



**IN THE MATTER OF THE DEATH OF A MALE
FOLLOWING HIS INTERACTION WITH
AN OFF-DUTY MEMBER OF THE
VANCOUVER POLICE DEPARTMENT AND HIS
DETENTION AND ARREST BY
A MEMBER OF THE RCMP IN
THE CITY OF SURREY, BRITISH COLUMBIA
ON MARCH 19, 2018**

**DECISION OF THE CHIEF CIVILIAN DIRECTOR
OF THE INDEPENDENT INVESTIGATIONS OFFICE**

Chief Civilian Director:

Ronald J. MacDonald, Q.C.

General Counsel:

Clinton J. Sadlemyer, Q.C.

IIO File Number:

2018 - 037

Date of Release:

February 14, 2019

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Facts

On March 19, 2018, at 1:38 p.m., Surrey RCMP received a complaint that the Affected Person (AP) was causing a disturbance. An off-duty member of the Vancouver Police Department (Officer 1), who by the provisions of the *Police Act* falls within the jurisdiction of the Independent Investigations Office (IIO), was on scene when an RCMP officer (Officer 2) and others attended. AP was arrested and placed in handcuffs. Shortly after, AP stopped breathing and did not survive.

The IIO was notified by the RCMP at 3:13 p.m. The IIO commenced an investigation as AP died while in police custody.

Evidence collected during the investigation included the following:

- 1) Statements of five Civilian Witnesses (CWs 1 to 5);
- 2) Statements of four police officers;
- 3) Attendance at the Autopsy;
- 4) Preliminary Autopsy Report; and
- 5) Toxicology report.

Pursuant to section 17.4 of the Memorandum of Understanding between the IIO and BC Police Agencies, and consistent with the *Canadian Charter of Rights and Freedoms*, officers who are the subject of an investigation are not compelled to provide a statement, nor submit their notes, reports or data. In this case, the Subject Officers, Officer 1 and Officer 2, did not provide a statement, notes, reports or data.

CW 1 told the IIO that AP was seeking CW 1's assistance with a problem that AP was having. CW 1 said AP seemed to be okay until suddenly his demeanour changed and AP started screaming that people "*are out to get me.*" CW 1 convinced AP to come outside and the pair got into CW 1's car so CW 1 could give AP a ride home. As they were about to leave, AP got out of CW 1's car and ran off in the direction of where he was later arrested.

Some time later, CW 2 and CW 3, who were not far from where CW 1 last saw AP, noticed a man (AP) crawling on the road. AP was distraught, screaming, hollering and clawing at the roadway. CWs 2 and 3 saw an acquaintance, Officer 1 (who was off duty and in street clothes), and two other men (CW 4 and CW 5) near AP. All were maintaining a short distance (approximately three paces) between themselves and AP. CW 2 said Officer 1 was saying something to AP which CW 2 could not hear and one of the other men was directing traffic around AP.

CW 2 said AP asked Officer 1 whether he could see the lights and AP moved his arms as if to ward something off. CW 2 said AP screamed "*get out of here*" and "*I'm serious*" and tried to grab Officer 1's ankle, but Officer 1 moved away. Although no one was touching AP, he was yelling "*that hurts.*" CWs 2 and 3 said AP then got up and moved out of their sight.

CW 4 told the IIO that he and Officer 1 approached a man (AP) who was on the ground screaming. CW 4 said that as Officer 1 approached AP he tried to calm him down. CW 4 said AP, on his own, "*slid*" from the middle of the road towards a lawn and then CW 4 and Officer 1 steadied him by holding AP's arms to where AP laid down on the lawn and was calmer but was speaking "*gibberish*."

CW 4 said AP began attacking some bushes and was hurting himself on them. Another man they did not know (CW 5) came over and he, CW 4 and Officer 1 helped AP get down off the bushes and AP again calmed down. AP was given some water which he drank and then lied down on the ground, panting.

CWs 4 and 5 said a uniformed officer (Officer 2) arrived in a marked police vehicle and approached AP with a calm demeanor. Officer 2 asked AP for his name and AP gave his first name. CW 4 told the IIO the police used a lot of patience while dealing with AP who was "*raging*."

CW 4 told the IIO that Officer 2 started to put handcuffs on AP who appeared to be "*stiffing out*" and not letting Officer 2 handcuff him. CW 4 said Officer 2 addressed AP by his first name and said to AP to "*...calm down. We're just trying to help. Don't resist us.*" CW 4 said AP appeared to be exhausted.

