

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Sidhu v. Vancouver (City)*,
2024 BCSC 1735

Date: 20240919
Docket: S159356
Registry: Vancouver

Between:

Ayisha Sidhu

Plaintiff

And

City of Vancouver and John Doe

Defendants

Before: The Honourable Justice Elwood

Reasons for Judgment

Counsel for the Plaintiff:

C.A. Campbell

Counsel for the Defendant:

W.R. LeBlanc
R. McMullan

Place and Date of Trial:

Vancouver, B.C.
June 24-26, 28, 2024

Place and Date of Judgment:

Vancouver, B.C.
September 19, 2024

Table of Contents

I. INTRODUCTION 3

II. FACTS..... 3

 A. The Initial Melee 5

 B. Use of Force #1 5

 C. Use of Force #2..... 6

 D. Use of Force #3..... 8

 E. Use of Force #4..... 8

 F. Injuries and Damages 9

III. ANALYSIS 10

 A. The Issues..... 10

 B. Were Ms. Sidhu’s Injuries Caused by Use of Force #2? 12

 C. Was Use of Force #2 Reasonable and Justified? 16

 D. Did PC Skates Have Reasonable Grounds to Arrest Ms. Sidhu? 21

 E. Was the Use of Handcuffs in the Hospital Reasonable and Justified? 23

IV. CONCLUSION 24

I. INTRODUCTION

[1] Ayisha Sidhu was injured during a street fight outside a nightclub in the Granville Entertainment District. The fight was started by an unidentified woman. Ms. Sidhu became involved when she came to the defence of a friend. She alleges that she was injured by a police officer.

[2] Ms. Sidhu brings this action against the City of Vancouver in its capacity as a statutory defendant with joint and several liability for the tortious actions of the members of the Vancouver Police Department (“VPD”). She alleges battery against two VPD officers who responded to the fight and detained her.

[3] The fight and Ms. Sidhu’s detention were captured by closed-circuit security cameras (“CCTV”). The entire incident took place in less than a minute, more than nine years ago. The scene was very chaotic, with multiple altercations occurring simultaneously. The CCTV footage provides remarkable video evidence of what happened, except for brief, but factually significant, moments when the interactions between Ms. Sidhu and the police officers are partially blocked from view.

[4] The City acknowledges that the officers used unwanted force on Ms. Sidhu. However, it argues that Ms. Sidhu has not met her onus of proving on a balance of probabilities that the actions of either officer was the cause of her injuries. Further, the City argues that the force the officers used was lawful, reasonable and justified in accordance with s. 25(1) of the *Criminal Code of Canada* [Code].

[5] For the reasons that follow, I have concluded that, while Ms. Sidhu was regrettably injured by one of the officers, all of her claims, except for one minor allegation concerning the use of handcuffs in a hospital, must be dismissed because the use of force was justified and s. 25(1) of the *Code* provides a complete defence.

II. FACTS

[6] The fight and Ms. Sidhu’s detention occurred in the early morning hours of June 21, 2015, when Ms. Sidhu was on a night out with two friends.

[7] Ms. Sidhu and her friends, Nimi Birk and Aman Mattu, ate dinner at a restaurant in Coal Harbour. After dinner, they moved to the Aura Nightclub on Granville Street. While in the Aura, they were hassled by a male patron. Another male patron invited them to join his group in a booth. Once in the booth, a woman at the table began making gestures for them to leave. When they stayed, the woman began throwing ice at them. Ms. Birk and Ms. Mattu responded by throwing drinks at the woman.

[8] Ms. Sidhu and her friends left the Aura quickly. They crossed Granville Street and began walking north on the west sidewalk, heading toward the Cabana Lounge nightclub. The woman from the Aura – whom the parties refer to as Ms. X - followed them out of the Aura and across the street.

[9] Four members of the VPD, including Constable Matt Oliver and Constable, now Sergeant, Trevor Skates, were on duty in the Granville Entertainment District, wearing their patrol uniforms and high visibility vests.

[10] Two CCTV cameras were in operation outside the Cabana, one looking up the west sidewalk to the north, and the other looking down the sidewalk to the south.

[11] The CCTV footage only came to light after Ms. Sidhu commenced this action, gave evidence on her examination for discovery and examined PC Skates for discovery. With the benefit of the CCTV footage, Ms. Sidhu identified PC Oliver, who she says broke her nose.

[12] The following narrative is based largely on the CCTV footage, supplemented by the testimony of Ms. Sidhu, PC Oliver and PC Skates.

[13] With the benefit of the CCTV footage, the incident may be broken down into several distinct phases for analysis, bearing in mind that it was experienced by those involved in real time, without the benefit of freeze frame, instant replay or hindsight.

