

This decision involves allegations of unlawful or unnecessary exercise of authority and discreditable conduct. This decision has been redacted in relation to information pertaining to the complainant while he was a youth.

**IN THE MATTER OF
ONTARIO REGULATION 123/89
MADE UNDER THE POLICE SERVICES ACT R.S.O. 1990, C.P.15
AND AMENDMENTS THERETO:
AND IN THE MATTER OF
POLICE CONSTABLE ANDREW CHALLANS #134
AND
AMHERSTBURG POLICE SERVICE**

J U D G M E N T

APPEARANCES:

Mr. David Cowling	For the Amherstburg Police Service
Mr. Andrew Braidie	For Constable Andrew Challans

BEFORE:

**Deputy Chief Terence Kelly
York Regional Police (Retired)
Hearing Officer**

May 12, 2014

J U D G M E N T

POLICE CONSTABLE ANDREW CHALLANS

BADGE NUMBER 134

AMHERSTBURG POLICE SERVICE

MAY 12, 2014

DEPUTY CHIEF TERENCE KELLY (RETIRED):

Before dealing with Judgment in this matter, I wish to thank Mr. Andrew Braidie, Defence counsel, and Mr. David Cowling, the Service prosecutor, for their able arguments and exhibits tendered, all of which have assisted me in reaching my decision.

Police Constable Andrew Challans, Badge Number 134, has pleaded not guilty to two counts of Unlawful or Unnecessary Exercise of Authority and two counts of Discreditable Conduct, laid under the *Police Services Act*. These charges have been adequately detailed in the Notice of Hearing **(Exhibit Number 1)**.

In general, the rules of evidence will be followed. If there is an easing of the

rules it is essentially in an attempt to arrive at the truth, while balancing the need for fairness towards the officer and also ensuring there is no denial of natural justice.

CHARGE NUMBER 1 – UNLAWFUL OR UNNECESSARY EXERCISE OF AUTHORITY alleges that on or about December 21, 2010, Constable Andrew Challans, without good and sufficient cause, made an unlawful or unnecessary arrest of Justin Brodie Timms-Fryer.

CHARGE NUMBER 2 – UNLAWFUL OR UNNECESSARY EXERCISE OF AUTHORITY alleges that on or about December 21, 2010, Constable Andrew Challans, without good and sufficient cause, used unnecessary force against Justin Brodie Timms-Fryer.

CHARGE NUMBER 3 – DISCREDITABLE CONDUCT alleges that on or about December 21, 2010, Constable Andrew Challans acted in a disorderly manner or in a manner prejudicial to discipline, or likely to bring discredit upon the reputation of the Police Service.

CHARGE NUMBER 4 – DISCREDITABLE CONDUCT alleges that on or about December 21, 2010, Constable Andrew Challans did commit the offence of discreditable conduct in that he used profane, abusive or insulting language, or was otherwise uncivil to a member of the public.

The first witness for the prosecution, Mr. Justin Brodie Timms-Fryer, testified he is currently a student at Michigan State University in his third year of biochemistry and biotechnology. The Service prosecutor asked the witness to focus on the events surrounding the evening of December 20 and the morning of December 21 of 2010.

The witness stated he went to Shooters in Amherstburg with a bunch of his friends as it was the end of the semester at University. At Shooters they had some wings and two or three pitchers of beer. When questioned about his sobriety at the end of the evening, the witness stated he was fine, but not in any condition to drive a motor vehicle and, further, that the alcohol consumption had no effect on his recollections of the evening. At the conclusion of the evening the witness stated he hopped in a car being driven by Jaclyn McCarthy along with Mitch Dender and Nic Corrado and Megan Carlone and that he intended to be dropped off at a friend's house, Brian Mailloux, to spend the night.

At the intersection of Sandwich and Richmond they turned onto Sandwich Street when the driver informed them that a police vehicle was present; telling the occupants to put on their seatbelts. After driving approximately one block on Sandwich Street he noticed the flashing lights of the police vehicle. They pulled over to the right side of the road. At this time he directed his observations to the driver side of the vehicle when the passenger door suddenly opened and at this time he observed Officer Challans who told

him to “get the fuck out of the vehicle” and began grabbing at him.

The witness stated that he was fumbling, trying to get his seatbelt off, and asking the officer if he could just let him get his I.D. which he believed was in his breast pocket, but was unable to locate it as he felt panicked. At this time the officer was physically trying to remove him from the vehicle. He managed to undo his seatbelt and at this time he was forcibly removed and stated he was more or less compliant. Outside the vehicle he kept asking the officer to allow him to get his identification. The officer didn't respond to him other than telling him to get his hands out of his pockets. The witness stated he continued to put his hands in his pockets, that he was reaching inside and the officer was attempting to restrain him by grabbing at his hands in an attempt to get them out of his pockets, while he contorted himself trying to find his identification.

Officer Challans then removed Mr. Justin Brodie Timms-Fryer to the rear of the vehicle. He stated at the rear of the vehicle he was shoved up against the back of the car and then grounded face first into the asphalt. He believes there were two officers at this location when he was grounded. When asked by the Service prosecutor if he recalled the officer saying anything to him at this time, he responded “no” he was just asking the officer to allow him to get his identification.

When asked what happened next, the witness stated he can't recall what

happened next; he came to in the back of the cruiser where he noticed that his hands were handcuffed behind his back and he has no recollection of being removed from the ground, handcuffed and placed in the rear of the police vehicle.

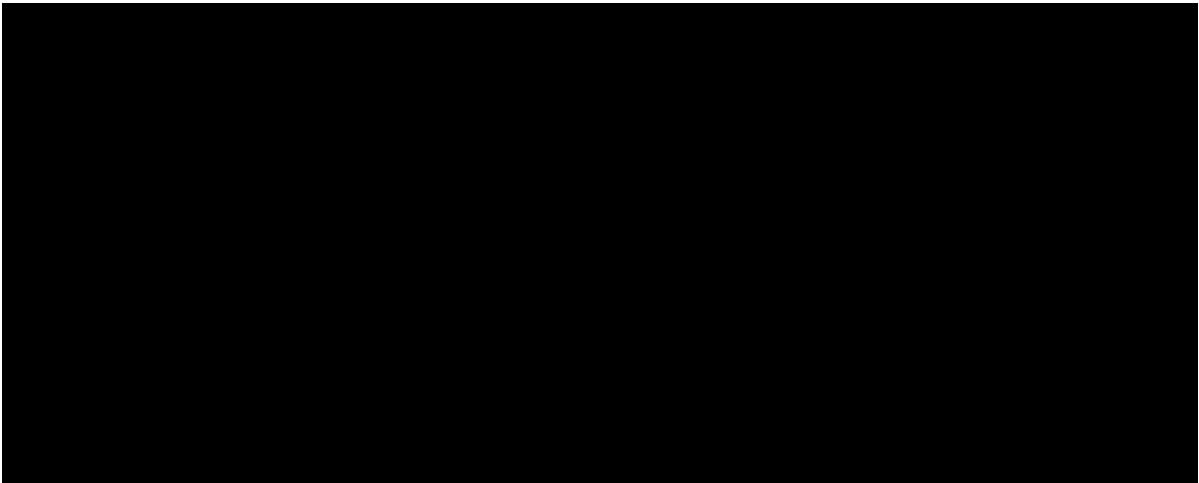
He stated he stayed in the back of the cruiser for a while, approximately half-an-hour and, during this time, he had no conversation with the officer. He was subsequently taken back to the Amherstburg police station.

When asked by the Service prosecutor if he recalled being told why he was under arrest, cautioned with respect to his rights to counsel or anything like that, the witness stated "no" however he recalls speaking to a lawyer. He further stated that the first time he was advised he was under arrest was when he was signing his release forms early in the morning.

When asked if any family members appeared at the station, the witness advised that his Aunt came to the station and, later, his Grandfather and Uncle. Mr. Justin Brodie Timms-Fryer stated he was lodged in the cells and at this time he was upset and angry. Some time later he was removed from his cell and taken to a kitchenette where he sat with his grandfather and Officer Challans. He stated his grandfather tried to calm him down; he was telling him if he said he was going to drop the charges and not charge the police he could walk free. At this time Constable Challans was urging him to listen to his grandfather but he stated he was adamant that this was not going

to happen. At this time his grandfather asked Officer Challans to leave the room so he could further discuss the incident with him. He told his grandfather that he would not change his mind about it. He was then removed from this area and returned to the cells. When asked if he spoke to anyone else that morning, he stated he spoke with his uncle and was subsequently released to his custody.

At this time a series of twelve (12) pictures taken at the scene of the incident by his uncle later that day were entered as **Exhibit Number 4**.



In January of 2011, a month or so after the incident with Constable Challans, he was back in the care of Dr. Burke for several months. He then changed to another doctor and is now being treated by Doctor Cassidy up to this date. Dr. Cassidy also continued to prescribe Celexa 40 milligrams to assist him with his psychiatric problems.

When questioned by Defence counsel if he was aware of any issue pertaining to the consumption of alcohol while on this medication, the witness stated he didn't think it's been studied, the effects of any interaction with alcohol. He agreed with Defence counsel that sometimes he consumed alcohol while on the medication. When asked if he still consumes alcohol while taking the medication, the witness responded that he does not currently consume alcohol and has not since October 7, 2012.

Defence counsel then questioned the witness with regard to an incident on October 7th of 2012 where he was subsequently arrested for public intoxication when he was observed staggering down Sandwich Street.

Mr. Timms-Fryer responded that in this incident he doesn't recall staggering in traffic, there were no cars in the street and he wasn't sure if he was staggering, however he agreed he was intoxicated that particular evening.

When questioned if he is now trying to stay sober since the October 7, 2012, incident, he responded that he is sober, that it has never been a problem for him to stop drinking.

Defence counsel questioned Mr. Timms-Fryer if he, on occasion, finds himself in some difficulties when he has been drinking. Mr. Timms-Fryer stated, "In a general sense, no."

Defence counsel then questioned the witness about an incident in Windsor in August of 2010 where he was arrested for breach of the peace and was subsequently lodged in the Windsor Police Service cells. The witness agreed it happened as the result of his intoxication that evening. He agreed that, after being removed from a drinking establishment, he shot the finger at a Windsor police officer, as he was not getting any assistance from him. When asked if he pushed several pedestrians after being removed from the bar in an attempt to start a fight, the witness said he doesn't recall trying to start a fight, but he is not denying it didn't happen. He agreed the consumption of alcohol would have some impact on his conduct.

The witness was further questioned about another incident in March of 2010 which took place in downtown Windsor where once again he had been drinking, however he denied that he was confrontational towards police officers attending the scene. He did, however, agree with defence counsel that on both occasions, August 27th, 2009 and March 7th, 2010, he dropped the name of his aunt, a police officer with the Windsor Police.

When questioned if he was cautioned by the police officer to keep his hands out of his pockets because of officer safety issues, Mr. Timms-Fryer said he placed his hands into his pocket to retrieve his wallet and that did not happen.

With regard to the incident with Officer Challans, the witness agreed with counsel that the only thing he said to the officer that evening was to allow

him to get his identification, although he could not recall how many times he said it as he was frantic, stating that Constable Challans at this time had never asked him for his identification.

When questioned as to why he was so anxious to show his identification to the officer, Mr. Timms-Fryer stated he had no idea what was happening to him; he thought they may have the wrong guy and that his last name of Fryer would have helped him as his family is involved with police officers. He agreed with counsel that he had dropped the family name twice to the Windsor Police and was hoping it would assist him at this time as he wanted to get out of there.

