of Ontario Regulation 123/98 and therefore contrary to S. 80(1)(a) of the Police Services Act, R.S.O. 1990.

3. The OIPRD investigation, in addition to numerous witness interviews, involved a careful review of a number of videos taken at the scene. These have come to be known as the Bridge videos, the Koke video and the Coombe video. All, in various ways, captured parts of the occurrence in question. I should mention that Mr. Nobody was arrested and charged with assault police and obstruct police under the *Criminal Code*. These charges were ultimately withdrawn. Mr. Nobody has, on several occasions, since the incident in question, spoken with the media and, as well has launched a civil action against a number of officers including the subject officers, the Chief of Police and the Toronto Police Service (T.P.S).
4. Before reviewing the evidence, I think it is important to understand the context within which the alleged incident occurred. Without question, the G-20 protests were well planned and orchestrated. Many of the protestors were peaceful, however, interspersed within their ranks were a great many violent protestors. Some, known as the black block, wore black clothing and face coverings. They, for the most part, were the ones responsible for violent attacks upon the police, police and public property along their various routes.
5. By Saturday, June 26, 2010, what had begun as a peaceful march turned extremely violent. The subject police officers had spent most of the previous week living in downtown hotels so they could be deployed daily as needed without delay. For the most part their work during the week had been fairly routine. It should be noted here that as well, the section of Queen's Park north of the Legislature had been designated as a protest area. Clearly, by Saturday, June 26th, many protestors had taken their activities far beyond this area.

6. While the officers in question had been deployed to different areas on the 26th, by early afternoon, through various commands, they were all ordered to go to Queen's Park to deal with what clearly had become a violent situation. By this, I mean various projectiles were being hurled at the police, including rocks, bottles sometimes filled with urine, golf balls and feces. Needless to say, many of the officers protected themselves with shields.
7. As ordered, a large group of officers formed a line at the north side of College Street at University Avenue with a view to moving the protestors north past the Legislature. As the officers tried to quell the violence, many individuals were taunting the officers, hurling insults and generally attempting to provoke them. This was anything but a peaceful protest. It was a riot.
8. By the time the line formed, the massive crowd that had moved up University from Queen Street, the scene of significant destruction, was north of the officers. Many, south of College, had dispersed. The crowd on the lawn of the Legislature was now face to face with the line of shields. I accept that this was probably sometime after 4:00 pm. I also conclude that certain agitators were targeted for arrest and that, once identified, officers would break out of the line in an attempt to make arrests. Sometimes arrests were made, sometimes not as many individuals escaped back into the crowd.
9. Let me now deal with the evidence of the complainant, Adam Nobody. Mr. Nobody is a 31 year old stage assembler. Before me he testified that he left home around 5:00 pm. wearing a t-shirt, the design of which will become important later in these reasons, blue shorts, a hat and shoes. He was carrying a back pack. After leaving his residence on Baldwin Street he went to College Street, west of University Avenue. He observed the line of officers and he stated in evidence he saw officers attacking civilians. He said the crowd

was becoming vocal and that he was screaming at the police "out of disbelief". He believed all of Queen's Park was a designated protest area. At some point he lost the water bottle he was carrying but denies throwing it at the police. It was later retrieved by Sgt. Jeffrey Alderdice who was concerned about what it might contain. I will return to Sgt. Alderdice's evidence later.

10. Mr. Nobody then says he left the police line after being told to leave. Initially intending to go to a nearby liquor store on his bicycle he instead went to a beer store where he purchased 12 cans of beer which he put in his back pack. The liquor store, it seems was boarded up. On his way back to Queen's Park he purchased a bristol board in order to create a protest sign.
11. Locking his bicycle at the University of Toronto, he arrived back at Queen's Park about 6:00 pm. whereupon he began writing his sign. By then he observed the police line to be about half way up the south lawn at Queen's Park. As he was writing his sign he heard the police banging their batons on their shields shouting "move, move". He says he felt he was allowed to be where he was, right in front of the Legislature. Before he finished writing on his sign, and, as he says, he was walking away from the police, he observed an officer running at him. He says he picked up his pack and ran. The officer, he says, was shouting "him, him, him". Within 2 seconds he was tackled to the ground with officers punching and kicking him as he was pinned down. This melee, he says, lasted less than a minute. He was handcuffed, picked up and taken to a police wagon where he was handed over to plainclothes officers. He says these officers attacked him again, challenged him to fight and called him demeaning names.