CW 4 moved away and looked back and saw Officer 1, Officer 2 and CW 5 turn AP over and put the handcuffs on him. CW 4 said AP was "*growling*" at them while they struggled to handcuff him. CW 4 said no blows or other force was used and the only injury to AP was from when he had jumped on the bushes. CW 5 also told the IIO that neither CW 4 nor Officers 1 or 2 did anything to cause injury to AP, nor were any police tools used, such as OC Spray, Baton or Taser

CW 5 said that he put his hands on AP's back and held him down as the other two men held AP's legs and Officer 2 handcuffed him. CW 5 said AP was lying on the ground and appeared to be breathing normally; however, approximately one minute later when paramedics arrived and rolled AP over, he was not breathing. CW 5 said the handcuffs were removed and CPR commenced. AP was placed on a stretcher and moved into the back of the ambulance.

CW 5 directed police to items belonging to AP, including different types of medication.

An autopsy performed on AP revealed that he had no serious injuries that could have caused his death. The pathologist remarked that abrasions to the elbows, lower arms, knees, and shins of AP were consistent with witness observations that AP had been crawling on his hands and knees on the road. Both wrists displayed minor abrasions that were consistent with AP having been handcuffed. The pathologist also found that AP's right coronary artery was severely (80%) narrowed.

The toxicology report dated June 12, 2018 and which was received by the IIO on June 14, 2018 found that AP had fentanyl (within a therapeutic range) and methamphetamine (non-fatal levels) in his body. AP also had two other types of medication in his body (the same type found in his possession) both of which were in concentrations that have been associated with fatalities and which in combination “*can increase the risk of cardiac toxicity.*”

At the date of release of this decision, a final Autopsy Report has yet to have been received.

Relevant Legal Issues and Conclusion

The purpose of any IIO investigation is to determine whether an officer, through an action or inaction, may have committed any offence in relation to the incident that led to the injury to AP.

A police officer who is acting as required or authorized by law is, if he acts on reasonable grounds, justified in doing what he is required or authorized to do and in using as much force as is necessary for that purpose. If a police officer uses unreasonable or excessive force, those actions may constitute a criminal offence.

More specifically, the issue to be considered in this case is whether Officer 1 or Officer 2 may have used excessive force when AP was arrested. Had they done so, they may have committed manslaughter.

Officer 1 did not use any force prior to Officer 2’s arrival. When Officer 2 arrived, AP was seated. At that point Officer 2 was calm and used a great deal of patience while dealing with AP. While AP was initially calm when Officer 2 arrived, he had been causing a disturbance and was acting in a very unusual manner. Officer 2 remained calm and used AP’s name when speaking with him. When AP began to “*act out again,*” Officer 2 tried to settle AP and told him they were “*...just trying to help.*” When AP continued to “*act out,*” Officer 2 was under a duty to arrest AP for not only the safety of the people around him but for his own safety given AP had been crawling on and lying on the road where there was traffic.

As Officer 2 attempted to apply handcuffs, he told AP not to resist. AP continued to resist even though he appeared to be exhausted. Given the concentrations of the medications he had in his body, along with the 80% narrowing of his right coronary artery, this physical exertion was likely harmful to him.

Civilian witnesses noted no excessive force being used against AP. The pathologist found no evidence of injury to AP that reflected any use of force beyond AP being handcuffed. AP’s resistance to being handcuffed justified the minimal use of force exerted by Officers 1 and 2 and the civilian witnesses to achieve his being handcuffed.

The IIO had hoped to obtain the final pathologist report prior to releasing this public report. However, that remains outstanding. Given the passage of time, notwithstanding that a definitive cause of death remains pending, I have determined it is appropriate to release this public report. The bottom line is that there is no evidence to support a conclusion that either Officer 1 or Officer 2 exerted force against AP that was excessive or unreasonable.

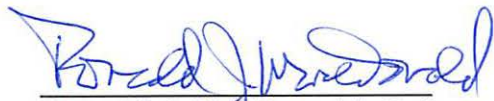
Rather, Officers 1 and 2 acted in a manner consistent with the duties of a police officer and in accordance with the law. They did what was required in the circumstances. The evidence collected does not provide grounds to consider any charges against any officer.

Accordingly, as the Chief Civilian Director of the IIO, I do not consider that an officer may have committed an offence under any enactment and therefore the matter will not be referred to Crown counsel for consideration of charges.



Clinton J. Sadlemyer, Q.C.
General Counsel

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Chief Civilian Director

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