A. The Initial Melee

[14] Ms. Sidhu and her friends enter the frame of the CCTV cameras walking side-by-side down the middle of the sidewalk. Ms. Birk is in the middle; Ms. Sidhu is on her left. All three women are wearing high heels.

[15] The four police officers are standing in a group at the far edge of the sidewalk closest to the roadway, ahead of and slightly to the right of Ms. Sidhu and her friends, with their backs turned to the three women.

[16] Ms. X approaches Ms. Sidhu and her friends rapidly from behind and attacks Ms. Birk, grabbing a hold of her hair. Ms. Sidhu turns to Ms. X and grabs a hold of Ms. X, pulling her off of Ms. Birk.

[17] A melee rapidly develops. All four women and several other people lurch toward the wall on near side of the sidewalk. Ms. X. pulls Ms. Sidhu, head down, toward the wall.

[18] Three police officers move in quickly. PC Skates grabs Ms. Birk, and pulls her away from the melee toward the curb. PC Oliver grabs Ms. Mattu, and moves her away as well.

B. Use of Force #1

[19] Ms. X and Ms. Sidhu emerge from the melee, fighting. Ms. X is thrown to the ground, and ends up on her back. Ms. Sidhu ends up crouched over Ms. X, throwing punches at her. Some of the blows appear to strike Ms. X in the area of her head.

[20] PC Oliver lets go of Ms. Mattu and approaches Ms. Sidhu from behind with the intent of arresting her for breach of the peace. PC Oliver announces that he is VPD and tells Ms. Sidhu to stop fighting. She does not stop fighting. PC Oliver grabs her under both arms and pulls her up and away from Ms. X.

[21] Ms. Sidhu testified that she did not comply with the officer's command to stop fighting because she was defending herself against Ms. X.

[22] Ms. Sidhu and Ms. X still have a hold of one another as PC Oliver pulls Ms. Sidhu up and away. Ms. X continues to kick and punch at Ms. Sidhu. Ms. Sidhu continues to kick at Ms. X.

[23] Ms. Sidhu and Ms. X momentarily let go of one another. When the tension against which he was pulling is released, PC Oliver briefly loses his balance and rotates to his left. To avoid falling himself, he drops Ms. Sidhu to the ground. Ms. Sidhu lands face forward, with her body slightly twisted. She braces against the fall with both arms and ends up on her right elbow and left hand, with her head tilted down. The camera's view is partially obscured by Ms. Sidhu's hair, but it does not appear that her face hits the ground in this fall.

[24] Ms. X regains hold of Ms. Sidhu and the two women begin fighting again while they are both still on the ground. They rotate and end up facing one another in a seated position, kicking and pulling at each other's hair.

C. Use of Force #2

[25] PC Oliver ends up standing behind Ms. Sidhu while she is seated on the ground fighting with Ms. X. He takes hold of Ms. Sidhu's left wrist with his left hand and simultaneously pushes Ms. X away with his right hand.

[26] Meanwhile, Ms. Mattu approaches Ms. X from behind, grabs her hair, and pulls her away from Ms. Sidhu. Ms. X. regains her footing and begins fighting with Ms. Mattu. A man in a black shirt attempts to separate them. A second man in a white shirt intervenes and carries Ms. X away.

[27] PC Oliver and Ms. Sidhu are now on their own, but with pushing and shoving still going on all around them. PC Oliver is still holding Ms. Sidhu's left wrist with his left hand. Ms. Sidhu starts to get to her feet. PC Oliver takes a hold of the back of her neck with his right hand just as she moves from sitting to a squatting position.

[28] PC Oliver testified that he was concerned Ms. Sidhu was standing up to rejoin the fight with Ms. X. He did not have a specific recollection of issuing a command at

this moment, but testified that his practice in this situation would be to tell Ms. Sidhu to stay down. Ms. Sidhu testified that she does not remember hearing this command from PC Oliver and would have complied had she heard it.

[29] PC Oliver testified that he believed it was necessary to take Ms. Sidhu to the ground in order to gain control of her and complete the arrest. He testified that putting her on her knees with her head down would allow him an opportunity to survey his surroundings and decide whether to handcuff her in that position or move her to another location. He testified that he applied pressure to the back of her neck because he knew from his training that if he moved her head down, her body would follow.

[30] PC Oliver rotates Ms. Sidhu contraclockwise around his body, maintaining his hold on her left wrist and using his hand on the back of her neck to push her head down. Ms. Sidhu collapses to her knees and falls forward. She puts her right hand down to brace her fall, but her left hand is held aloft by PC Oliver. The camera's view of where she hits the ground is obscured by PC Oliver's legs and a person in the foreground, but it appears that she lands face down.