12. As a result of the events that evening, Mr. Nobody suffered a fractured nose and a mildly displaced, comminuted fracture of his right cheekbone (zygoma). Surgery was later performed. He could not say whether the injuries occurred during the take down or while he was in custody with the plainclothes officers. In his booking video, which I reviewed, he complained only about the actions of the plainclothes officers.
13. While Mr. Nobody was being taken down initially, he says he was not resisting and that he obeyed the commands to give up his arms. It is his position that he was prone and that his arms were away from his body. He maintains he was at all times compliant. The police, not the crowd, were the agitators he maintains and at no time was he shouting profanities at the officers. Rather he was simply questioning their motives. At no time, he says, did he hear the police Long Range Acoustical Device (LRAD) broadcast ordering people to leave the area, but stated that even if he had heard it he would not have obeyed.
14. Needless to say, the defence evidence paints an entirely different picture. The first to testify, P. C. Geoffrey Fardell who stated at the time of the G-20, he was a 3rd year officer at 54 Division. He had received a 2 day training course with respect to the G-20 and was familiar with the Use of Force Wheel (Ex.30) to which I will return later in these reasons.
15. In the week or so leading up to the day in question he and other officers were living at downtown hotels. He had been doing 12 hour shifts. On June 26th, following a mid-afternoon briefing, he was ordered to go to Queen's Park where he was advised a large group of protestors was headed. At Queen Street, he observed a riot in progress – cars being torched and vandalism – a scene of chaos and mayhem. He was eventually able to get to the south lawn of Queen's Park. There a group of peaceful demonstrators were leaving. He then observed a very large group moving up University Avenue.

16. Ordered to go immediately north to Bloor Street, he and other officers ran there as quickly as they could. They were told to don gas masks and helmets and then move down to the south side of the Legislature buildings. Once there he got behind a Public Order Unit (POU) line just north of College Street. By now the crowd was on the front lawn south of the Legislature. This he described as a riot with rocks, bottles and other projectiles being hurled at the police. The crowd, he stated, was becoming increasingly violent. It was anything but a peaceful assembly. He heard the very loud LRAD warning for people to clear the area and that this was a non-demonstration zone.
17. By now, the line of officers was trying to move the crowd north shouting "move, move". At some point arrest teams were formed and that is when for the first time he became associated with the other accused. A Sergeant would identify people who needed to be arrested and he and the team would punch through the line to attempt the arrests. Most arrests, he stated, were non-confrontational. Adam Nobody was the second last person whose arrest he was involved in and the only one out of perhaps 10 to 20 extractions where force was required.
18. As the police line was pushing the crowd in a north-west direction, near the front entrance to the Legislature, he observed his team going through the line chasing a male who was running west. He had never seen this individual before although clearly he had been selected for arrest. Catching up with this team he shouted "stop" to no avail. The person running away, he said, was not compliant. He then observed his partner, P. C. Lowe tackle the male whereupon they both tumbled to the ground with the male ending up on top of P. C. Lowe.