Under questioning about his relationship with his grandfather when he came to pick him up at the police station on the night of October 7th of 2012, he stated he was angry with everything and his grandfather. He acknowledged that at times he becomes uncontrollably angry and on this particular evening he was uncontrollable.

He admitted on December 21, 2010, he told his grandfather that he hated him because, as far as he was concerned, his grandfather was on the cops side and he was trying to get him out of the station with no charges and to agree he would not charge Officer Challans, so in that moment he was angry, upset and he hated him as he was not listening. He also admitted that he had a big confrontation with his Aunt Tammy Fryer on December 21, 2010, which

resulted in him causing an injury to her although he doesn't recall striking her.

When asked again about the night of December 21, 2010, the witness agreed that his friends were trying to talk to him, trying to get him to calm down. Mr. Timms-Fryer agreed with counsel that he was drunk, drunk and very angry when he was placed in the police car.

Defence counsel questioned the witness as to his knowledge of Constable Challans. He stated he recognized Constable Challans from the gym he attended, however he had no previous contact with him.

The witness was then asked about his relationship with Nic Corrado. He stated that Nic Corrado was, and still is, a good friend of his and agreed with counsel that Mr. Corrado would have no animosity towards him.

When questioned about the audio interview he gave to members of the O.I.P.R.D. on June 20, 2011, he agreed with counsel that the incident in December of 2010 was a conspiracy by the police, that officers Challans and Chambers, who were out to set someone up, premeditated the incident.

When asked why he thought the car he was in was pulled over, he replied he was told that it was stopped because of him shooting the finger at the officer. He agreed with counsel he had never had problems with officers Challans

and Chambers prior to this.

Mr. Timms-Fryer agreed with counsel that two officers from E.M.S. (Emergency Medical Services) attended at the station approximately 20 minutes after he was lodged in the cells, and treated his injuries. Mr. Timms-Fryer stated he was agitated with the officers and felt they were not taking his injuries seriously. When asked if he was using profanities towards them, he responded that he couldn't be certain, but wouldn't be surprised.

Mr. Timms-Fryer agreed he was released at approximately 8:00 a.m. that morning to his Uncle Chris Dougan, the husband of Tammy Fryer-Dougan. At this location the incident was discussed with his Aunt Tammy Fryer-Dougan and arrangements were made to speak to the other occupants of the vehicle to conduct interviews and get them to provide statements.

Defence counsel questioned Mr. Timms-Fryer where he kept his wallet the night of the incident. He replied he believed it was in the breast pocket of his Pea Jacket, however he didn't know where it was for certain. When the passenger door of the car was opened he reached into his breast pocket for his wallet. He recalls the officer telling him to keep his hand out of his pocket and saying he didn't want to do that. He cannot recall the number of times he was advised to keep his hands out of his pockets, that Constable Challans grabbed him as he was trying to get his identification and kept telling him to get his hand out of his pocket. Challans kept telling him to get

his hand out of his pocket, however he disobeyed that command. Once outside the vehicle Constable Challans was grabbing at his hand trying to get his hands out of his pockets. He stated he didn't recognize Constable Challans as a police officer at this time, he assumed he was a cop.

Asked by Defence counsel why he was so fixated on getting his identification out when he didn't know he was being spoken to by a police officer, he responded that he was anticipating a police officer,

Mr. Timms-Fryer further testified that once outside the vehicle, Constable Challans removed his hand from inside his jacket after he refused to move it. Constable Challans then pushed him face first into the rear passenger-side window where Nic Corrado was seated. He again attempted to put his left hand back into his inside pocket and was going to do this regardless of what Constable Challans said.

When questioned about the second officer on the scene, Mr. Timms-Fryer stated he did not recall seeing Officer Chambers that night. When asked if he could recall an officer yelling, "he's grabbing for something" Mr. Timms-Fryer stated he didn't hear that and does not think it happened, however he agreed with counsel he was grabbing for something. When asked if, in fact, it was said it would be accurate, he agreed it would be.

The witness stated that once outside the vehicle he recognized Constable

Challans as a police officer, a police officer who was asking him to take his hands out of his pockets, but he refused. Defence counsel asked him if he is familiar with officer safety. The witness stated he was and agreed the officer had the right to tell him to remove his hands.

The next witness for the prosecution, Jaclyn Elizabeth McCarthy, testified that on December 20, 2010, she went to Shooters with a friend around 9:00 p.m. She sat with friends eating, but did not consume any alcohol. At approximately 1:00 a.m. she left the establishment with four people; Brodie Timms-Fryer, who was seated in the front passenger seat of her vehicle; Mitchell Dender, seated in the rear directly behind her; Megan Carlone, seated in the rear centre; and Nic Corrado who was seated directly behind Timms-Fryer.

After leaving Shooters she turned left onto the main street toward downtown Amherstburg. Approaching a set of traffic lights she stopped and when the light changed she got an advance green and proceeded to make a left turn. On the opposite side of the light she observed a police vehicle, stating she could tell it was a police vehicle as she could see a light on top of the car. As a result of this observation she reminded the occupants of the car to make sure they had their seatbelts on.

When asked if the other occupants of the car had their seatbelts on, she

replied, "I don't believe they did." After making the turn she observed the police vehicle also turning in her direction and, shortly after turning, this vehicle activated its roof lights. Ms. McCarthy advised her passengers that they were getting pulled over and at this time she pulled her car to the curb and put her vehicle in park. She stated that at this time the passenger door was forcefully opened and someone grabbed Brodie and told him to get out. Ms. McCarthy said Brodie then tried to reach to his seatbelt trying to unbuckle it as he had just gotten it on. The officer grabbed him by his coat lapels and pulled him out of the car.

When asked who opened the passenger door she stated it was a police officer although she is not sure which one. She did not hear any other comment from the officer other than to tell Brodie to get out of the vehicle. When asked whether the officer said anything else to Brodie, she recalled the officer telling him to stop reaching. Brodie was then removed from the vehicle. She recalls Brodie being shoved forcefully against the side of her vehicle then being removed to the back of the vehicle by the officer. When asked if she recalled any conversation going on at this time between Brodie and the officer, she stated she heard the officers telling him to stop reaching and Brodie telling them he was trying to get his identification.

The next thing the witness recalled was an officer approaching her side of the vehicle and asking her if she knew why she had been pulled over. The officer told her they believed that Brodie had shot the finger, however, she

cannot recall which officer made this comment. The witness stated she had not observed this and was given no other explanation for being pulled over. She recalls at one point giving her driving licence to the officer.

The witness further testified that at one point she asked the officer if someone could speak to Brodie. Initially her request was refused and then later they allowed Mitch Dender to go back and speak to him.

When asked by the Service prosecutor if she overheard any other conversations amongst the officers and Brodie, she stated she didn't, but she did hear one officer say to Brodie he was lucky they didn't shoot him. When asked where Brodie was when this comment was made, the witness stated he would have been back towards the police cruiser, however she was unsure if he was standing outside, or was inside, the cruiser.

She stated she never heard any officer explain to Brodie why he was removed from her vehicle, nor did she hear any officer giving Brodie his rights. She was then asked by the prosecutor to describe Brodie's level of intoxication and she stated she was getting ready to take him home as he was having a nap on the table and it was not too much of a struggle to get him into her vehicle.

Under cross-examination by Defence counsel, Ms. McCarthy agreed with

counsel that initially two officers approached the passenger door and when the door was opened one of the officers grabbed Brodie and the other was standing behind him. When questioned if she was confident in her memory as to other incidents she stated she was, however, she cannot distinguish which officer did what.

She recalls one of the officers grabbing Brodie by his coat lapels and being pulled out of the vehicle and that Brodie at this time was trying to remove his seatbelt. She does not recall Brodie reaching into his pockets until he was outside the vehicle, but had no idea what he was reaching for. When asked if she recalled the officer telling Brodie to stop reaching into his pockets, she replied she did but Brodie did not stop. She agreed with counsel Brodie had been told more than once to stop reaching into his pocket.

When questioned if she understood why the officers were asking Brodie to stop putting his hands in his pocket, the witness was initially hesitant to respond to this question, however she agreed it is a reasonable concern for officer safety if someone is putting their hands in their pocket. The witness recalled the officers removing Brodie's hand from his inside pocket, after which he would place his other hand inside his coat.

The next witness for the prosecution, Mitchell Dender, testified on the evening of December 20, 2010, he and some friends went to Shooters Bar in Amherstburg. There were approximately ten (10) of them and they arrived at

the location around 9:00 p.m. When asked if he had something to eat and drink at the bar, the witness stated he had some chicken wings and approximately nine beers. They stayed at this location until 1:00 a.m. He left this location with four other people, Jaclyn McCarthy, Megan Carlone, Nic Corrado and Brodie. On leaving the premises they got into Ms. McCarthy's vehicle. The witness said he was seated directly behind the driver, Ms. McCarthy.

When asked about his directions upon leaving Shooters, he stated they turned left, he believes onto Simcoe, and then left onto Richmond Street. When questioned if he noticed anything while approaching Richmond Street, he stated as they approached the traffic lights Ms. McCarthy said there was a police car across the road and to make sure they had their seatbelts on; they then turned at the lights and got pulled over.

The Service prosecutor asked the witness what happened at this point and he replied an officer came to the passenger side door of Brodie and told him to get out of the car. Brodie asked him why and the officer just told him to get out of the car. Mr. Dender identified this officer as Constable Challans. When asked what happened next, the witness said Brodie reached either for his I.D. or his seatbelt and then he was taken out of the car because the officer said, "don't put your hands in your pockets." At this time Officer Challans pulled Brodie from the vehicle. The witness stated that after Brodie was pulled from the vehicle he was put up against the side of the car,

the same side he was removed from, after which he was removed to the rear of the vehicle. He believes he heard Brodie saying he was going to grab his identification and then being told not to reach into his pockets. The witness stated he looked back and could see another officer coming to help grab Brodie behind the vehicle.

When questioned if he, or any of the other occupants of the car, knew what was going on at this time the witness replied, "no" they stayed in the vehicle talking among themselves. Later on an officer came to the driver's side door and, at this time, the occupants asked what had happened and were told that when they were turning, Brodie had given them the finger. They were given no other explanation.

Mr. Dender stated he had his window open and another officer approached the vehicle. He asked the officer what was going on and was everything okay and could he speak to Brodie. The officer told him that Brodie kept reaching into his pocket and they had to take him down because of the threat and they had to secure him. Mr. Dender stated he was allowed to get out of the car to speak to Brodie. He approached Brodie in the police car and noticed that he was bleeding a lot from the side of his face and was really upset. Brodie was saying something like, "they are lucky they didn't shoot me or something," After speaking to Brodie, Dender returned to the officer telling him he couldn't calm him down.

When asked by the Service prosecutor if there was any profanity used by anyone during the interaction between Brodie and the police, Dender replied that he thought the exact words of Officer Challans when he came to the side door was, "Get the fuck out of the car."

Under cross-examination by Defence counsel, Mitchell Dender testified he has been a friend of Brodie and Nic Corrado for approximately six years.

Defence counsel then questioned him about his written statement and who asked him to complete one. The witness said his parents told him it would be a good idea to write one up, so he did. He eventually gave his statement to Tammy Fryer.

