



**IN THE MATTER OF THE INJURY OF A MALE  
WHILE BEING APPREHENDED BY MEMBERS OF THE  
VANCOUVER POLICE DEPARTMENT IN  
THE CITY OF VANCOUVER, BRITISH COLUMBIA  
ON FEBRUARY 1, 2017**

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

Chief Civilian Director:

Ronald J. MacDonald, Q.C.

IIO File Number:

2018-042

Date of Release:

August 8, 2019

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## **Introduction**

On April 4, 2018, the Independent Investigations Office (“IIO”) was contacted by the Affected Person (“AP”) in this case. AP reported that in February 2017, over a year earlier, he had been injured by members of the Vancouver Police Department (“VPD”). He said his injuries had included a concussion and broken ribs. The IIO commenced an investigation.

The narrative that follows is based on evidence collected and analyzed during the investigation, including the following:

- statements from AP and two other civilian witnesses;
- statement from an involved police witness officer;
- police Computer-Aided Dispatch (“CAD”) and Police Records Information Management Environment (“PRIME”) records;
- audio recordings of police dispatch traffic;
- Conducted Energy Weapon (“CEW”) data; and
- medical evidence, including statements from attending paramedics.

Pursuant to section 17.4 of the Memorandum of Understanding between the IIO and BC Police Agencies, officers who are the subject of an investigation are not compelled to submit their notes, reports and data. In this case, the injuries suffered by AP appeared to be connected to significant force used by three of the officers involved in his arrest, and the three officers were designated as subject officers. All three subject officers permitted access to their PRIME reports but declined to be interviewed by investigators.

## **Narrative**

### ***Civilian Witnesses***

#### **Civilian Witness 1 (“CW1”)**

CW1 told investigators that on February 1, 2017, she had met with AP at around 2:00 to 2:20 a.m. She said she talked with him for about fifteen minutes. She then told him to get a ride home with CW2, who was across the street, and gave him some cash for food. AP seemed fine at that time, she said, and he left with CW2. Later that day, she was informed that the AP was in police custody after being tasered, hit in the legs by a car, “thrown into a dumpster” and beaten up by police.

CW1 was aware that AP was subject to a court-ordered curfew at the time, and was in breach of the curfew by being out on the streets in the middle of the night.

## **Civilian Witness 2 (“CW2”)**

CW2 recalled agreeing to give AP a ride home on the night in question. They stopped on the way, she said, on West Pender Street. AP was supposed to be going into a fast food restaurant for food but instead, she said, he ran into a hotel where she knew a friend of his lived. When she texted him to ask what he was doing, he said he was going to make his own way home, so she left. AP later told her that after she left he had gone to a convenience store with a friend and had subsequently been arrested by the police.

### ***AP’s Account***

AP told investigators that on the night in question, shortly after being in the company of CW1 and CW2 and going to a fast food restaurant and to a convenience store on Abbott Street for cigarettes, he was stopped by police while he was walking home. He said he was walking down Cambie Street between Pender and Hastings when two plain-clothes police officers pulled their vehicle into his path and detained him. He said the officers told him the stop was for spitting on the sidewalk.

AP said that a confrontation ensued and he tried to walk away, and was “shot with a taser in the back.” He described in some detail how the shock from the CEW made his muscles “stiffen,” and caused him to go down on one knee, unable to defend himself. Then, he said, he was “thrown to the ground, hit in the head multiple times.” The strikes, he said, were with a baton, and were delivered to “the side of the head above the left ear ... the right and left eye sockets ... the right side of my ribs.” He said he was punched and kicked in the lower back while on the ground “numerous times.” AP recalled that other police vehicles arrived, and other officers participated in the beating. Three to four more blows to his head, he said, then knocked him unconscious, and he woke up later in hospital with “bruises all over my body [and] bootprints on my forehead.”

Asked for more detail about what he was doing before being stopped by police, AP said that he had gone with CW2 to a fast food restaurant, but CW2 had to go back to work so she had dropped him off for him to get a cab home. He then said that they had gone to a convenience store on Abbott Street, not a restaurant, and he had met a friend there. He said he had known this individual for several years, did not know the person’s name, and “thought” the person was female. At another point, AP told investigators that when the incident occurred, CW2 was only “a half-block away,” and had just dropped him off moments before: “she was literally just leaving me.”

Asked again about what he was doing when tasered by the officers, AP said that he was cooperating, and was just turning “to go get handcuffed” after being told he was being detained and would be issued with a ticket. He also said that he was just stepping away

from the door of the police vehicle to allow the officers to exit the vehicle, when he was forcibly turned around by the officer who was the passenger.