19. Catching up, P. C. Fardell then tried to pull the male off P. C. Lowe and in doing so tried to get the male to the ground. To do so he used his left knee and his body weight as he was trained to do. Officer Fardell stated in evidence that the male was struggling and clearly resisting arrest. At no time were his arms stretched out but rather were being held under him. The officer was busy trying to get the male in a prone position which he says the male was resisting. Most of the time this officer was attempting not only to get the male prone but also to get his arms and hands out from under him. In his view, the male's conduct was assaultive. At no time did he hear the male say he couldn't give up his arms in spite of the officer yelling at him to do so.
20. The male, whom he described as being 200 – 220 pounds and 6 feet tall was eventually subdued and taken away.
21. P. C. David Donaldson is a 30 year old officer having joined the T.P.S. in 2008. He too, had brief G-20 training along with a refresher course on the use of force. On the day in question, he was on a team that included P. C. Michael Adams and P. C. Oliver Simpson. His day began at 7:00 am. with a briefing downtown. After being at several locations during the day trying to control crowds, including some black block agitators, he received an order to go to College and University where a large crowd was approaching, a crowd which he described as being in the 1000s.
22. Officer Donaldson observed the crowd becoming increasingly hostile with rocks and bottles being thrown. Finally, while behind the POU line at College and University, he heard the LRAD broadcast that this was an unlawful assembly. It was, he said, very clear. He was assigned to an arrest team, (he had never been on an extraction team before) and, as I have described previously, he made a number of arrests.

23. Eventually a male, who turned out to be Adam Nobody, was pointed out as someone to be arrested for breach of peace and unlawful assembly. Breaking the line, he ran after Mr. Nobody yelling “you are under arrest” several times. Mr. Nobody continued to run. Although he does not recall the take down, he does recall Mr. Nobody being in a bridge position as he tried to get him prone. Officer Donaldson attempted to grab and control Mr. Nobody’s flailing legs which he was able to do with some difficulty. At no time, this officer testified, was Mr. Nobody compliant, nor was he ever on the ground with his arms out like a cross.
24. P. C. Donaldson was a flexi-cuff officer. Unable to get Mr. Nobody to give up his arms after repeatedly being told to do so, P. C. Donaldson, using what he described as “compliance blows”, executed 2 – 3 strikes with his fist to the left side of Mr. Nobody’s body. This he described as part of his training and that these hard techniques were entirely justified in the circumstances. Eventually, Mr. Nobody was handcuffed, stood up and lead away. Even during that time Officer Donaldson says Mr. Nobody was yelling, spinning and, generally, non-complaint.
25. P. C. Oliver Simpson, is 39 years of age and an 8 year veteran of the T.P.S. Prior to that he served 10 years in the military. He, as well, had brief G-20 training and along with the others had resided that week at a downtown hotel. June 18th until the 26th, he stated, had been uneventful but on the 26th things changed dramatically. He observed the black block embedded within a group of peaceful marchers, generally causing significant mayhem and vandalism. He was eventually ordered to College and University where he observed a “sea of black” on College heading toward University Avenue.

26. Clearly there were not enough officers present and he along with other officers was ordered to retreat up to Bloor Street where helmets and masks were donned.
27. Heading south, the officers were ordered to disperse the crowd which by now he estimated at around 2000 and which was clashing with police. He eventually got behind the POU line at College and University and together with other officers attempted to move the crowd north. The crowd, he says, was violent, engaging the police by throwing rocks and bottles. He was assigned to an arrest team with whom, before encountering Mr. Nobody, he had made several arrests.
28. Eventually while on the south lawn of the Legislature, close to the buildings he observed a male with a sign fleeing. Officer Simpson joined the pursuit and observed the lead officer catch him. He saw them tumble to the ground and observed the male on top of the lead officer (P.C. Lowe). This concerned Officer Simpson as he wasn't aware of the man's role in the disturbances. He attempted to get the man's hands free so he could handcuff him but the male was clearly resisting and struggling. As a result, as he was trained to do, P. C. Simpson gave the man a hard knee strike. The man continued to refuse to give up his arms despite Officer Simpson pulling hard. The man was using his muscles to resist, and, in this officer's view, it was not the weight of the officers that prevented the man from complying. Two or more knee strikes and possibly a hand strike were administered and eventually he was able to secure and handcuff the man's hands. The knee and hand strikes, the officer testified, were entirely justified and in line with his training. The man was simply refusing to comply with the officers' commands.
29. I turn now to the evidence of P.C. Michael Adams, a 30 year old, nearly 7 year veteran of the T.P.S. As with the others, he had received brief G-20 training and had spent the