He agreed with Defence counsel that the morning after the incident his memory of the events would be a lot clearer than what it was today. He was then asked about the remark made by the officer to Brodie about getting the fuck out of the car and would that be something that stuck out in his mind. The witness stated that, when he wrote his statement, he didn't want to use profanities and, in his mind, by saying get out of the car was the same as saying, "get the fuck out of the car."

Mr. Dender was then asked why he had not also included in his statement about Brodie being pulled from the car and the witness responded saying that

after talking to his parents about the night in question, his mother told him not to write anything that he didn't know for sure. He agreed with counsel that, when completing his statement, he was trying to create an honest memory of the events.

When questioned about the number of times Brodie reached into his coat pocket, Mr. Dender replied there were two times when Brodie reached into his pocket, inside the car and then outside the car. He recalls the officer giving him a specific order on both occasions not to. He also agreed there were two officers on location, but cannot remember if they both arrived at the same time.

The next witness for the prosecution, Ms. Amanda Rizzo, testified she is presently employed as a Paramedic with Essex-Windsor. On December 21, 2010, they were called to the police station in Amherstburg to treat a Mr. Justin Brodie Timms-Fryer. Upon meeting Timms-Fryer he told them he wanted to have his injuries noted and did not want to go to hospital.

Entered at this time was **Exhibit Number 7** (a report completed by the paramedics pertaining to the treatment of Timms-Fryer.) At this time the witness was shown photographs taken of the facial injuries of Mr. Timms-Fryer (**Exhibit Number 4**) and asked if the photos are consistent with the injuries she observed on December 21, 2010. Ms. Rizzo stated she does not

exactly remember; the report she prepared speaks to some scrapes on his right cheek and chin. Ms. Rizzo further testified they completed a number of tests on Mr. Timms-Fryer to make sure he was good to stay on his own as he did not wish to go to hospital and, in her opinion, they felt comfortable leaving him there.

Under cross-examination by Defence counsel, Ms. Rizzo confirmed again that they were dispatched to the Amherstburg police station and, upon arrival, were directed to the cell area where Mr. Timms-Fryer was located. She reiterated they offered to take Mr. Timms-Fryer to hospital, but he declined their request.

When asked about her observations of Mr. Timms-Fryer, Ms. Rizzo stated he was intoxicated, very agitated, and only wanted his injuries noted. She was then questioned with regard to the report they filled out that evening in relation to what the patient had told her, specifically when Mr. Timms-Fryer said they got pulled over by the police and he began mouthing off and the police threw him to the ground. When asked about the comment “mouthing off” she stated not exactly mouthing off, he was saying that he was confrontational. When asked by counsel if they were laughing at him, making fun of him, Ms. Rizzo responded, “No.”

Under re-examination by the Service prosecutor, Ms. Rizzo stated they also spoke to the police officers with regard to the incident and, again, repeated

that the words “mouthing off” were hers not Mr. Timms-Fryer.

The next witness for the prosecution, Mr. Nic Corrado, testified he is friends with Mr. Timms-Fryer and have been since high school. On December 20, 2010, he arrived at Shooters in Amherstburg at approximately 9:30 p.m. with a group of friends and they stayed on the premises until around 2:00 a.m. the following morning. During this time he stated he consumed at least five glasses of beer. Upon leaving the premises he got into the vehicle of Jaclyn McCarthy and seated himself directly behind the front passenger seat. Leaving the premises they made a left turn and proceeded towards Simcoe Street. They made a left turn at this location and, shortly after the turn, they noticed police lights behind them so Ms. McCarthy pulled the vehicle over. After they had stopped an officer approached the passenger-side door, opened it and told Brodie to get out of the car. Brodie stated he wanted to get his I.D. but the officer said he wasn't interested in his I.D. he just wanted him to get out of the car. Brodie then got out of the vehicle.

When questioned about what he observed next, the witness said he could hear Brodie and the officer yelling at each other and he also heard a lot of commotion at the rear of the vehicle, some banging, thumping. Mr. Corrado then stated that a short time later another officer came to the vehicle and advised them that Brodie was being charged for, he thinks, resisting arrest or assaulting a police officer, and the reason they were being pulled over was because someone had given the officer the middle finger as they were

making the left turn. When asked by the Service prosecutor if there was any other conversation with the officer, Mr. Corrado stated the officer asked them if there was anywhere Brodie could stay. They suggested Mitch Dender's house or Brodie's own house. The officer also advised them that Brodie was kind of being hysterical in the police cruiser and allowed Mitch Dender to go to the cruiser and attempt to calm him down. Mitch returned to the car and said Brodie's face looked pretty like beat up and kind of scratched up.

Under cross-examination by Defence counsel, Mr. Corrado reiterated he has been a friend with Brodie for six years and they are still friends to this day. He then agreed that investigators from the O.I.P.R.D. interviewed him at his home with regard to the incident. He stated that during the interview he was being as truthful as possible and he appreciated the seriousness of the investigation. He also agreed with counsel that his memory on the day of the interview would have been clearer on that day than it is today.

Defence counsel then questioned Mr. Corrado as to his understanding of the sequence of events from the officers when they came to the vehicle after Brodie had been removed; that Brodie had been arrested for assaulting a police officer, resisting arrest, and he was going to be taken to the police station and may be released from the police station if there was a place for him to go. The witness stated that was his understanding. When asked if he recalled the officer using profanity when he opened the passenger door, the witness stated he didn't recall the use of profanity.

At this time the audio taped interview between Mr. Corrado and the investigators from the O.I.P.R.D. was played. At the conclusion of listening to Mr. Corrado's audio interview, Defence counsel again asked the witness if his memory was clearer on the day of the interview and was he being truthful. Mr. Corrado responded he was being truthful then and he accepts the evidence he heard today on the audio as his recollections of the incident. The tape of the audio recording of Mr. Corrado's interview with investigators from the O.I.P.R.D. was marked as **Exhibit Number 8**.

The next witness for the prosecution, Ms. Megan Carlone, testified that on December 20, 2010, she had gone out with a bunch of friends to celebrate the end of the exams and the holidays. They went to the Shooters bar in Amherstburg and arrived at the bar at approximately 10:00 p.m. and left around 1:30 a.m. Upon leaving the premises she got a ride from her friend, Jaclyn McCarthy. Ms. Carlone stated she was seated in the back of the vehicle between Nic Corrado and Mitch Dender. Ms. McCarthy was driving with Brodie in the passenger seat. Upon leaving Shooters they turned left and headed towards Mitch's house. At Simcoe Street they made a left-hand turn. Prior to making the left turn Ms. McCarthy advised them there was a police officer across from them stopped at the lights and to make sure they put their seatbelts on. When asked by the prosecutor if she had a clear view of the police officer, she stated she could see the police car and she only noticed it after Ms. McCarthy had made the statement about the seatbelts. She put her

seatbelt on along with the others, including Brodie. After they made the turn the police cruiser turned behind them and turned its lights on and Ms. McCarthy pulled the vehicle over.

When asked what happened next, Ms. Carlone stated a police officer approached the passenger side of the vehicle, opened the door and reached into the car and pulled at Brodie's jacket telling him to "Get the fuck out of the car." Ms. Carlone stated Brodie exited the vehicle by a combination of the officer pulling him and Brodie getting out. When questioned if there was any other conversation, she stated that Brodie was reaching for his seatbelt and he was told to stop reaching. When asked if Brodie said anything to the police officer at this time, the witness stated Brodie said, "What's going on?" "What did I do?" but the officer didn't respond.

When asked about her reaction to this, the witness said she was surprised and shocked, that she didn't know what was going on. She felt it was unfair that Brodie was getting pulled out of the car as he hadn't done anything.

Asked what she observed next, she said that Brodie was reaching into his pockets for his identification and is being told by the officers to stop reaching in his pockets to get his I.D. The officers told him they didn't want his I.D. and to stop reaching and if he doesn't stop reaching, they are going to restrain him. The next thing she observed were the officers at the back of the car with Brodie pushed up against it and then dropped to the ground. At this

point she cannot see him but heard Brodie asking the officer who he is and doesn't get a reply, then one of the officers asked, "Are you Brodie?" and Brodie said yes, I'm Brodie. Brodie and the officers get up off the ground and they walked further away from the vehicle. When asked if there was any conversation going on in the car at this time, she stated they were all wondering what was going on and Jaclyn was crying as she had never been pulled over before.

A short time later an officer came to the car and asked them for their identification and told them to stay in the car. The officer approached the car and asked them if Brodie had a problem with police officers and when they asked why they were told that Brodie had given them the finger back at the light. Ms. Carlone said the officer returned their I.D. and told them that Brodie is not calming down and they are going to take him. They allowed Mitch Dender to leave the car to speak to Brodie. Dender returned to the vehicle and advised them that Brodie was not calm and, like, he had visible trauma to his face and they are not going to release him, they were taking him to the police station. They were going to try and release him to his aunt and she stated the officer was given phone numbers for his mom and his aunt.

Under cross-examination by Defence counsel, Ms. Carlone was questioned as to her knowledge of the streets in Amherstburg and stated that, originally in her statement, she got the streets mixed up as she is not familiar with them.

The witness was asked about the condition of Brodie and she stated he was intoxicated, like a sleepy drunk when he was in the car, swinging his head against the side of the car half-asleep. When questioned as to the accuracy of the statement she made in relation to the incident, she replied, "Yes" that she had read it again prior to testifying and that's how she remembers the incident.

Defence counsel then questioned the witness as to the number of officers who initially approached the passenger side door of the vehicle and the witness stated her memory of the incident tells her that three officers were at the door, however, she now thinks there was only one officer. When asked why she had changed from the number of officers, Ms. Carlone stated that she had been constantly asked, "Do you remember three officers?" which got her thinking about it and logic told her that three police officers would not ride in the same vehicle and that made her question the number of officers.

Ms. Carlone agreed with counsel that, from her position in the rear of the vehicle, it would be difficult to see what Brodie was doing with his hands. She also agreed with counsel that she observed the police car prior to the vehicle making a left-hand turn and also when the officer initially opened the door she heard the officer, on more than one occasion, telling Brodie to stop reaching and Brodie kept saying he was reaching for his identification. She also agreed that outside the vehicle the issue between the officers and Brodie

was the fact they wanted him to stop reaching into his pockets, and he wouldn't. The police warned him they would have to put him on the ground if he didn't stop reaching.

Defence counsel then questioned the witness asking her if one of the officers who spoke to her said, "We asked your friend not to put his hands in his pockets, we are not going to wait and see if he had a weapon so we did what we had to do. We have to take him somewhere." The witness agreed with counsel that what she was told was consistent with what she saw.

The next witness for the prosecution, Mr. Wilfred Fryer, testified that on December 21, 2010, around 4:00 a.m. he received a phone call at his house from Officer Burany who advised him that his grandson, Brodie, was in custody for Assault Police and Resist Arrest. Mr. Fryer asked the officer who his grandson had assaulted and was told it was Officer Andrew Challans. He stated Officer Burany asked him to come to the station. When asked what he did next, Mr. Fryer said he called his daughter, Brodie's aunt Tammy Fryer, to tell her what happened. When advised of Brodie's arrest, his daughter stated it had better not be Andrew Challans, but did not explain herself. Mr. Fryer advised her he was heading to the police station and shortly afterwards he and his wife left their residence and attended at the police station.