[31] Ms. Sidhu testified that her face hit the concrete sidewalk and she felt her nose break and blood begin to flow. PC Oliver testified that he does not know whether her face hit the ground, but he did not intend to push her face to the ground, only to hold her head down.

[32] Ms. Sidhu ends up on her knees with her right hand on the ground and her hair obscuring her face. PC Oliver pulls her up by her left arm and away from where she fell. Initially, Ms. Sidhu crawls and then stands and walks with him. He leads her to a lamp post four or five metres away from where the initial melee took place.

[33] Ms. Sidhu testified that she was yelling at PC Oliver as he led her away that he had broken her nose. PC Oliver testified that he does not remember her saying this to him.

D. Use of Force #3

[34] PC Oliver leaves Ms. Sidhu at the lamp post to attend to a situation developing in the roadway. He tells her to stay where she is.

[35] For several moments, Ms. Sidhu stays at the lamp post, hands on her hips looking back towards where PC Oliver had taken her to the ground. She puts her hand to her face and then draws it away and looks at it.

[36] Ms. Muttu approaches Ms. Sidhu at the lamp post and appears to say something to her. Ms. Sidhu's attention turns to the roadway. She leaves the lamp post and begins striding at a brisk pace towards where PC Skates is standing with Ms. X and the man in the white shirt.

[37] PC Skates testified that Ms. Sidhu was approaching aggressively and he was concerned she would attempt to go through him and begin fighting with Ms. X again. Ms. Sidhu testified that she was approaching PC Skates to demand medical attention for her broken nose.

[38] PC Skates takes Ms. Sidhu by the arm and leads her away from Ms. X and back across the sidewalk. Along the way, Ms. Sidhu pulls her arm free from his grasp several times. When they reach the wall, PC Skates places handcuffs on Ms. Sidhu without further incident.

[39] PC Skates testified that once she was in handcuffs, Ms. Sidhu began yelling and swearing at bystanders and that people in the crowd were yelling back at her. Concerned she could initiate a new disturbance, he put Ms. Sidhu in a police wagon which had been summoned.

E. Use of Force #4

[40] PC Skates testified that, once he had put Ms. Sidhu in the wagon, he observed a bump on her forehead, which she told him she received when a police officer threw her to the ground.

[41] Ms. Sidhu testified that she told PC Skates that a police officer had broken her nose. PC Skates disagreed that she said this to him.

[42] PC Skates called an ambulance for Ms. Sidhu. The emergency services dispatch relayed that there were no ambulances available. PC Skates obtained approval from his supervising officer to transport Ms. Sidhu to St. Paul's Hospital in the police wagon. In accordance with VPD protocol, Ms. Sidhu was handcuffed during transit.

[43] When the wagon arrived at St. Paul's Hospital, PC Oliver took Ms. Sidhu into his custody again and escorted her into the emergency room. PC Oliver testified that he kept her in handcuffs because he was concerned she might breach the peace again.

[44] Ms. Sidhu testified that she was handcuffed to a chair in the emergency room waiting area. PC Oliver denied this. He testified that she was handcuffed with her hands behind her back in accordance with his normal practice.

[45] Ms. Sidhu was seen by a triage nurse. PC Oliver learned that it would be several hours before she could be seen by a doctor. After consulting with his supervising officer, he determined that Ms. Sidhu was no longer a risk of breaching the peace, and released her.

[46] Ms. Sidhu left St. Paul's Hospital approximately 20 minutes after she arrived, without receiving medical care.

F. Injuries and Damages

[47] Later in the day on June 21, 2015, and on two subsequent days, Ms. Sidhu attended at Peace Arch Hospital and received medical care for her injuries.

[48] In October 2020, a surgeon performed a rhinoplasty procedure on her nose.

[49] The parties agree that Ms. Sidhu sustained a broken nose and blackened eyes during the events of June 21, 2015.

[50] The parties agree that, if Ms. Sidhu establishes the City is liable for these injuries, she is entitled to damages totalling \$62,743.91.

[51] There is no evidence that Ms. Sidhu suffered any additional physical injuries as a result of being arrested by PC Skates or being handcuffed by PC Oliver at the hospital.

III. ANALYSIS

A. The Issues

[52] Although she also alleged wrongful arrest and false imprisonment in the notice of civil claim, Ms. Sidhu narrowed her claim at the trial to the tort of battery.

[53] A battery occurs whenever unlawful force is intentionally inflicted on another person that is either physically harmful or offensive to their reasonable sense of dignity: *Norberg v. Wynrib*, [1992] 2 S.C.R. 226 at 246, 263.