previous week at a downtown hotel. After an early morning briefing on June 26th he spent the day in crowd control at various locations. At one point he was assigned to College and Spadina where a parade travelling north on Spadina was about to go east on College to Queen's Park. At some point the mood of the crowd changed and he heard a radio transmission asking for assistance because of black block trouble. Cars were being destroyed and a flare set off. He was then detailed to Queen's Park. After deploying to Bloor Street with the others he returned to Queen's Park to see an "immense crowd", a "sea of black" heading to University and College. Wearing his helmet and mask he eventually, with difficulty, got to the POU line just north of College. People were screaming, spitting and throwing objects at the police. He heard the LRAD warning the crowd to disperse and that if they remained they would be arrested. He was then assigned to an arrest team, breaking the line several times to make arrests.

30. At some point he observed P. C. Donaldson, whom he knew, go through the line after a targeted male. He joined the pursuit. This male, of course, was Mr. Nobody. He observed P. C. Lowe gaining on the sprinting male who turned to look back. It appeared to P. C. Adams that Mr. Nobody braced himself into a crouch before impact. As a result of the tumble, Mr. Nobody ended up on top of Officer Lowe. P. C. Adam's priority, he stated, was to get Mr. Nobody off. Giving verbal commands to stop resisting and "you are under arrest", Officer Adams was able to pull Mr. Nobody off P. C. Lowe. His goal was to get Mr. Nobody in a prone position so he could be handcuffed. Mr. Nobody resisted and kept holding his arms snug beneath him. Officer Adams tried distractionary strikes to the right shoulder without success. He then tried pushing and pulling Mr. Nobody's arms and at one point observed Mr. Nobody about to bite him.

31. At that point P. C. Adams hit Mr. Nobody with 3 quick strikes to the right side of his face. This stopped Mr. Nobody's attempted bite. He has no doubt that otherwise he would have been bitten. These blows, he stated, were completely in accordance with his training as Mr. Nobody's behaviour was at all times actively resistant. As a result of not wearing his identification and epaulets he was subsequently docked 2 days' pay. He denied acting on emotion but rather as he was trained to do.
32. Other officers testified about the circumstances of that day. P. C. John Santarelli, a 9 year officer was assigned to the POU on June 26th. Not only was he able to provide some context, he was able to describe some of the actions of Mr. Nobody that day. He described a crowd which he estimated at 10,000 people on University Avenue, a crowd that had been moving east on Richmond Street and which was burning cars, ransacking stores and shouting profanities. As the crowd moved along, rocks and bottles were being hurled at the police. At some point later he observed 2 people who seemed to stand out in a crowd of "1000's". One was a white male approximately 6 feet tall with a bushy beard, wearing a distinctive Jello Biafra t-shirt. Looking at a photograph (Ex. 33), P. C. Santorelli identified Adam Nobody. This man was one of the main protestors, taunting the police and exhorting the crowd. Efforts were made to arrest Mr. Nobody without success as he would run back into the crowd. This officer, while not seeing the ultimate arrest, did see Mr. Nobody being put into a police wagon.
33. Sergeant Jeffrey Alderdice also gave evidence. A 20 year, 46 year old T.P.S veteran, he had, prior to the subject incident, been posted to Afghanistan in 2010 with the RCMP. He is the recipient of the T.P.S Medal of Honour (its highest award) and the Ontario Medal for Bravery, as a result of his extraordinary service in that theatre. During the G-20 he was a