Upon entering the station he observed Constable Challans at the end of the station counter alongside his daughter, Tammy Fryer. Officers Burany and Chambers were standing behind the counter. Mr. Fryer asked Officer Challans what his grandson had done and Officer Challans advised him that he had given him the finger and chest-bumped him.

When asked what took place next, Mr. Fryer said Officer Challans spoke to his daughter. They then went down the hall and had a conversation. Mr. Fryer stated he overheard the conversation between Challans and his daughter; Challans was telling his daughter, Tammy Fryer: “They will do this for the brotherhood if you don’t charge me with assault and we won’t lay charges.” After this they came back to where he was.

The Service prosecutor asked Mr. Fryer if his daughter responded to Officer Challans suggestion. He said that Tammy and Challans were going to the cellblock to speak to Brodie. During this time, Officer Burany said Brodie had facial injuries as a result of being taken to the ground and hitting his head on a snowbank that had ice. Mr. Fryer stated that, prior to his daughter going to see his grandson, she told him she was going to talk to Brodie about not charging Andrew Challans with assault and they will let him go with no charges.

When they came back from the cellblock Tammy Fryer told him how upset and mad Brodie was because she was there; his pupils were dilated and she

didn't know what was wrong with him; he was in a rage, swearing at her saying, "Get me out of here." As a result, they asked him to go and talk to Brodie and the officers, and also his daughter Tammy suggested he might want to talk to him.

Mr. Fryer stated he was taken to the kitchenette area and, once inside, they brought Brodie in. Mr. Fryer did not recall which officers were there, but believes Officer Challans was there outside the door. Once Brodie came in Mr. Fryer noticed that his face was pretty chewed up. He was shown **Exhibit Number 4** – pictures taken of Brodie's injuries, and agreed it was consistent with his grandson's injuries. Mr. Fryer advised Brodie if he agreed not to charge the officer with assault they would release him with no charges. Upon hearing this, Brodie became upset, saying he didn't do anything wrong. During this conversation Officer Challans came into the room and tried to convince his grandson to listen to him but his grandson just became angry. At this time Mr. Fryer asked Constable Challans to leave the room. After Officer Challans left Brodie got really mad at him, telling him to get the fuck out. Mr. Fryer stated he left the room at this time and walked directly out of the building without telling anyone what had transpired.

Five or ten minutes later Mr. Fryer returned to the building and spoke to Officers Challans, Chambers and Burany stating he didn't know what was going to happen, that he could probably talk to him in the morning. Mr. Fryer stated he spoke to Officer Challans at the counter, asking how he can

not lay any charges to which Officer Challans stated, “Well, I can’t because I pulled him out of the car.” Mr. Fryer left the station and returned at approximately 8:30 a.m. Upon entering the station he observed his son-in-law, Chris Dougan, who told him he had tried to talk to Brodie; that he was really uncontrollable and still in the cells. Mr. Fryer left the station at this point.

The Service prosecutor asked Mr. Fryer if he made a complaint about the treatment of Brodie and he responded ‘yes.’ Entered at this time was **Exhibit Number 10** – the complaint filed by Mr. Fryer.

Under cross-examination by Defence counsel, Mr. Fryer agreed it may have been his wife who answered the phone in the early morning hours of December 21, 2010, and it could have been Constable Burany asking to speak to the chief. Mr. Fryer agreed he hired Constable Burany when he was Chief of the Amherstburg Police Service.

When questioned about his grandson, Brodie, and his previous encounters with the Windsor police and the Amherstburg police, Mr. Fryer stated he was aware of the incidents and was concerned about Brodie’s alcohol consumption and subsequent behaviour.

Defence counsel then questioned Mr. Fryer about another incident in October

of 2012, when his grandson was arrested again for being intoxicated in a public place by members of the Amherstburg police. Mr. Fryer stated he picked up Brodie at the police station upon his release, stating that Brodie was very angry and intoxicated. Initially he was taking his grandson to his home but eventually he proceeded to his daughter's house. At this location, Brodie became extremely uncontrollable and, as a result, they had to contact the Amherstburg police to respond to the residence to control him. As a result of Brodie's behaviour at his daughter's house, both he and his daughter received injuries when trying to control Brodie.

When questioned about the proceedings at the Amherstburg police station on the morning of December 21, 2010, Mr. Fryer stated when he was in the kitchenette Brodie was brought in and went into a rage and was clearly intoxicated.

Defence counsel asked Mr. Fryer if he was ever made aware that Brodie even contemplated charging the officers, Mr. Fryer responded, "No, he didn't know where that came from." Mr. Fryer stated he was trying to explain to his grandson he has been charged and to go to court and face the consequences. Shortly thereafter, Constable Challans entered the room and, at this time, Brodie's rage factor began to get stronger and Mr. Fryer asked Constable Challans to leave the room.

Counsel asked Mr. Fryer if he felt Constable Burany held any responsibility

for what took place at the police station that morning. Mr. Fryer said he felt Constable Burany was in charge of the scene; he was in charge as Acting Sergeant and responsible for the conduct of any officers on duty.

Mr. Fryer then advised the Tribunal about two separate instances where Constable Challans had acted in an unprofessional manner towards him.

When questioned further by counsel, Mr. Fryer agreed Officer Challans had never worked under his administration and was hired by the Amherstburg Police Service some five (5) years after he had retired. Mr. Fryer believed his grandson, Brodie, was singled out because of him.

Counsel suggested to Mr. Fryer that Constable Challans was never the driving force behind any deal that he wouldn't be charged; if his grandson agreed not to charge him, he wouldn't charge his grandson. The witness stated that is incorrect.

The next witness for the prosecution, Mrs. Christine Fryer, testified that on the morning of December 21, 2010, she received a phone call from Viktor (Constable Burany) wanting to speak to the chief. After her husband spoke to Constable Burany they proceeded to the Amherstburg Police Station. When asked by the Service prosecutor if she knew Constable Challans prior to her arrival at the station she stated "No." She recalled Officer Challans

looking at them when they entered, looking towards them and saying "Bill" in reference to her husband. She recalls Challans standing at the front counter saying, "This will all go away as long as he doesn't charge me. As long as there are no charges, this will go away."

Mrs. Fryer recalled her daughter, Tammy, being there and in conversation with Constable Challans and also her husband left to go and talk to her grandson. She stated there were three officers in the area of the front counter, Constables Challans, Burany and Chambers.

Under cross-examination by Defence counsel, Mrs. Fryer said she was aware of the different incidents involving her grandson Brodie, the Windsor police and the Amherstburg police. Defence then asked her if, on approaching the Amherstburg police station, she told her husband to keep quiet, as he had had two previous encounters with Officer Challans. When asked if she felt there was going to be an issue, she responded, "Well actually, when we came here Bill said I hope it's not that asshole Challans."

Defence counsel then questioned Mrs. Fryer regarding the comments made by her husband, asking her if she recalls being interviewed on the telephone, telling the interviewers that her husband got off the phone at home and said, "I hope it's not those efferes." Mrs. Fryer stated, "If I said that, then he must have said it."

The next witness for the prosecution, Mr. Christopher Dougan, testified that Mr. Timms-Fryer is his nephew; he is married to Brodie's aunt, Tammy Fryer. Mr. Dougan stated that on the morning of December 21, 2010, at approximately 4:00 a.m. they received a call from his father-in-law, Mr. Bill Fryer, telling them that Brodie had been arrested in Amherstburg and asking for one of them to attend. Mr. Dougan stated his wife, Tammy, attended at the station. She returned home approximately one-and-a-half-hours later and briefed him on what was going on and asking him if he would return to the station later in an attempt to talk Brodie out; leaving the cells.

When asked by the Service prosecutor what Tammy had briefed him about, he advised the Tribunal she told him Brodie would be released with no charges as long as there's no charges placed against the officer, the arresting officer.

At approximately 5:30 a.m. Mr. Dougan returned to the Amherstburg Police Station. On his arrival he met Constable Challans and they had a discussion about Brodie leaving the cells. Constable Challans explained to him they can get him out and no charges, as long as Brodie is not going to charge him. Mr. Dougan then proceeded to the cell area. In the cell area with Brodie he explained to him he could walk out right now. Brodie wanted to know at what cost as he was adamant he would not leave the cells if he was going to give up the right to charge the officer in order to leave the cells. Mr. Dougan stated that after this conversation he left the cell area and spoke to Constable

Challans telling him there is nothing he can do. He then left the building. He was then asked about the condition of Brodie and he stated he was agitated, knew he had been drinking and using profanity. However, he appeared to follow the conversation they were having. On the way home he received a call from Tammy advising him that Brodie had been charged and to turn around and go back to the station. At the station he waited outside and shortly thereafter Brodie came out. Both of them then went back to Mr. Dougan's residence and, at this location, Mr. Dougan took photos of his injuries (**Exhibit Number 4**).

Under cross-examination by Defence counsel, Mr. Dougan reiterated the time sequence of the original call and his wife Tammy leaving the house. He agreed with counsel that his arrival could have been around 6:55 a.m. He also agreed he attended the station at the behest of his wife to go and talk to Brodie. She explained to him what was going to happen; Challans would release Brodie as long as there were no charges. Mr. Dougan was then referred to the October of 2012 incident involving Brodie and his wife, Tammy. When questioned about any injuries his wife may have sustained, Mr. Dougan stated she told him she was punched in the mouth by Brodie and complained her teeth were a bit rough. Although he was not there to witness this altercation, he attended at the house later and, at this time; the police were present with his father-in-law. Brodie had been returned to the hospital for psychiatric purposes.

The next witness for the prosecution, Ms. Tammy Lynn Fryer, testified she is employed by the Windsor Police Service and currently holds the rank of Staff Sergeant. When questioned about her relationship with Brodie Timms-Fryer, she stated he is her nephew. She was then asked about her recollections of the morning of December 21, 2010, regarding her nephew. Ms. Fryer testified she was at home with her family sleeping when the phone rang at approximately 4:00 a.m., which was answered by her husband. He advised her it was her father and that Brodie was in custody at the Amherstburg Police Station; he had been beat up, assaulted by the police. She stated that the first words out of her mouth were, "It was probably Andrew Challans."

Ms. Fryer stated she believed her father had asked her to meet him at the police station. On her arrival at the station Constable Challans let her into the premises. Inside she observed Constables Challans and Viktor Burany standing behind the front counter. Constable Challans advised her that Brodie had been charged with Assault Police and Resist Arrest. Ms. Fryer then asked Officer Challans about Brodie's injuries and he advised her he had road rash as the result of being taken down in the snow at the side of the road.

The Service prosecutor questioned Ms. Fryer as to the reason she inquired about injuries to Brodie and she stated it was probably as a result of speaking to her father that he had been assaulted.

Ms. Fryer stated that Constable Challans asked to speak to her and they went around the corner away from the other officers. [REDACTED]

[REDACTED]

[REDACTED] Ms. Fryer advised Constable Challans that her father is Brodie's guardian and she would have to consult him. They then went back into the hallway and spoke to her father. Ms. Fryer asked to see Brodie in the cell area and Constable Challans escorted her back there. In this area she spoke to Brodie; he was angry and said to her, "What the fuck are you doing here?" She told him to shut up. He then complained about being beat up by members of the Amherstburg police. Ms. Fryer again told Brodie to shut up and told him he had shot the finger at the officers. She stated that without hesitation he denied shooting the finger and he didn't even see the police car. She told Brodie he could walk away from this, but he became angry stating he was not leaving here and they can charge him.