[54] Justification is a defence to battery. Section 25 of the *Code* provides statutory justification for the use of force in certain circumstances. Justice Crossin set out the legal test in *Degen v. British Columbia (Minister of Public Safety)*, 2023 BCSC 508, at para. 444:

[444] The applicable legal test to establish justification for use of force under s. 25(1) of the *Code* is a three-part test. The onus of proving each element lies with the defendant and is based on a balance of probabilities. In the context of actions taken during the course of an arrest made by an officer, the three elements that must be proven are that:

- a) the officer's conduct was required or authorized by law in administering or enforcing the law;
- b) the officer was making the arrest based on reasonable grounds; and
- c) the officer did not use unnecessary force in effecting the arrest.

[55] In closing submissions at the trial, Ms. Sidhu focussed her claim primarily on Use of Force #2 by PC Oliver. In doing so, she acknowledged that:

- a) PC Oliver had reasonable grounds to arrest her for breach of the peace under s. 31(1) of the *Code* when he witnessed her fighting with Ms. X and punching Ms. X while she was in a vulnerable position on the ground;
- b) PC Oliver did not use unreasonable force in relation to Use of Force #1; that is, he acted reasonably and within the scope of s. 25(1) when he grabbed Ms. Sidhu under the arms and lifted her up and away from Ms. X, and then dropped her to the ground when he briefly lost his balance.

[56] The necessary implication is that Ms. Sidhu also acknowledges that the City is not liable for any injuries she may have sustained when PC Oliver dropped her to the ground during Use of Force #1.

[57] In her closing submissions, Ms. Sidhu focused on the moment in time during Use of Force #2, after she and Ms. X had been separated, when PC Oliver had a hold of her by her left wrist and the back of her neck. She argues that there was no need, from this point in time forward, for PC Oliver to apply further force and take her to the ground to complete the arrest.

[58] In addition, Ms. Sidhu argues that PC Skates did not have reasonable grounds to arrest her for breach of the peace when she approached him in the roadway, and that PC Oliver did not have reasonable grounds to restrain her in the hospital.

[59] The issues can therefore be stated as follows:

- a) Has Ms. Sidhu established on a balance of probabilities that her injuries were caused by PC Oliver during Use of Force #2?
- b) If so, has the City established on a balance of probabilities that Use of Force #2 was reasonable and justified under s. 25(1) of the *Code*?

- c) Did PC Skates have reasonable grounds to arrest Ms. Sidhu for breach of the peace?
- d) Was the use of handcuffs in the hospital reasonable and justified under s. 25(1) of the *Code*?

B. Were Ms. Sidhu's Injuries Caused by Use of Force #2?

[60] Ms. Sidhu bears the onus of proving causation, which means that she must establish on a balance of probabilities that PC Oliver's actions in Use of Force #2 were the cause-in-fact of her broken nose. To put it another way, she must satisfy the court that it is more probable than not that her nose was broken when PC Oliver took her to the ground during Use of Force #2. If the court is unable to find on a balance of probabilities when her nose was broken, then she will not have discharged the burden of proof: *Day v. Woodburn*, 2019 ABQB 356.

[61] In a civil case, the court need not be certain of what happened, but there must be at least a 51% probability that the plaintiff's injuries were caused by the defendant's actions: *Snell v. Farrell*, [1990] 2 S.C.R. 311.

[62] The City argues that there were four possible causes of Ms. Sidhu's injuries:

- a) the initial melee, during which her head may have hit the wall;
- b) the fight with Ms. X, during which she may have received blows to the face;
- c) Use of Force #1, during which PC Oliver dropped her to the ground; or
- d) Use of Force #2, during which PC Oliver pushed her to the ground.

[63] The CCTV footage is inconclusive. Ms. Sidhu's face is not visible to the camera during the initial melee or when she landed on the ground during Use of Force #1 or Use of Force #2. It is also difficult from the footage alone to determine whether Ms. Sidhu was punched or kicked in the face during the fight. However, as discussed above, the most likely cause of the injury based on what can be seen in

the CCTV footage is when Ms. Sidhu fell forward under rotational and downward force by PC Oliver during Use of Force #2.

[64] Ms. Sidhu testified in direct that she felt her nose break when PC Oliver pushed her face to the ground during Use of Force #2. She also testified in direct that she screamed at PC Oliver “you broke my fucking nose” as he dragged her to her feet and led her away immediately following Use of Force #2. Finally, she testified that she told PC Skates that a police officer broke her nose when he threw her to the ground.

[65] Under cross-examination, Ms. Sidhu denied that her face contacted the wall when Ms. X pulled her towards it by the hair during the initial melee. If anything, she said, she may have hit the top of her head, but not her face. She also denied that her face contacted the sidewalk during Use of Force #1. She testified that she braced herself with both hands when she fell on that occasion.

[66] The City argues that Ms. Sidhu’s evidence should be rejected.