In the course of repeating his account to investigators, AP at one point said that other officers had arrived while he was being beaten by SO1 and SO2, and had joined them in the assault. At another point he provided a different version, in which he had simply been beaten unconscious by several blows to the head from SO1 or SO2, and had woken up in the hospital, with no mention of any participation by any other officer.

AP told investigators that he had been charged with possession of illicit identity documents, but that he had not been in possession of any, even though he had subsequently entered a guilty plea to the charge. Investigators were aware that AP had also been charged with possession of a large sheath knife in breach of a bail condition not to possess weapons, but AP denied having possessed any weapon, saying he could not remember what the breach charge had been about.

## ***Police Account***

### **Subject Officer 1 (“SO1”)**

SO1 reported that on the night in question he and SO2 were patrolling downtown Vancouver in an unmarked police vehicle. At about 3:38 a.m. they were driving northbound in the 500 block of the lane between Richards and Hamilton Streets when they stopped to check a male (AP) seen spitting on the ground (a by-law offence). Asked what he was doing, said SO1, AP told them he was going to a friend’s house. AP’s right eye was swollen partly shut, and SO1 said AP told the officers he had just been pepper sprayed on Abbott Street, at a convenience store (police had been called to a pepper spraying incident at that location about fifteen minutes earlier).

AP verbally provided identification details, which the officers tried unsuccessfully to verify through the police database. While they were doing this, said SO1, AP became nervous and ran off “at a full sprint.” The two officers chased AP to the 300 block of Dunsmuir Street and into the 500 block of Hamilton, where they tried to arrest him for obstruction. SO1 stated that AP resisted, fighting and kicking, so SO1 tried unsuccessfully to subdue him with pepper spray. SO2 struck AP’s arms two to three times with a baton in an attempt to apply handcuffs, but SO1 was then distracted by the approach of a second unidentified male who “rushed” at the officers, shouting, and SO2 lost control of AP.

AP broke free and ran away across Victory Square (which is bounded by Pender, Hamilton, Hastings and Cambie Streets) into an alley north of Pender between Cambie and Abbott. As other attending officers tried to block his path, said SO1, AP lost his

balance attempting to evade them and fell to the pavement. He was finally taken into custody after “actively fighting” with the arresting officers and “screaming wildly in an apparent psychosis.” SO1 said that “several stunning strikes were delivered in attempts to subdue the suspect” with little effect. SO1 stated that he believed AP was “in full drug psychosis” at the time.

AP was transported to hospital with a head injury. Once he had been searched and his true identity had been established, the initial obstruction arrest was expanded to include charges for breach of his curfew condition and a no-weapons condition (he was found to be in possession of a large hunting/survival knife), and for resisting arrest. He was also found to be in possession of “numerous” identification documents in other persons’ names and two brand new iPhones still in the original packaging, and was charged further with unlawful possession of the identity documents.

### **Subject Officer 2 (“SO2”)**

In SO2’s police statement, the officer described essentially the same sequence of events as SO1. He stated that while chasing AP, both he and SO1 repeatedly told AP he was under arrest for obstruction and to stop running. AP refused, he said, telling the officers “I didn’t do anything wrong.”

During the interaction on Hamilton Street, said SO2, AP raised his hands in a “fighter’s stance,” and SO2 drew his baton and struck AP three times on the right thigh. SO2 went on to describe the continuing foot chase into the alley by Victory Square, and his retracing of the route to retrieve clothing and other items thrown aside by AP as he ran, as well as SO2’s handcuffs that had been dropped during the struggle on Hamilton Street.

### **Subject Officer 3 (“SO3”)**

SO3 reported having responded to a call from SO1 that he was chasing a male suspect, and then hearing that SO1 and SO2 were struggling with the male and needed more police resources. As he approached Victory Square, emergency lights and siren activated, SO3 saw AP running towards him in the middle of the road. AP, he said, turned back and ran into a lane.

SO3 said he tried three times to cut AP off with his police vehicle, but each time AP evaded him and kept running. On the fourth attempt, said SO3, he was successful in stopping AP’s flight, and got out of his car to challenge him. AP turned to run back in the direction he had come, but SO3 was able to grab his shirt and one arm, and spun him around. AP, he said, was still trying to run and fell onto the pavement, landing on the left side of his face. SO3 said that as he was struggling to control AP, including delivering two

open palm strikes to his shoulders, other officers arrived to assist and AP was taken into custody.