Once away from the cell area she suggested to Constable Challans that her father should go and talk to him. She said Constable Challans stated: "We'll bring him out and into the kitchen because there's no audio tape or video tape and you can talk to him in private." Ms. Fryer, her father and Constables Challans and Chambers returned to the cell area. Brodie was removed and

placed in the kitchen area with her father. Ms. Fryer stated she could hear yelling coming from the kitchen area, however, she couldn't hear what they were saying.

In the hall area Ms. Fryer stated that Officer Challans went into the kitchen area. At this time Constable Chambers said to her; "Why didn't he just take his hands out of his pockets?" She asked him what he meant and Constable Chambers told her when he arrived at the scene Constable Challans had Brodie at the back of the car. Brodie had his right hand in his pocket, then he put his right hand behind his back and put his left hand in his pocket. Chambers told her he panicked and as a result they grounded him. Shortly after this conversation Brodie was brought back to the cell area and her father told her he was not leaving. Ms. Fryer stated she suggested her husband come to the station and talk to Brodie as he has a good rapport with him. She said Constable Challans stated, "Yeah, because if we don't get him out of here by seven, administration comes in and it's done, we have to get him out of here by seven."

On the way out of the station, Ms. Fryer recalls her father asking Constable Challans how he can make this all go away, he would have to charge Brodie with something, at least drunk in public. Challans responded saying he couldn't charge him with drunk in public as he was the one that pulled him from the vehicle.

Ms. Fryer returned home and explained the situation to her husband asking him to go to the station to talk to Brodie about the deal. Sometime after this her husband and Brodie came back to the house. Ms. Fryer stated she asked Brodie for the phone numbers of his friends in the vehicle that night. She then spoke to some of the occupants and advised them of the need to write everything down while it's fresh in their memory because Brodie is probably going to get a lawyer. Later her husband took photos of Brodie's injuries. They then returned to the scene and took some more pictures. Ms. Fryer was then shown **Exhibit Number 4**, a series of pictures, and she identified them as the pictures they took that morning showing Brodie's injuries and the location where the incident took place.

Under cross-examination by Defence counsel Ms. Fryer stated that she prepared notes for her interview with members of the O.I.P.R.D. on June 19, 2011, the notes were with regard to this incident and were made on the day of her interview. Produced at this time was a set of notes Ms. Fryer identified as hers.

Defence counsel then questioned Ms. Fryer regarding the notation of the 4:00 a.m. phone call they received the morning of December 21, 2010. Ms. Fryer stated it was her Dad calling, Bill Fryer. He told her husband, Chris that Brodie was at the Amherstburg Police station and he had been beat up by the police. When asked if this was her recollection of the call that morning, that she had been told Brodie had been beaten up by the Amherstburg police, she

replied, "Yes, that's exactly the conversation that took place at her house." Further, when she arrived at the police station she was told Brodie had been arrested for Assaulting a Police Officer and Resist Arrest. Her response to that was, "You're fucking kidding," and probably said, "What are his fucking injuries." Notes made by Ms. Fryer dated June 27th of 2011 were entered as **Exhibit Number 11.**

She agreed with Defence counsel she was told when Brodie was a passenger in a vehicle he shot two fingers at Officer Challans and responded, "Really." She agreed there had been a prior incident the previous year when Brodie had shot the finger at a police officer, and also another incident in Windsor involving Brodie where the Windsor Police subsequently arrested him for Breach of Peace. Fryer also agreed with counsel that shooting the finger to a police officer is disrespectful and she was concerned about his drinking, however, she is not presently concerned as Brodie hadn't drank in over a year because he has identified it as an issue and he has taken care of things. At this point Ms. Fryer was reminded by counsel that the Amherstburg police again arrested Brodie in October of 2012 for being drunk in a public place.

Ms. Fryer stated that, as a result of this arrest, Brodie was subsequently released to her father who brought Brodie back to her residence. At the residence Brodie became very angry and wanted to leave the residence. Ms. Fryer stated she was concerned about Brodie's welfare and did not want him to leave the residence. A struggle ensued between herself, her Dad and

Brodie. Ms. Fryer was adamant that Brodie did not punch her in the face at this time.

Defence counsel advised Ms. Fryer that her husband had told the Tribunal that she had told him Brodie had punched her in the face. Ms. Fryer denied telling him this.

Ms. Fryer further testified that, as a result of this altercation, she contacted the Amherstburg police and spoke to Constable Wiley and asked him to send an ambulance. Constable Wiley attended at the residence along with the ambulance personnel. Brodie settled down and left in the ambulance Ms. Fryer agreed with counsel when Brodie drinks to this extent he loses control of what he is doing.

When asked by Defence counsel if she has concerns about Brodie being removed from the vehicle, Ms. Fryer stated that if Brodie got out of the vehicle and Constable Challans was in the lawful execution of his duty, she would have no problems with the officers grounding him if he refused to move his hands from his pockets However, she does not agree with someone being pulled from a vehicle. She agreed that Brodie's injuries were caused either by contact with the asphalt or with the hard snow following the grounding,

Ms. Fryer reiterated that upon speaking to Brodie in the cell area he was very

angry with her, telling her to get the fuck out of there.

Under further questioning about the vehicles being stopped at the intersection of Sandwich and Richmond, Ms. Fryer agreed it is a well-lit intersection and the vehicles would basically be facing each other. When asked if Brodie had told her that the paramedics, upon arrival at the cells, were laughing at him, she stated he did and she believed they were.

When asked if she attended the station the following day and spoke to Deputy Chief Palumbo, Ms. Fryer said she spoke to Deputy Chief Palumbo because she wanted to bring her concerns to him about what had happened the previous day, telling him there were some issues here, we're going to have problems. The Deputy Chief advised her he had read the reports telling her she has problems, that her nephew suffers from mental health issues and should get some help. After he made this statement Ms. Fryer stated she got up and walked out of the station.

Defence counsel questioned Ms. Fryer about gathering the recollections of the various occupants of the vehicle on the night in question and Ms. Fryer stated she received something from them in the form of e-mail. She then passed on the information to the investigators from the O.I.P.R.D.

When asked if she believed there was a conspiracy theory to deal with her nephew in the manner he was treated, to get back at her dad, Ms. Fryer

stated she didn't believe this and she has had discussions with her father about it.

The first witness for the Defence, Police Constable Aaron Chambers, testified he has been a member of the Amherstburg Police Service since August of 2006. When asked about his involvement on December 21, 2010, Constable Chambers stated he was working in uniform in a marked police cruiser northbound on Sandwich Street when he observed a cruiser to the east, on Richmond Street. He proceeded to this area and parked behind the marked cruiser which had a vehicle pulled over. Upon leaving his vehicle, Constable Chambers observed Constable Challans and a male party behind the vehicle that had been pulled over and Constable Challans was yelling, "Take your hands out of your pockets." At this time Constable Chambers proceeded towards them as he could see the male party reaching into his pockets and was not being compliant with respect to the commands of Constable Challans.

Constable Chambers testified he started to run towards Constable Challans as he was concerned about the yelling and the male party not being compliant. He stated he yelled towards Constable Challans, "He's grabbing, he's grabbing." Once he reached the vehicle he observed the male, now known as Brodie Timms-Fryer, start to put his left hand in his pocket. Constable Chambers had no idea what he was grabbing for and, as a result, he grabbed

the male's hand, noticing at this time that Constable Challans had his right hand. The male then started to wrestle with them, breaking the grasp of Constable Challans and struck him in the chest with his hand. At this time, Constable Challans lost his balance as he was standing on an uneven snow bank and he grabbed Mr. Timms-Fryer and they both started falling to the ground. Constable Chambers stated he jumped on Mr. Timms-Fryer's back as Challans had fallen away from them as he attempted to gain control of Mr. Timms-Fryer to effect an arrest as he was still wrestling with him on the ground. He was able to get control of Mr. Timms-Fryer's hands and Constable Challans assisted him in handcuffing him. Once he was controlled he was picked up and placed inside a marked cruiser. Inside the cruiser Mr. Timms-Fryer continued to be very aggressive, he was yelling and swearing. Constable Challans went to the stopped vehicle and asked one of his friends to go back to the cruiser to try and calm him down as he was basically out of control.

Defence counsel then questioned Constable Chambers regarding injuries sustained by Mr. Timms-Fryer and he said he was aware of them; when he jumped on his back and he went to the ground; the snow piles at the side of the road were icy and hard and there was nothing to break his fall. When asked who applied the force to him that caused the injury to his face, Constable Chambers said he did.

Constable Chambers stated he returned to the station and, upon arrival, was

advised that Mr. Bill Fryer, Brodie Timms-Fryer's grandfather, had been contacted by Acting Sergeant Viktor Burany to come down to the station. At approximately 4:15 a.m. Mr. Bill Fryer, the former Chief of Amherstburg Police Service, his wife, and his daughter, Tammy Fryer, showed up at the station,

When asked by Defence counsel if he had any dealings with Mr. Bill Fryer, the ex-chief of Amherstburg, he responded he had never met the man prior to that evening. He did acknowledge he had met his daughter, Tammy Fryer, prior to that evening.

Asked about any conversations that took place at this time, Constable Chambers stated Ms. Tammy Fryer was asking them for some professional courtesy in the matter as her nephew, Brodie Timms-Fryer, had a scholarship in the United States at Michigan State. She said if the charges were dropped, nothing would come of it. At one point, Ms. Fryer went down the hallway with Constable Challans and appeared to be having a discussion with him. He advised he talked briefly to her after that and she told him there were similar incidents in Windsor with Brodie, that he could be suffering from some mental health issues and she was concerned he was suicidal. When questioned if he had any independent knowledge of this, he stated he did not as he had never met Brodie Timms-Fryer prior to this incident.

When questioned if he could hear any conversation coming from the kitchen

area, Constable Chambers said Mr. Fryer was speaking to Brodie in the kitchen and Brodie was yelling and swearing,

Defence counsel asked Constable Chambers about his concerns when he observed Brodie being non-compliant at the back of the vehicle with the order to remove his hand out of his pocket, Constable Chambers advised the Tribunal he had been in a similar situation, attempting to control a female who was acting irrationally, when she took out a knife and stabbed him in the leg.

Under cross-examination by the Service prosecutor, Constable Chambers stated that Constable Challans is a friend of his and they were not partnered up that evening, when asked when he completed his notes that morning, Constable Chambers replied before the end of his shift that morning. When asked about his arrival at the scene that morning, he stated when he arrived Constable Challans and Mr. Timms-Fryer were at the rear of the vehicle and his observations started at this point.

When questioned about his observations in relation to Constable Challan's cruiser, he stated he never received a call for the location, that the roof lights of Constable Challan's cruiser directed him there. Upon his arrival, Mr. Timms-Fryer and Constable Challans were standing upright apart from each other towards the back curbside of the vehicle. He ran towards the vehicle and grabbed the left hand of Mr. Timms-Fryer. At this time Constable

Challans took hold of his right arm. He grabbed his arm as he was trying to reach into his pocket and struggling with them. He stated he had no idea what was in his pocket.

In the midst of this, Mr. Timms-Fryer broke free of Constable Challan's grip and struck him and after this both Mr. Timms-Fryer and Constable Challans started to fall. The strike against Constable Challans was the reason he was charged with Assault. As they were falling, Mr. Timms-Fryer broke his grasp and, at this point, Constable Chambers jumped on his back and attempted to handcuff him; he was still struggling at this point. Constable Challans assisted him and they both managed to handcuff him and remove him to the back of Constable Challan's cruiser.