[67] First, the City argues that Ms. Sidhu gave evidence on her examination for discovery that is inconsistent with the objective CCTV footage, such as how the fight started, her participation in the fight, her compliance with police directions and her actions preceding and during the arrest by PC Skates.

[68] I do not put negative weight on these inconsistencies. The City examined Ms. Sidhu for discovery in 2018, before the CCTV footage came to light. Ms. Sidhu attempted, in my view, to provide an accurate description of a violent and chaotic incident that occurred more than three years before she was examined. It is inevitable that she would get some details wrong. While she obviously refreshed her memory prior to the trial by viewing the CCTV footage, I do not agree that she deliberately modified her evidence to support her case.

[69] More specifically, the City argues that Ms. Sidhu testified on her examination for discovery that her nose was broken during Use of Force #1. It relies on the following answer she gave on discovery:

A. So then there was an officer, a male officer that then grabbed me from the back. So the officer is grabbing me from the back trying to pull me, trying to get me to stop the fight. And I remember as the officer is pulling me, again, my hair is what's being pulled more. I just remember fighting back and trying to have this girl let go of my hair.

And then immediately right after I remember the officer sort of grabbing me. So now we are not -- the Caucasian is -- no longer has my hair.

And I remember the officer sort of grabbing me and putting my arms back and throwing me down to the ground, which then resulted in my face and my nose having direct contact with the ground and my nose breaking. And I remember the officer then handcuffing me as I was on the ground.

And then I remember yelling at the officer. Pardon my language, but I remember exactly saying, "You fucking broke my nose. You fucking broke my nose.

[emphasis added]

[70] The City argues that Ms. Sidhu's description on discovery of when her nose broke is probably Use of Force #1 because she described how the officer grabbed her and put her "arms" behind her back, which was part of Use of Force #1, but not Use of Force #2, and she described the officer "throwing" her to the ground, which is more consistent with his actions in Use of Force #1 than Use of Force #2.

[71] I do not accept these submissions. First, Ms. Sidhu did not adopt the above-quoted answer from her examination for discovery as her evidence at the trial. Second, the answer from the discovery merges, in my view, the two uses of force by PC Oliver into one. Without the benefit of the CCTV footage, neither Ms. Sidhu, nor the lawyer asking her questions, broke the as-of-then unnamed officer's actions into separate falls. Her evidence on discovery described the actions of the officer who broke her nose as a single interaction that ended up with her in handcuffs with a broken nose. Moreover, her recollection on discovery that she was thrown to the ground is more consistent in my view with the rotational force applied by PC Oliver in Use of Force #2, than it is with Use of Force #1, when he dropped her.

[72] For these reasons, I do not agree with the City that Ms. Sidhu admitted on discovery that her nose was broken during Use of Force #1; nor would I prefer her evidence on discovery over her evidence at the trial.

[73] The City further argues that the evidence of PC Oliver and PC Skates should be preferred over Ms. Sidhu's evidence at trial where it conflicts.

[74] I do not attach any weight to the fact that PC Oliver's evidence of the events appears to be more consistent with his examination for discovery than Ms. Sidhu's testimony. PC Oliver was examined for discovery in 2020, after he had an opportunity to review the CCTV footage, so the comparison is unfair.

[75] Moreover, PC Oliver's evidence does not contradict Ms. Sidhu's evidence of when her nose was broken. He did not testify that her face hit the ground when he dropped her during Use of Force #1. Nor did he testify that her face did *not* hit the ground during Use of Force #2. PC Oliver was careful to say he did not know whether her face hit the ground, only that he did not intend to push her face into the ground. PC Oliver remembered Ms. Sidhu screaming as he led her away, but did not remember what she was screaming.

[76] PC Skates did not give evidence of when Ms. Sidhu was injured. He did not witness Use of Force #1 or Use of Force #2. He testified that Ms. Sidhu was screaming as she approached him in the roadway, but did not remember what she was screaming.

[77] PC Skates gave evidence that he recorded in his contemporaneous report of the incident that Ms. Sidhu reported a bump on her head as a result of being thrown by an officer. On cross-examination, he said he would have recorded observing an injury to Ms. Sidhu's nose if it was broken. He also said he would have recorded if Ms. Sidhu had reported to him that an officer had broken her nose.

[78] The City submits that it is unlikely PC Skates would have omitted a claim that a police officer broke Ms. Sidhu's nose while he was recording her report that the

officer caused a bump on her head. Accordingly, the City argues that Ms. Sidhu's evidence that she told PC Skates that a police officer broke her nose is not credible.

[79] I do not accept this submission. It is indisputable that Ms. Sidhu had a broken nose when PC Skates briefly examined her in the police wagon. PC Skates either overlooked or forgot this significant injury when he wrote his report. Therefore, I cannot prefer his note of the conversation over Ms. Sidhu's evidence.