POU sergeant responsible for 6 officers. After earlier having been in the downtown core at approximately 12:35 pm he was ordered to go to Queen's Park. There he observed a violent situation with people throwing rocks and other objects at the police. He himself was struck by a hard object. During this time, between 1:00 pm. and 2:00 pm., he became familiar with an individual he identified from Ex. 33 as Adam Nobody. This man, about 6 feet tall and 200 pounds, wearing a "devil" t-shirt was repeatedly charging the police line, yelling profanities and agitating the crowd to attack the police. Although 2 unsuccessful attempts were made to arrest Mr. Nobody, he did observe Mr. Nobody drop a red water bottle. Examining this object, Sgt. Alderdice thought he detected a kerosene smell. The bottle was kept for evidence. Eventually it was determined not to contain kerosene but rather traces of alcohol. Sgt. Alderdice did not witness Mr. Nobody's arrest but he did see him later in custody seated beside a police wagon.

34. Finally, regarding the events of June 26th, retired Inspector Gerald Cashman gave evidence. Recently retired after a 35 year T.P.S career, Mr. Cashman testified he was the G-20 Commander of Bravo Section. Initially assigned to the Queen and John Streets area, he observed what had initially begun as a labour protest turn violent as black clad protestors began attacking police throwing bottles, rocks, golf balls and feces. After being assigned to T.P.S Headquarters on College Street, where he observed considerable damage, he was assigned to Queen's Park. There, at or about 3:00 pm. he estimated, a large chanting crowd had become much more aggressive. He recalled one particularly aggressive protestor wearing a "devil t-shirt". Ex. 33 was shown to Mr. Cashman and he identified Mr. Nobody as a person who had been banging the police shields and swearing at the officers. Attempts were made to arrest Mr. Nobody, but he kept running back into the

crowd. Originally, when interviewed by the OIPRD, then Inspector Cashman said his recollection of specific events was “foggy” and that he didn’t remember Mr. Nobody being “taken down”. However, what stood out in his memory was the man wearing the “devil t-shirt”. When he later saw pictures and videos of Mr. Nobody wearing this t-shirt he realized he had in fact seen Mr. Nobody being arrested. Apart from the fact it took a number of officers to effect it, he said there was nothing unusual about the arrest.

35. Let me now turn to the issue of use of force training. In this regard, I was assisted by Staff Sgt. John Stockfish, the Section Head of T.P.S in service training for new and existing officers. His C.V. is extensive and was tendered as Ex. 34.
36. The so-called Use of Force Wheel (Ex. 30) is used extensively during this training in order to teach officers how to appropriately respond to various levels of behaviour. Essentially it is a tool used to explain how to react to specific incidents. Without going into great detail, because the wheel is quite self-explanatory, at the centre is the situation where one must assess, plan and act. Behaviour being confronted may range from cooperative, through passive resistant to active resistant to assaultive and eventually on to serious bodily harm or death. At each stage an officer’s response will move from communication to soft action, to physical control to hard action and eventually to lethal force. All the while, the officer is to be mindful of tactical considerations as he/she subjectively perceives what is unfolding.
37. Active resistance, the officer testified, can involve pushing or pulling away, indeed running away. Assaultive behaviour would mean some use of force against an officer by act or gesture. Time is of the essence and an officer’s speed in reacting critical. Those responses would move from communication to soft control techniques for passive resistance to physical control for active resistance on to hard techniques such as punches,

kicks or elbow strikes. Beyond that, but not relevant here, would be the involvement of weapons such as batons, spray or Tasers as required. For situations where serious bodily harm or death were threatened an officer may have to use his firearm.