### **Witness Officer 1 (“WO1”)**

WO1 told investigators that, responding to a priority radio call, he found an unattended police vehicle in the 500 block of Hamilton Street (the first block south of Pender). He drove on to the intersection of Pender and Hamilton, and saw a male (AP) running through Victory Square pursued by SO1 and SO2. AP was running towards an alley leading from the east side of the park on Cambie eastwards to Abbott Street, so WO1 drove around to the east end of the alley to cut AP off.

Midway in the alley, he saw SO3’s stationary police vehicle, its emergency lights flashing. Just beyond the vehicle, WO1 said he found AP fighting with SO3. AP, he said, was grabbing at SO3’s body and waist, trying to pull himself up and throwing punches, so WO1 kicked AP once in the bicep to deaden the arm, and then assisted in handcuffing him. The time was now 3:47 a.m.

Officers’ reports including WO1’s describe AP, even after being restrained, continuing to kick at police, spitting, screaming and swearing. He was placed in a hobble to control the kicking, and in a spit mask.

### **VPD Data**

Audio recordings of the police radio dispatch channel corroborate the narrative set out in officer reports and confirm the timeline. An initial call indicates a pursuit northbound on Hamilton, followed by the announcement of “one in custody” in the 500 block of Hamilton. After a lengthy period of silence, Dispatch asks for confirmation that the situation is under control, and there is a breathless response that officers are getting an individual “into cuffs.” A few seconds later, though, the same officer calls for “some more units,” and other officers respond. Then there is an update, with police sirens audible in the background, that the suspect is “heading north into Victory Square,” and a request for a unit to go to the east end of the alley north of Pender. Finally, officers radio that [AP] is actually in custody, request paramedics to attend because he is “having a seizure,” and cancel the earlier call for more police resources.

VPD equipment records show that of the involved officers only SO1 and WO1 were carrying a Taser on the night in question. A data download from SO1’s weapon obtained by IIO investigators indicated that it had been armed during the encounter with AP, but had not been fired. WO1’s Taser had not been turned on at any point. This evidence contradicts AP’s detailed statement about being “shot with a taser in the back.”

## ***Medical Evidence***

AP was subsequently diagnosed with “healing” left side seventh and eighth rib fractures, a “small laceration” on the left side of his head that was repaired with staples, and some facial contusions. Despite repeated attempts by IIO investigators to obtain clarification, the medical evidence remains ambiguous regarding the age of the rib injuries, but the adjective “healing” strongly suggests that the injury was not caused on the night of the incident under investigation here.

## **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 injuries to the affected person. More specifically, the issue to be considered in this case is whether an officer may have used force against AP that was unauthorized, unnecessary or excessive, in which case that officer may have committed the offence of assault causing bodily harm. In judging whether the evidence would support such a conclusion here, I have to evaluate two rather different versions of the incident.

AP has told the IIO, in essence, that he was simply attacked and viciously beaten by police officers for no legitimate reason. Acceptance of AP’s allegations would lead to a conclusion that an offence or offences had been committed by the officers involved.

There are difficulties, though, with AP’s narrative. As set out above, his statement to IIO investigators is not consistent from one point to the next. Indeed, he seems to tell quite different stories. His evidence is also directly contradicted by the evidence of CW2. There is conflict, also, between AP’s allegation that a Taser was used against him and reliable evidence indicating that no CEW was deployed during the incident.

On the other hand, the account provided by the subject officers in their reports is quite consistent. It is also corroborated by witness officer statements and by recorded radio transmissions made in the course of the unfolding incident. The officers’ account details an attempt to identify AP and issue him a bylaw ticket, that worsened into obstruction, evasion and an extended foot chase with physical struggles on the part of several officers to overcome AP’s determined resistance. On this latter point, the radio transmissions confirm the footchase, which the AP does not refer to at all.

In addition, the medical evidence suggests AP’s injuries were not nearly as significant as he described. For example, his ribs seem to have been injured on an earlier date. As well, while he did have injuries to his head and face, they were not consistent with the multiple blows he described receiving to his head area by fists and police weapons. They are



consistent with a fall to the ground while being finally arrested, as well as having more than one struggle on the ground with police.

Access by IIO investigators to the duty reports of the subject officers has assisted the investigation to a significant extent, and the demonstrated reliability of the narrative they set out makes it possible for me to reach a confident conclusion in this matter. While it is unfortunate that physical harm to AP resulted, ultimately, from an incident with rather trivial origins, it cannot be said that the officers involved used force that was unauthorized, unnecessary or excessive.

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.

A handwritten signature in blue ink that reads "Ronald J. MacDonald". The signature is written in a cursive style and is positioned above a horizontal line.

**Ronald J. MacDonald, QC**  
**Chief Civilian Director**

August 8, 2019  
**Date of Release**