When asked again to describe how they fell at the rear of the vehicle, Constable Chambers reiterated that Mr. Timms-Fryer fell and Constable Challans fell away from him and, at this time, he jumped on Mr. Timms-Fryer's back. He was on top of him on the snow and that's where the struggle started.

Constable Chambers was then examined regarding his conversation at the station with Ms. Tammy Fryer. He stated it was Ms. Fryer who asked him for professional courtesy and his understanding of this she was asking that Mr. Timms-Fryer be released without charges. When asked about his response to this, he stated he didn't say anything, he stayed out of it.

The Service prosecutor asked Constable Chambers if this request from Ms. Fryer troubled him and he stated, "It does" but he understood it, he could see where she was coming from. When questioned if he informed the Chief of the Amherstburg Police Service about this interaction, he responded "no" but made a note of it in his notebook. Constable Chambers further stated he does not recall any response to Ms. Fryer's request by either Constable Challans or Acting Sergeant Burany who were involved in this meeting. Constable Chambers said he later spoke to Ms. Fryer in the hallway and this is where he learned Mr. Timms-Fryer could be suffering from mental health issues and she was concerned about him, that he could be suicidal.

When asked why Mr. Bill Fryer was allowed to speak to his grandson in the kitchen, Constable Chambers said he believed it was an attempt to get Mr. Timms-Fryer to calm down and, further, he felt the whole situation was strange because, like Viktor Burany working for him before, he was extending the courtesy to him because it was his grandson. When asked if he was aware of Constable Challans trying to make some sort of deal with Mr. Bill Fryer, he stated he wasn't aware of any deal, it didn't make sense to him as Constable Challans had done nothing wrong. He noted that Ms. Fryer was not asked to attend the station, he was only made aware that Mr. Fryer would be in attendance.

When questioned if it would be unusual for a relative to be taken back to the cell area to speak to an accused, he stated that would be unusual. Entered at

this time was **Exhibit Number 12 (the notes of Constable Aaron Chambers;)** **Exhibit Number 13 (a statement of claim against Constable Chambers by Mr. Timms-Fryer, Tammy Fryer and Wilfred (Bill) Fryer.)**

The next witness for the Defence, Police Constable Andrew Challans, testified he has been a member of the Amherstburg Police Service since 2003 and has previous experience with the Ontario Provincial Police.

Defence counsel described the allegations made by former Chief Mr. Bill Fryer regarding Constable Challans attitude towards him. Constable Challans stated he has absolutely no idea what that was about as he has never worked for him, or even spoken to him. When asked if he knew Brodie Timms-Fryer prior to the incident on December 20/21, 2010, he responded, "No, I did not."

Constable Challans was asked a series of questions regarding the events of December 20/21 of 2010, he stated he was in uniform, driving a marked cruiser. Entered at this time was **Exhibit Number 14 (the notes of Constable Challans.)**

Constable Challans testified that earlier that evening he met up with Constable Chambers for coffee at the Tim Horton's situated across the street from the police station. He agreed with counsel that during the course of the

evening he was driving northbound on Sandwich Street and, upon reaching the intersection of Sandwich and Richmond Street, he came to a stop at the traffic lights. A vehicle opposite him was also stopped, facing southbound. Constable Challans described the signal sequence stating that southbound vehicles have the advanced turn. The light signalled for the left turn and the vehicle opposite proceeded to make a left turn in front of the cruiser. He described the intersection as well lit.

The vehicle passed in front of his cruiser and at this time he had a clear view of the passenger side of the vehicle. He noticed that the front passenger had turned completely sideways towards his cruiser and gesturing with both hands, the middle finger. The vehicle completed its turn eastbound on Richmond Street. Constable Challans stated it was clearly obvious to him, due to his position in the vehicle and the lighting at this intersection; the passenger was not wearing his seatbelt.

He then made a turn onto Richmond Street to initiate a stop of this vehicle, activating the emergency lights on his cruiser. The vehicle pulled over and he exited his vehicle and approached the front passenger side,. As he approached the vehicle the occupants were looking to their left as if expecting him to approach the driver's side. At the front passenger side the window was open slightly. Constable Challans stated he had a conversation with regard to requesting documents for the vehicle, The front passenger became confrontational asking "What for?" and Challans explained the

reason for the stop was he was not wearing his seatbelt, however, he still required the vehicle documents.

While standing at the window he noticed a strong smell of alcohol from inside the vehicle. When the front passenger spoke, alcohol emanated from his breath. He also observed the front passenger's look, his eyes were dilated, glossy, almost blank. When the officer asked for documents, the passenger said he had no authority to do so. At this point the passenger began reaching for his jacket and fumbling inside his pocket. Constable Challans testified he was not comfortable with the position he was in as there were four other people in the vehicle. He felt the passenger was affecting his vehicle stop, obstructing him, and he was also concerned that the passenger's actions were going to start the rest of the occupants of the vehicle off in the same confrontational manner.

He felt the passenger was breaching the peace and, in an attempt to ease the situation, asked him to step out of the vehicle in order to separate him from the rest of the occupants.

When asked if the passenger complied with this request, Constable Challans responded, "Yes, he did." He stated the passenger, now known as Brodie Timms-Fryer, exited the vehicle. Constable Challans stated he was holding the passenger door open as the passenger exited. Once out they proceeded to the rear of the vehicle, two short steps away. At this location Mr. Brodie

Timms-Fryer again became confrontational, reaching into his jacket with his hands. On at least three occasions Constable Challans told him to stop reaching inside his jacket pockets. He appeared to be looking for something inside. Given that he was not listening to his commands, and the comments he was making, Constable Challans stated he was starting to get concerned and, quite frankly, scared because he didn't know what he was dealing with.

When asked by counsel what comments he was making, Constable Challans stated he said, "I will fight you to death." This comment caught him by surprise as he didn't know where it was coming from. At this point he is aware that Constable Chambers is on the scene, he could see him coming and Chambers is yelling, "Watch out, he's grabbing for something." As a result of this he grabbed Mr. Timms-Fryer right arm to stop the action. Constable Chambers is to his left and takes hold of his left arm. Mr. Timms-Fryer broke the hold of Constable Challans grip and struck him in the chest area with an open hand causing him to stumble backwards into the snow bank. As he was falling he tried to hold on to Mr. Timms-Fryer in an attempt to break his fall and, as he is doing so, he stumbles over the snow bank and, looking up he sees Constable Chambers on top of Mr. Timms-Fryer, who is still continuing to yell and scream.

Constable Challans further testified he got to his feet, took a few moments, and stepped towards the vehicle and told the occupants to stay inside. He then assisted Constable Chambers and advised Mr. Timms-Fryer he was

under arrest for Assault Police and Resisting Arrest.

When asked by counsel about the injuries to Mr. Timms-Fryer, Constable Challans stated his struggling on the snow bank, or the altercation with Constable Chambers may have caused them when he jumped on top of him. Mr. Timms-Fryer was removed from this area and placed in the rear of the cruiser where he continued to scream and yell and appeared totally out of control. As a result of Mr. Timms-Fryer's actions Constable Challans asked for one of the occupants of the vehicle, a Mr. Mitch Dender, to come and talk to Mr. Timms-Fryer in an attempt to calm him down. Mr. Dender was unsuccessful in his attempts to calm Mr. Timms-Fryer.

At this point Mr. Timms-Fryer was transported to the Amherstburg police station and placed in the cells. Prior to leaving the scene Acting Sergeant Viktor Burany attended the scene and also identified Mr. Timms-Fryer to him and advised him that Brodie was Bill Fryer's grandson.

When questioned if he was aware that Acting Sergeant Burany made a call to the former chief, Constable Challans stated he was not. Acting Sergeant Burany advised him afterwards that he had placed the call to the former chief.

At approximately 4:15 a.m. Mr. Bill Fryer, the former Chief, his wife and daughter, Tammy Fryer, arrived at the station. Constable Challans stated he

he had never met Ms. Fryer prior to this and initially thought she was Brodie Timms-Fryer's mother. When Tammy Fryer came in she advised she was there for Brodie Timms-Fryer and asked what happened. She was given a synopsis of the events. Constable Challans stated he again confused Tammy as being Brodie's mother, but Ms. Fryer corrected him saying she was a police officer with the Windsor Police Service. She then explained to him she had similar incidents in Windsor with the same type of behaviour, telling him that Brodie was a student in the U.S. and expressed concern this would affect his education. She then requested what she referred to as professional courtesy to not charge Brodie Timms-Fryer. Ms. Fryer then asked if he was the arresting officer and could she speak to him privately and they then walked down the hallway and had a discussion. She relayed information to him about the Windsor incidents where Brodie had done similar things and they were able to have him released with no charges. Constable Challans told her that wasn't his call and that the Sergeant should be involved in this conversation. At this time they returned to the lobby area where all the other parties were situated.

Asked by counsel if there were any arrangements made, Constable Challans stated that Acting Sergeant Burany allowed Ms. Fryer to speak to Brodie Timms-Fryer in the cell area, after which she returned to the lobby area and spoke to her father, Mr. Bill Fryer. Mr. Fryer then asked Acting Sergeant Burany for a chance to speak to Brodie as well. This opportunity was given to him and Mr. Fryer was allowed to speak to his grandson in the kitchen.

Constable Challans stated he was in the hallway outside this area with Acting Sergeant Burany, Constable Chambers and Ms. Fryer. He could hear a lot of yelling and swearing coming from the kitchen area that appeared to be directed towards Mr. Bill Fryer. Constable Challans stated he became concerned and entered the kitchen area and attempted to calm down the situation, but it was not working, stating that Mr. Fryer appeared to be crying while Brodie Timms-Fryer was agitated and very angry. Mr. Fryer then left this area and Brodie Timms-Fryer was returned to the cells.

When asked how he felt about having family members back in the cell area and in the kitchen, Constable Challans stated it was ridiculous and he believed Acting Sergeant Burany arranged it.

When questioned by Defence counsel if he was party to any deal to release Brodie Timms-Fryer, Constable Challans responded he was never involved in any discussion about a deal. He stated there were comments about a professional courtesy, but he could not understand how Brodie Timms-Fryer could be released, without charges, to another police officer or the ex-chief. He believes that, as a result of this, Acting Sergeant Burany was informally disciplined for allowing this to happen. Constable Challans further stated he was never comfortable with what took place; how an arrested person can come into a police station; he's put his hands on him; he's been arrested; he has minor injuries to his face; he's on video in a cell; and then he's just going to walk out. He stated he spoke to Deputy Chief Palumbo later that

morning regarding the occurrence and the request made and he reassured him and supported him in laying the appropriate charges.

Under cross-examination by the Service prosecutor, Constable Challans was asked if he was the Use of Force instructor for the Amherstburg Police Service and he responded he is, but does not recall when he initially trained and became the instructor. He agreed with counsel that he met with Constable Chambers at Tim Horton's for coffee and shortly after that he became involved in the incident. Officer Challans reiterated the incident at the intersection of Sandwich and Richmond and it was obvious to him that Brodie Timms-Fryer was not wearing a seatbelt; and the interaction of getting the finger from him drew his attention to the seatbelt infraction, He further stated he had no previous interactions with this individual.

When questioned about approaching the passenger side of the vehicle, Constable Challans stated he was trained that way at the Ontario Police College and again at the Provincial Police Academy and it's a practice his coach officers also taught him and he still uses this approach as it gives him an opportunity to see inside the vehicle.