38. Several hypothetical situations were put to Staff Sgt. Stockfish, whom I qualified as an expert witness. He was asked to assume the G-20 environment on June 26th, involving a very large crowd of unknown people thought to be violent. A targeting individual who had been exhibiting assaultive behaviour flees and is taken down resulting in him ending up on top of the officer. The act of fleeing, this witness testified, could be active resistant behaviour and him being on top of the arresting officer gravely concerning. By not giving up his hands and not going prone in spite of being ordered to do so would in his view clearly be active resistance. In these circumstances, holding his hands close to his body and resisting, distractionary knee strikes would not only be appropriate, this is what is taught. Asked if an officer perceived he was about to be bitten whether fist strikes would be appropriate, the witness said they would. Again, active resistance requiring physical control and hard use of force.
39. Clearly an officer's response is a balance of subjective and objective factors. One must always of course be mindful that these are often very dangerous and explosive situations and that an officer must react quickly or the consequences could be dire. Communication is ever present as is the officer's continuing perception of what is occurring.
40. I now turn to the law. All four officers are charged with one count of using excessive force in the arrest of Adam Nobody on June 26, 2010 during the G-20 disturbances. Section 25 (i) of the *Criminal Code* provides that:

“Everyone who is required or authorized by law to do anything in the administration or enforcement of the law as a peace officer is, if he acts on reasonable grounds, justified in doing what he is required to do or authorized to do and in using as much force as is necessary for that purpose.”

Obviously if more force is used than necessary that amounts to an assault. Proportionality, necessity and reasonableness are the constraining principles. The police do not have unlimited power to inflict harm in the execution of their duties.

41. Nevertheless, as LeBel J. stated in *R. v. Nasogaluak* (2010) S.C.R. 206 at paragraph 35,

“Police actions should not be judged against a standard of perfection. It must be remembered that the police engage in dangerous and demanding work and often have to react quickly to emergencies. Their actions should be judged in light of these exigent circumstances.”

42. Before this Tribunal the onus rests with the prosecution to prove these charges on a balance of probabilities. Is there clear and convincing evidence that produces in my mind a firm belief or conviction that the allegations sought to be proved are true? For the reasons and analysis that follow, I am not so persuaded and the prosecution has failed to meet its onus. Accordingly, the charges are to be dismissed.

43. After careful consideration of all of the evidence, I conclude that the complainant, Adam Nobody, was the author of his own misfortune. I disagree with the prosecution that the evidence of Officers Cashman, Santorelli and Aderdice is irrelevant. What is relevant

about their evidence is the context in which the arrest of Mr. Nobody occurred. Simply put, I accept their evidence, and indeed the evidence of the subject officers, that this was a very highly charged situation. I accept that this hostile crowd at Queen's Park was out of control and that many projectiles were being thrown at the police. This was a situation that had escalated during the day largely due to the influence of radical black block protestors. By mid to late afternoon this situation had become combative and confrontational. In short, it was a riot.

44. I find as a fact that the LRAD warning to the crowd to disperse was clearly heard and despite his denial, I find that Mr. Nobody heard it. He knew, I find, that he had no right to be where he was. As he said, even if he had heard the order to leave he would have remained.
45. Adam Nobody's thesis seems to be that the police were the agitators, attacking innocent civilians. This notion I completely reject. It is simply one of many areas where Mr. Nobody's credibility is lacking. Mr. Nobody would have me believe he simply went over to Queen's Park to see what was happening and that he wasn't angry but merely disappointed with the police. This is nonsense. Mr. Nobody was well aware that the G-20 protests were likely to become explosive, hence his June 5th, 2010 Facebook posting "Kaboom Toronto – Kaboom" regarding the upcoming G-20. For Mr. Nobody to suggest he was simply chanting in protest and that he was just walking away with his sign when the police gave chase strains credulity. I accept the evidence of those who testified that Mr. Nobody stood out in the crowd as a particularly agitated protestor, egging the crowd on and frequently charging at the police line before retreating into the pack. Mr. Nobody clearly knew he was risking arrest and I find as a fact that he was able to escape arrest on at

least one other occasion that afternoon before he was finally curtailed. He knew, I find, that the police were there to keep people away from Queen's Park south of the Legislature. Without question, I find that when Mr. Nobody returned to Queen's Park from purchasing beer around 5:00 pm. he knew he was not permitted to be there.