[80] I found Ms. Sidhu to be a credible and generally reliable witness who endeavoured to tell the truth and accurately describe what she considers to be a traumatising incident. Although her memory was less than perfect, she was clear and compelling in her evidence that PC Oliver broke her nose during Use of Force #2. I have considered the asserted frailties in her evidence raised by the City, but find that they do not undermine her evidence of how she was injured.

[81] It is possible that Ms. Sidhu could have been injured by some other cause, including Use of Force #1. However, this is a civil law claim, and Ms. Sidhu is not required to prove causation beyond a reasonable doubt.

[82] I find on a balance of probabilities that PC Oliver's actions in Use of Force #2 caused Ms. Sidhu's broken nose and blackened eyes.

C. Was Use of Force #2 Reasonable and Justified?

[83] The parties agree on the three requirements of s. 25 set out in *Bencsetler v. Vancouver (City)*, 2015 BCSC 1422, at para. 147:

- a) The officer was required or authorized by law to do something in the administration or enforcement of the law;
- b) The officer acted on reasonable grounds in doing that which he or she was required or authorized to do; and
- c) In doing that which he or she was required or authorized to do, he or she used only as much force as was necessary for that purpose.

[84] The third branch of the test, which is the most relevant here, was explained by the Court in *R. v. Gamache*, 2015 QCCS 5175:

[24] The third branch of the test focuses on the level of force used. The allowable level of force is constrained by the principles of necessity, proportionality and reasonableness.

[25] The perception of the events by the police officers, subjectively, must be considered in determining whether the level of force was reasonable. That perception must also be objectively reasonable.

[26] On the objective analysis, the court should place itself “in the shoes of the officer” at the moment of the impugned action, not in retrospect.

[27] In this context, police officers are not expected to carefully measure the exact amount of force required in a given set of circumstances. They are not to be judged against a standard of perfection. It is in fact unrealistic and unreasonable to expect that, in the heat of the moment, they will use the least amount of force necessary to achieve a valid law enforcement objective.

[28] In essence, police officers are entitled to be wrong, providing however that they acted reasonably.

[footnotes omitted]

[85] The Court in *Gamache* further instructed:

[61] Trial judges should be mindful that, in assessing the reasonableness of police conduct, they have the benefit of hindsight. Quick decisions have to be made by police officers in the course of law enforcement activities.

[62] Trial judges have the advantage of time to “minutely dissect the significance of the events” or reflect from the comfort of their offices on the propriety of decisions made by law enforcement in the exigencies of the moment.

[63] The conduct of law enforcement officials should therefore be assessed at the time and in circumstances of the events in question, and it will generally be unfair to judge on the basis of hindsight.

[footnotes omitted]

[86] As stated, Ms. Sidhu focuses on PC Oliver’s actions after he had a hold of her by her left wrist and the back of her neck. She acknowledges that he had reasonable grounds to arrest her for breach of the peace, but argues that there was no need once he had a hold of her in this manner for him to apply further force and take her to the ground in order to complete the arrest.

[87] In my view, PC Oliver's actions should not be parsed and considered at an instant in time in isolation from the interaction as a whole. PC Oliver was reacting to a rapidly unfolding situation in real time. It is therefore necessary to back up in time and consider his impugned actions in full context.

[88] PC Oliver received training on the use of force at the police academy at the Justice Institute of British Columbia ("JIBC") and over the course of his career with the VPD. In his testimony, he explained with reference to the National Use of Force Model that he was taught to escalate from officer presence, to communication with the subject, to physical control, to intermediate weapons and, as a last resort, to lethal force, based on the behaviour of the subject, the risk to others and tactical considerations. He also explained that physical control, which is what he applied here, ranges from soft to hard with gradients within each category.

[89] On the night that Ms. Sidhu was injured, June 21, 2015, PC Oliver was on what he called a LIMA shift – a weekend specific liquor enforcement shift in the Granville Entertainment District.

[90] As of June 21, 2015, PC Oliver had worked approximately 35 to 40 LIMA shifts, and dealt with, on average, six-to-seven fights per shift. Those fights ranged in severity from verbal arguments to brawls of upwards of 20 people. He testified that the challenges he faced while working the LIMA shift included aggression towards police officers, being quickly outnumbered in large fights, and the prevalence of splinter fights that break away into other areas.

[91] On the night in question, PC Oliver did not see the start of the fight involving Ms. Sidhu. He did not see Ms. X attack Ms. Sidhu and her friends. When PC Oliver intervened, Ms. X was on the ground in a vulnerable position, and Ms. Sidhu was over top of her in a dominant position. Ms. Sidhu did not respond to his presence or his verbal commands to stop fighting. He determined that it was necessary to arrest Ms. Sidhu in order to prevent harm coming to Ms. X. He was concerned that if he did not intervene, the fight would continue to the point of injury.