When asked further on his approach to the vehicle, Constable Challans stated when he approached the front passenger side he got the attention of the passenger by using his flashlight. The window was partially opened and he was standing slightly behind the door but face-to-face with the passenger.

He then asked the driver for the vehicle documents and it is at this point Mr. Brodie Timms-Fryer became confrontational; challenging his reason to stop the vehicle and telling him he didn't have the authority to do so. It was then that Constable Challans detected alcohol emanating from him and the blank stare and stated he was now focused on the passenger.

When asked if he already had concerns about the passenger giving him the two-finger salute, Constable Challans stated the totality of the events involving the passenger gave him concerns; the shooting of his fingers and his total demeanour did cause him concern.

The Service prosecutor then asked Constable Challans if he believed when Brodie Timms-Fryer was reaching into his pockets that he was concerned he was reaching for a weapon. Constable Challans stated yes, with the totality of everything and given he had not asked him for any identification yet, yes it was a concern.

Constable Challans agreed the only time Mr. Timms-Fryer was compliant with him was when he was asked to step out of the vehicle. Once out of the vehicle he took approximately two steps to the back and is now facing Mr. Timms-Fryer face-to-face.

When questioned what Mr. Timms-Fryer was doing as they approached the rear of the vehicle, Constable Challans stated he still had his hands inside his

jacket and was frantically searching through his jacket. The Service prosecutor questioned if the officer, now outside the vehicle with Mr. Timms-Fryer, was in a more vulnerable position. Officer Challans didn't believe so as he didn't have a clear view of his body when seated in the vehicle, nor could he determine what was in the vehicle beside him, plus his concern that his behaviour inside the vehicle was enticing the other occupants.

When asked if at the police station he had told Mr. Bill Fryer and Ms. Tammy Fryer that he pulled Mr. Timms-Fryer out of the vehicle, Constable Challans denied this comment was ever made.

Constable Challans stated that, at the rear of the vehicle, he took control of Mr. Timms-Fryer's right hand. Officer Challans was then questioned as to his memory of Constable Chambers arriving on the scene, Challans said he could hear Constable Chambers voice and that was the first indication. Constable Chambers at some point grabbed the left hand of Mr. Timms-Fryer and prior to this Constable Chambers is yelling, "He's grabbing for something, he's grabbing for something." At this point Constable Challans is becoming fearful for his safety given the behaviour of Mr. Timms-Fryer and the way he has acted throughout the evening. It was at this point Mr. Timms-Fryer broke his hold and pushed him in the chest with an open hand, Constable Challans then re-stated how he fell to the side of Mr. Timms-Fryer and Constable Chambers subsequently jumped on Timms-Fryer.

When questioned about Ms. Tammy Fryer talking about professional courtesy at the station, Constable Challans does not recall Mr. Bill Fryer or his wife being present at that time Ms. Fryer asked to speak to him. When asked if he had explained to Mr. Fryer and his wife about the incident with their grandson that evening, Constable Challans believes Acting Sergeant Burany did this while he was speaking to their daughter, Tammy Fryer.

Constable Challans was adamant about any discussion regarding visiting Mr. Timms-Fryer in the cell area and the grandfather being allowed in the kitchen area were at the direction of Acting Sergeant Burany. He stated he was not comfortable with what was taking place to the point where he spoke with the Deputy Chief when he arrived that morning, briefing him on what had occurred with the Fryer's.

When asked a series of questions as to why he had written 'unsuccessful' in his notebook, Constable Challans stated that, after speaking to his relatives, Brodie had refused to come out of the cells and sign his release papers; that there had been attempts to get Mr. Timms-Fryer released and to calm down, but they were unsuccessful.

In his submissions, Mr. Cowling stated the prosecution does not dispute the fact that Mr. Timms-Fryer was not wearing his seatbelt and the initial stop

was legitimate, but what happened subsequently and the actions of Constable Challans constitute a breach of his obligations under the Police Services Act; that this case comes down to a matter of credibility about what occurred at the scene and, subsequently, the police station. There is very clear evidence from Mr. Dougan a discussion took place about a deal to release Mr. Timms-Fryer.

The Service prosecutor spoke to the sequence of events which occurred at the vehicle; that Constable Challans opened the passenger door, placed his hands on Mr. Timms-Fryer and told him to “get the fuck out” stating it is these acts by the officer that make it unlawful and therefore a breach of the Police Services Act.

Mr. Cowling then made reference to his Book of Authorities, Tab Number 4 – Constable J.B. Pigeau v. Ontario Provincial Police; and Christopher Taillon, OCCPS 09-12 (July 15, 2009) and directed the Tribunal to Page 14, the court of appeal in R. v. Deadman which states, and I quote. “Although a police officer is entitled to question any person in order to obtain information with respect to a suspected offence, he has no lawful power to compel the person questioned to answer. Moreover, a police officer has no right to detain a person for questioning or for further investigation. No one is entitled to impose any physical restraint upon the citizen except as authorized by law, and this principle applies as much to a police officer as anyone else.” Unquote.

The Service prosecutor argues if the Tribunal accepts the evidence of the other vehicle occupants, Constable Challans had no legal authority to remove Mr. Timms-Fryer and therefore the arrest was unlawful and any use of force that flowed from the arrest was improper. Mr. Cowling further submits that there is clear and convincing evidence Constable Challans opened the car door and physically removed Mr. Timms-Fryer from the vehicle.

He then referenced several other cases in his Book of Authorities dealing with similar situations and also to assess the conduct of officers based on the reasonable expectations of the community, all of which I have taken into account.

In his submissions, Mr. Braidie, Defence counsel, stated we are dealing with a situation in which Mr. Timms-Fryer, on the evening in question, drank to excess, was intoxicated and was not wearing a seatbelt while a passenger in a motor vehicle. Defence then spoke to the previous incidents in which Mr. Timms-Fryer had been involved and where he exhibited similar behaviour. Mr. Braidie submits one of the factors in a Hearing is to determine credibility and reliability and the independence of the witnesses, one from the other and, in his opinion, everyone in the vehicle that night had a significant defect in his or her testimony.

Defence counsel talked about the condition of Mr. Timms-Fryer and the

concern of Constable Challans regarding his actions and his own personal safety. He agreed that if, in fact, Mr. Timms-Fryer was unlawfully touched in the car, the legal landscape is altered.

Counsel then spoke to the evidence of the civilian witnesses, pointing out what he believed were inconsistencies in their evidence with regard to the exit of Mr. Timms-Fryer from the vehicle and the alleged profanity used by Constable Challans at this time.

He also spoke to the evidence of the paramedics at the police station and their subsequent treatment of Mr. Timms-Fryer and the comments he made about their conduct.

Defence counsel then spoke to the evidence of the Fryer family upon their arrival at the station and the credibility of the evidence given by them regarding the preceding phone calls, initially to the home of Christine Fryer and Mr. Bill Fryer and then to Mr. Dougan, the husband of their daughter.

During the course of this Hearing process there has been a great deal of family history with respect to the interactions of Mr. Bill Fryer, his wife Christine, their daughter, Tammy Fryer and her husband, Mr. Dougan.

Mr. Fryer testified he received a call at 4:00 a.m. on the morning of December 21st of 2010 from Officer Burany who informed him his grandson,

Brodie, was in custody for Assault Police and Resist Arrest. Upon asking who the officer involved was, he was advised it was a Constable Challans. Officer Burany then asked him to attend the station. Mr. Fryer then called his daughter, Ms. Tammy Fryer, and advised her of the call. She responded to this information by stating, "It had better not be Andrew Challans." However, she did not explain herself. Mr. Fryer stated he attended at the station with his wife Christine and became involved in a number of conversations with Constable Challans, his daughter Tammy and his grandson, Brodie.

When questioned by Defence counsel if he felt Constable Burany held any responsibility for what took place at the station that morning, he stated he felt Constable Burany was in charge of the scene, that he was in charge as Acting Sergeant and responsible for the conduct of any officers on duty.

Counsel further suggested to Mr. Fryer that Constable Challans was never the driving force behind any deal that Brodie wouldn't be charged if his grandson agreed not to charge him. Mr. Fryer responded that is correct.

The next witness, Mrs. Christine Fryer, testified that on the morning of December 21st of 2010, she received a phone call from Viktor Burany wishing to speak to the chief. After Mr. Fryer took the phone call they both proceeded to the police station.

Under cross-examination she was asked if, on approaching the station, she advised her husband to keep quiet as he has had previous encounters with Officer Challans, she responded, "Well actually when we came here Bill said I hope it's not the asshole Challans."

The next witness, Mr. Christopher Dougan, stated they received a phone call from his father-in-law at approximately 4:00 a.m. telling him that Brodie, his nephew, had been arrested in Amherstburg and asking for one of them to attend at the station. He stated his wife, Tammy, attended. She returned a half-hour later and told him Brodie would be released with no charges if he didn't charge the officer.

Mr. Dougan stated he returned to the station and spoke to Officer Challans and the officer explained to him about Brodie being released as long as there were no charges laid against him.

The next witness for the prosecution, Ms. Tammy Fryer, stated her phone rang at 4:00 a.m. on December 21st of 2010 and her husband, Chris Dougan, answered it. He advised her it was her father and Brodie was in custody at the Amherstburg police station, that he had been beat up, assaulted, by the police. She stated the first words out of her mouth were, "It was probably Andrew Challans."

In the notes she made of the incident, **(Exhibit Number 11)** she refers to him

as 'Andrew Challenge.' On her attending at the station she was told by Constable Challans that Brodie had been charged with Assault Police and Resist Arrest. A series of discussions and meetings took place within the police station between herself, her father, the officers, and Brodie.

It is clear from these witnesses a phone call was made from the police station to Mr. Fryer from Acting Sergeant Burany about Brodie Timms-Fryer being arrested. Subsequent calls were made to Ms. Fryer's residence; however, on the initial phone call to Mr. Fryer he was only advised of Brodie's arrest. There was no mention of him being beat up or assaulted.

After listening to the evidence pertaining to the allegations at the station after the arrest of Brodie Timms-Fryer, it is clear Acting Sergeant Burany is the individual who appears to be controlling the situation. Mr. Fryer alludes to this when under cross-examination by Defence counsel. However, I am unwilling to accept that in his phone call to the retired chief he advised him that his grandson had been beat up and assaulted. Constable Burany did not appear before this Tribunal as a witness.

Constable Challans has denied he had any discussion with regard to the release of Brodie Timms-Fryer without charges, providing he wasn't charged. He stated he was not aware of the phone call to Mr. Fryer or that he would be attending the station. He was upset by what took place at the station

that morning and, as a result, he spoke to Deputy Chief Palumbo, venting his frustrations to him. Constable Challans further stated that subsequently Constable Burany was informally disciplined for his actions on that morning.

The Service prosecutor spoke to the issue of credibility of the witnesses and referred to the case of **Faryna vs. Chorny** (1952) 2 D.L.R. 354 (B.C.C.A.) Justice O'Hallaran. I agree with the Service prosecutor that the O'Hallaran test is a most helpful guide. It gives tangible parameters of what factors to include in the assessment of the story presented by the witness:

The credibility of interested witnesses, particularly in cases of conflict, be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

I find as a fact that the evidence with respect to the phone calls made to the homes of Mr. Bill Fryer and Ms. Tammy Fryer, and the statements made therein, together with the interactions at the Amherstburg police station, are

entirely inconsistent with the preponderance of the probabilities that rationally emerge out of all the evidence pertaining to this series of events.