46. Let me turn to the incident itself. As I have previously found, Mr. Nobody knew he was risking arrest and indeed had been able to evade being arrested previously that afternoon. I find as a fact, based on the evidence I accept, that Mr. Nobody knew he was being pursued by the police when he decided to run away just before his capture. I accept that he heard "him, him, him" several times. I also find that several of the officers shouted "stop" (Fardell), "you are under arrest" (Donaldson), and eventually "stop resisting", "give me your hands" and "you're under arrest" (Adams). I further find that Mr. Nobody heard the officers' commands and in spite of that he failed to comply.
47. By most accounts the lead officer, P. C. Lowe, was in close pursuit and very quickly caught up with Mr. Nobody. According Officer Fardell, P. C. Lowe tackled Mr. Nobody as a result of which P. C. Lowe ended up under Mr. Nobody. Because of the intensity of the crowd, Officer Fardell was rightly concerned. As the Bridges 2 video shows, Mr. Nobody was on his knees, similar to what P. C. Donaldson described as a bridge position. All of this happened in a matter of seconds and as the other officers arrived, I am satisfied that their objective was to get Mr. Nobody into a prone position on the ground so he could be handcuffed. I realize that P. C. Adams testified he saw Mr. Nobody go into a crouch position before P. C. Lowe engaged him. He may very well have but in the final analysis it matters not. In any event, P. C. Adams was one of the last, if not the last officer in the chase. There is no doubt, however, as the Bridges 1 video shows, Mr. Nobody did look

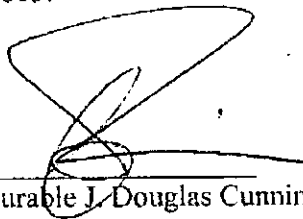
back as he continued to race away from the oncoming P. C. Lowe. As well the Koke video clearly shows Mr. Nobody on his knees over top of Officer Lowe.

48. I accept the evidence of the subject officers that Adam Nobody was non-compliant, not only by running away but also once he was tackled to the ground. At that point I am satisfied he became actively resistant in several ways. First, he would not go to the prone position and second he refused to give up his arms when ordered to do so. In fact, he held his arms tightly under him causing much of the tugging and pulling by Officers Fardell, Simpson and Adams. P. C. Donaldson, as the video frames clearly show, was busy at the back end pulling and trying to control Mr. Nobody's flailing legs. Given the active resistance by this large male, the distractionary strikes administered by all of the subject officers were perfectly justified. They simply did as they had been trained to do in an active resistance non-compliant situation such as this. As to the evidence of P. C. Adams, I accept that in the heat of this struggle, it was his reasonable perception both subjectively and objectively that Mr. Nobody was about to bite him. As a result the 3 quick blows were administered to Mr. Nobody's head causing him to turn away. Perfectly justified in my view.
49. One must remember that the whole incident, this dynamic struggle, lasted all of 10 seconds. As to when Mr. Nobody suffered the broken nose and the fractured zygoma. I cannot say. What I do know is that he agreed that in his booking video his complaints were directed toward the plain clothes officers who in his evidence he said had "attacked him again" with one of the officers putting a boot on his face.
50. Indeed in paragraph 34 of his Statement of Claim, Mr. Nobody states that one of these officers kicked his feet out from underneath him causing him to fall face first on the

ground. In paragraph 35 he states that officers then repeatedly kicked him in the face while he was on the ground. This allegation was repeated in his interview with Globe & Mail writer, Joe Friesen. It is very clear to me from the videos and the evidence of the officers, that at no time during the initial incident involving the subject officers, was Mr. Nobody lying on the ground willingly spread-eagled or like a cross.

51. As I have concluded that Mr. Nobody was actively resistant and that the strikes made by the officers in question were justified, the charges against these officers are dismissed.

May 28, 2015.

A handwritten signature in black ink, consisting of a large, stylized loop at the top, followed by a horizontal line, and a smaller loop at the bottom.

The Honourable J. Douglas Cunningham, Q.C.