[92] PC Oliver testified that his objective in taking hold of Ms. Sidhu in Use of Force #1 was to control Ms. Sidhu physically with soft force and prevent her from continuing to strike Ms. X.

[93] PC Oliver was initially successful in controlling Ms. Sidhu's arms; however, the fight continued and PC Oliver struggled to control Ms. Sidhu. He testified that she was flailing around and kicking and pulling Ms. X's hair. He testified that he lost his balance and he was forced to drop her. This is when she fell to the ground the first time.

[94] At the beginning of Use of Force #2, Ms. Sidhu was seated at PC Oliver's feet on the sidewalk, still fighting with Ms. X. PC Oliver was standing behind her, holding onto her left wrist and the back of her neck. Someone pulled Ms. X away and the two women stopped fighting. This is when Ms. Sidhu argues PC Oliver ought not to have applied further force; put differently, she argues that further force cannot be justified.

[95] PC Oliver testified that he believed it was necessary to prevent Ms. Sidhu from getting to her feet. According to PC Oliver, he believed Ms. Sidhu would try to re-engage in the fight with Ms. X. PC Oliver testified that he based this belief on the fact that Ms. Sidhu had continued to fight with Ms. X notwithstanding his verbal command to stop fighting and his unsuccessful attempt to separate her from Ms. X.

[96] PC Oliver further explained that putting Ms. Sidhu on her knees and holding her head down would afford him an opportunity to bring her under sufficient control to survey the area for safety and then complete the arrest.

[97] PC Oliver emphasised the chaos of the situation and his concern that someone, including Ms. X, might try to interfere with the arrest. For that reason, he testified, it was important for him to be able to assess what was going on in his surroundings before he applied handcuffs on Ms. Sidhu.

[98] PC Oliver explained that his hold on the back of Ms. Sidhu's neck was a soft technique that he learned in his training. Holding the back of the neck facilitates

directing a person's entire body because, he said, "where the head goes, the body follows". Putting Ms. Sidhu into a kneeling position with her head down was also a soft technique that he learned in his training. Putting a person's head down, PC Oliver explained, creates leverage that can be used to prevent them from getting up.

[99] PC Oliver testified that he did not intend to cause Ms. Sidhu's face to contact the pavement. He testified that he used only enough force to make sure her head was down and she could not regain enough leverage to stand up.

[100] Ms. Sidhu argues that there was no need whatsoever for PC Oliver to escalate his physical control to the point where there was substantial risk of serious injury. She argues that he had sufficient physical control over her without taking her down to the ground. He was a strong, fit and experienced police officer, with a hold of her firmly by one wrist and the back of her neck. She was a 5'2", 110-pound woman, crouching off-balance in stiletto high heels.

[101] I appreciate the logic of Ms. Sidhu's submissions; however, the question under s. 25 of the *Code* is not whether the Court, after careful study of the CCTV footage, thinks PC Oliver could have used a different technique to arrest Ms. Sidhu. The question is whether PC Oliver had a subjective belief it was necessary to take Ms. Sidhu down to her knees with her head down, and whether that belief was objectively reasonable: *Gamache*, at para. 64.

[102] I accept PC Oliver's evidence that he subjectively believed the following: he did not yet have Ms. Sidhu under sufficient control to complete the arrest; he needed to survey the scene to decide how and where to complete the arrest; his best strategic option was to put Ms. Sidhu on her knees with her head down.

[103] I find that PC Oliver's subjective belief was objectively reasonable in consideration of all of the circumstances discussed above, in particular the chaotic and violent nature of the scene, and Ms. Sidhu's apparent lack of response to police presence and commands.

[104] I accept Ms. Sidhu’s evidence that she kept fighting with Ms. X because she was defending herself. I also accept her evidence that she would not have reengaged with Ms. X if PC Oliver had allowed her to stand up. In addition, I have found that she was injured when PC Oliver took her to the ground. However, as Justice Southin cautioned in *Berntt v. Vancouver (City)*, 1999 BCCA 345:

[25] 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.

[105] I conclude that PC Oliver’s use of force against Ms. Sidhu was applied on reasonable grounds, and that the force used was reasonable and proportional to the circumstances. Accordingly, s. 25 of the *Code* provides PC Oliver with a complete defence to the tort of battery in relation to Use of Force #2.

D. Did PC Skates Have Reasonable Grounds to Arrest Ms. Sidhu?

[106] Ms. Sidhu argues that PC Skates did not have reasonable grounds to arrest her for breach of the peace.