I will now deal with the evidence placed before this Tribunal with respect to the investigation of Brodie Timms-Fryer.

On the evening in question, Brodie Timms-Fryer testified he was very drunk. He stated the only thing he said to Constable Challans was to allow him to get his identification. He agreed with counsel he has never had any previous interaction with this officer, however, when being interviewed by members of the O.I.P.R.D. he told them the incident was a conspiracy by the police officers, Challans and Chambers, that they were out to set someone up. He denied shooting the finger at the officer, but admitted he had done this on a previous occasion to a Windsor police officer.

Clearly, this is a young man who has had several altercations with police officers and members of the general public stemming from his alcohol abuse.

When questioned why he was so anxious to show his identification he stated he thought they had the wrong guy, but acknowledged his last name "Fryer" would have helped him due to his family's involvement in policing as he had dropped the family name in other incidents involving the Windsor police.

During the altercation at the vehicle, Brodie Timms-Fryer stated the passenger door opened and Officer Challans told him to “get the fuck out of the vehicle” and began grabbing at him. He stated that at this time he was attempting to get his seatbelt off and also to get his identification which he believed was in his breast pocket. Officer Challans was physically trying to remove him from the vehicle and eventually forcibly removed him. Brodie Timms-Fryer stated he was more or less compliant at the time.

It is clear from the evidence placed before this Tribunal that from this point on right up to, and including, his time in the Amherstburg police station he was, in actual fact, out of control with the arresting officer, his grandfather, Mr. Bill Fryer, and his aunt Ms. Tammy Fryer. He continued with this behaviour while being treated by the paramedics who attended at the police station to deal with his injuries, stating they were not taking his injuries serious and he may have been using profanities towards them.

When questioned about his removal from the vehicle by officer Challans. Brodie Timms-Fryer said once out of the vehicle the officer pushed him face first into the rear passenger window where passenger Nic Corrado was seated.

In his evidence, Nic Corrado stated he observed Brodie and the officer through the passenger window after Brodie had exited the vehicle and saw no altercation between them.

When Timms-Fryer was asked about his relationship with Nic Corrado, he described him as a good friend who holds no animosity towards him.

The next witness called by the prosecutor, Ms. McCarthy, stated that upon making her turn she observed the police vehicle stopped at the lights and told her passengers to fasten their seatbelts. Ms. McCarthy stated when she stopped her vehicle her passenger door was forcibly opened and someone grabbed Brodie Timms-Fryer and told him to get out. When asked if she heard any other comment other than the officer telling Mr. Timms-Fryer to get out, she stated he was told to stop reaching into his pockets.

Under cross-examination, Ms. McCarthy recalls the officer grabbing Brodie Timms-Fryer by his coat lapels; however, she does not recall Brodie Timms-Fryer reaching into his pockets until outside the vehicle.

The next witness called was Mitchell Dender who, when asked by the Service prosecutor what happened after the vehicle was stopped, stated an officer came to the passenger door and told Brodie Timms-Fryer to get out of the vehicle. Brodie Timms-Fryer asked the officer why and he was told to get out of the vehicle. He then reached for his seatbelt or his I.D. and, at this point he was taken out of the car because the officer said "Don't put your hands in your pockets." Once outside the car Brodie Timms-Fryer was put up against the side of the car and then removed to the rear of the vehicle. Mr.

Dender stated that later he was allowed to go back to the police vehicle in an attempt to calm Brodie down. He stated Brodie was really upset and he couldn't calm him down.

When asked by the prosecutor if there was any profanity used, Mr. Dender replied he thought the words Officer Challans used when he came to the side door was, "Get the fuck out of the car."

Defence counsel questioned Mr. Dender about his written statement he had completed and he said it was done the morning after the incident. He was then asked why he didn't include profanities in it. Mr. Dender stated that, in his mind, saying, "get out of the car" was the same as saying, "get the fuck out of the car." When further questioned why he did not mention Brodie Timms-Fryer being pulled from the vehicle, he responded that after talking to his parents his mother told him not to write anything he didn't know for sure.

The next witness called, Ms. Amanda Rizzo, a paramedic with Essex-Windsor, together with her partner, attended at the Amherstburg Police Station and treated Brodie Timms-Fryer. He told them he wanted them to note his injuries and did not wish to go to hospital. She concluded he was good to stay on his own.

When questioned by Defence counsel, Ms. Rizzo stated that Brodie Timms-

Fryer was intoxicated, very agitated, and only wanted his injuries noted. She stated a report of her visit was filled out (**Exhibit Number 7**), noting that Brodie Timms-Fryer had been pulled over by the police; he got confrontational with them and was thrown to the ground.

The next witness called was Nic Corrado. When questioned about the vehicle stop, he testified he was seated in the rear of the vehicle directly behind Brodie Timms-Fryer. When the officer approached the vehicle he opened the passenger door and told Brodie to get out of the vehicle. Brodie told the officer he wanted to get his I.D. but the officer told him he wasn't interested in his I.D. he just wanted him out of the vehicle. Brodie then got out of the vehicle and once they were out of the vehicle he could hear Brodie and the officer yelling at each other.

When responding to Defence counsel's questions, Mr. Corrado stated he has been a friend of Brodie for the past six years and they are still friends to this day. With respect to his interview with members of the O.I.P.R.D. he said that during the interview he was being as truthful as possible and he appreciated the seriousness of the investigation. His memory on the day of the interview would have been much clearer on that date than it is today.

Played at this time was the audio interview of Nic Corrado by the investigators assigned to the O.I.P.R.D. (**Exhibit Number 8**). During the course of the interview Mr. Corrado was questioned several times by both the

investigators with regard to his recollections of the incident at the time the vehicle was stopped. He is quite clear to the point that the officer, upon opening the door, asked Brodie to get out; there was no profanity used. Brodie got out of the vehicle and was subsequently removed to the rear of the vehicle. Mr. Corrado stated he was able to observe this by looking through the passenger window where Brodie was standing after exiting the vehicle. He was clear in his statement that Brodie undid his seatbelt and got out of the vehicle.

Towards the end of the interview, Mr. Corrado was asked if the officer asked Brodie to “get the fuck out of the car” and he responded “no.” He was again questioned if he saw any physical action at this time between the officer and Brodie and, again, he responded “no” that his attention was focused on the officer to observe what was happening. He stated he would have observed any contact between Brodie and the officer from his vantage point seated directly behind Brodie and was also able to view them through the passenger window, stating that the officer was standing straight up and would need to bend down to reach into the vehicle, and this never happened.

I found Mr. Corrado to be a straightforward witness with no apparent bias. He was able to observe the actions of Constable Challans from his vantage point and the movement of Brodie as he left the vehicle. He appeared to be quite candid about his observations.

The examination of Mr. Corrado by the members of the O.I.P.R.D. was very thorough and, thanking him for his truthfulness, they concluded the interview.

The next witness called by the prosecution, Ms. Megan Carlone, was seated in the rear of the vehicle, between Mitchell Dender and Nic Corrado. She stated when the vehicle came to a stop; the passenger door was opened by a police officer who reached in and grabbed Brodie by the jacket, telling him to "get the fuck out." Brodie asked the officer what he had done. She felt it was unfair he was getting pulled out of the car as he had done nothing wrong. She recalls Brodie at the back of the car and the police officers asking him if he was "Brodie" and Brodie saying yes.

She stated an officer came to the car asking for identification. The officer also asked them if Brodie had problems with police officers.

When questioned by Defence counsel, Ms. Carlone stated Brodie was intoxicated, like a sleepy drunk; in the car he was swinging his head against the side of the car half-asleep. When questioned how many officers initially approached the passenger door, she replied her memory tells her three but she now thinks one as she was constantly asked, "Do you remember three officers?" that made her think about it. Logic tells her three officers would not ride in the same vehicle and that made her question the number of officers.

Having listened to these witnesses testify, one thing is consistent: Brodie Timms-Fryer was clearly under the influence of alcohol and he was told numerous times to remove his hands from his pockets. However, there seems to be considerable confusion as to what they observed and heard between the interactions of Brodie Timms-Fryer and Police Constable Challans.

Throughout this process I have kept in mind the presumption of innocence and the requirement that defendants are entitled to an acquittal unless the case against them is proved on clear and convincing evidence.

We require, as a routine part of their duties, that police officers conduct investigations and sometimes use force. Officers seldom have the luxury of relaxed contemplation when determining officer safety, or what degree of force is necessary to control an uncontrollable individual under the influence of alcohol. It will usually be impossible to gauge with "detail" how much force is required in these circumstances and in any given situation.

Constable Challans denies pulling Brodie Timms-Fryer from the vehicle. He told him to stop reaching into his pockets and to get out of the vehicle. Constable Challans testified Brodie got out of the vehicle, but continued to place his hands inside his jacket, despite numerous warnings.

In his evidence-in-chief, Brodie Timms-Fryer said that although he was

being pulled from the car, he was more or less compliant at this time.

I cannot conclude that I am comfortable with the way Constable Challans handled the incident upon approaching the vehicle, however, I must conclude I have no clear and convincing evidence before me as to what actually took place.

It was clear from the evidence of Constable Chambers that upon arriving at the scene he observed Brodie Timms-Fryer and Constable Challans at the rear of the vehicle. He noticed Brodie Timms-Fryer putting his hands inside his jacket and was concerned to the point that he shouted to Constable Challans he was grabbing something,

In determining a decision, I must be cognizant of the interpretations of the burden of proof of clear and convincing evidence, as well as ensuring that I must consider the whole of the evidence received and be satisfied that the elements of the allegations have been proven to the clear and convincing standard.

My duty as Hearing Officer, while ensuring procedural fairness and ultimately natural justice to both parties, is to hear the testimony of witnesses, receive exhibits and weigh the evidence provided. At the conclusion of this process I must decide if there is sufficient “weighty and cogent” evidence that leads me to conclude the evidence is clear and

convincing and find the subject officer has committed misconduct.

If I find at the end of the day that the evidence is not clear and convincing it is my duty to find the officer has not committed misconduct and dismiss the allegations.

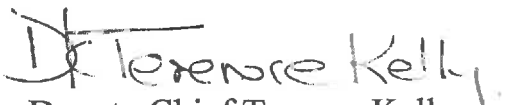
“Weighty, cogent and reliable evidence upon which a trier-of-fact, with care and caution, can come to the fair and reasonable conclusion that an officer is guilty of misconduct.”

My definition of “weighty” is important, material and deserving consideration, and “cogent” as compelling or convincing.

The Tribunal is not simply confronted with the choice between the two alternatives of accepting the prosecution’s evidence or that of the accused, but a third alternative exists where, in the view of conflicting evidence, a reasonable doubt exists as to where the truth of the matter lies. In such cases the benefit must go to the accused.

In this matter I find the prosecution has failed to prove its case on clear and convincing evidence and I find Police Constable Andrew Challans, Badge Number 134, Not Guilty of the charges before this Tribunal.

If I may add a final comment: It seems to this trier-of-fact that all the angst engendered in this case, culminating in these proceedings, could have been avoided if Mr. Justin Brodie Timms-Fryer had only complied with the police officer's routine and simple commands to remove his hands from his pockets.


Deputy Chief Terence Kelly
York Regional Police (Retired)
Hearing Officer

May 12, 2014