[107] PC Skates testified that Ms. Sidhu approached his location aggressively as he was dealing with Ms. X in the roadway. He testified that he recognized Ms. Sidhu as being a participant in the earlier fight with Ms. X. He described her demeanour as she approached him as confrontational. He testified that he believed it was necessary to stop Ms. Sidhu and remove her from the roadway so as to prevent her from reaching Ms. X and starting another fight.

[108] Ms. Sidhu acknowledged that she approached PC Skates “briskly”, but maintains that she was seeking medical attention for her broken nose. She argues that PC Skates’ belief she could start another fight with Ms. X is objectively unreasonable, because to get to Ms. X, she would first need to go through PC Skates, which she says is implausible, given that he was a large police officer in full uniform, while she was a petite woman who had just been seriously injured.

[109] PC Skates applied very limited force to Ms. Sidhu. He took her by the arm, led her back to the far side of the sidewalk and then placed handcuffs on her.

[110] As I understand her submissions, Ms. Sidhu does not take issue with the officer's use of soft force to lead her away from Ms. X, but objects to his use of handcuffs to restrain her.

[111] PC Skates testified that the handcuffing was routine and completed without the need for further use of force. PC Skates testified that he told Ms. Sidhu that if she calmed down, he would remove the handcuffs, but she remained confrontational and continued to yell and swear at the crowd that had gathered around her.

[112] PC Skates testified that he believed it was necessary to handcuff Ms. Sidhu because her breach of peace was in its third phase: she fought with Ms. X; she approached Ms. X aggressively in the roadway; and then she repeatedly pulled her arm away as he tried to remove her from the scene.

[113] I accept PC Skates' evidence. While Ms. Sidhu may have been seeking medical attention from him, his concern that she wanted to fight with Ms. X was reasonable in the circumstances. The two women had been fighting on and off despite the presence of police officers and their attempts to separate them. The scene remained chaotic and potentially violent. Both officers testified to their experience that people who have been drinking often do not make good decisions. While Ms. Sidhu may have been sober, PC Skates would not have known this. His subjective belief that she would try to go through him to get at Ms. X was in my view objectively reasonable.

[114] Ms. Sidhu argues that her anger and her resistance to being led away by PC Skates were "unsurprising [...] given what she had just suffered at the hands of PC Oliver". In my view, however, PC Skates had reasonable grounds to interpret her actions as resisting arrest and a risk that she could initiate further violence with members of the crowd that were gathering around her.

[115] From this perspective, PC Skates' decision to handcuff Ms. Sidhu and put her in the police wagon was both supported by his subjective belief and objectively reasonable.

[116] As with PC Oliver, PC Skates' actions must not be judged with hindsight based on what Ms. Sidhu was actually intending to do: *Berntt*, para. 25.

[117] I conclude that PC Skates' use of force was minimal, reasonable, and proportional to the circumstances. Accordingly, s. 25 of the *Code* provides him with a complete defence to the tort of battery.

E. Was the Use of Handcuffs in the Hospital Reasonable and Justified?

[118] Ms. Sidhu testified that she was handcuffed to a chair while in the hospital emergency waiting room. However, I think it is more likely that she was sitting on a chair with her hands handcuffed behind her back.

[119] PC Oliver testified that he kept Ms. Sidhu in handcuffs in the hospital because he was still assessing whether she was a risk to breach the peace. He testified that his standard practice is to consult with the NCO to decide if and when to release a subject under detention. In this case, he decided in consultation with the NCO to release Ms. Sidhu after he spoke with the attending nurse and learned that it would be hours before a doctor could see her.

[120] In my view, there is no evidence to justify the use of restraint on Ms. Sidhu in the hospital. She was completely removed from Ms. X and the scene outside the nightclub. There is no evidence that she acted aggressively in the police wagon or in the hospital. There is no evidence she was a danger to PC Oliver or any of the hospital staff or patients. The handcuffs were, in my view, completely unnecessary.

[121] Ms. Sidhu was in handcuffs in the hospital for about 10 to 20 minutes. She does not allege any physical injury from the handcuffs. However, being handcuffed unnecessarily while awaiting treatment for her injuries was, in my view, an affront to Ms. Sidhu's dignity, albeit a minor one.

[122] Having dismissed all of the other allegations of battery in this case, I would award nominal damages to Ms. Sidhu for the use of handcuffs in the hospital.

IV. CONCLUSION

[123] The action is dismissed except for the use of handcuffs in the hospital, for which I award Ms. Sidhu nominal damages.

[124] If the parties wish to address the quantum of nominal damages or costs, they may do so in writing. Their submissions should not exceed five pages in length and should be exchanged according to a schedule to be agreed between counsel, with the first submission to be filed with the registry within 28 days of the release of these reasons.

“Elwood J.”