



**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 NOVEMBER 4, 2018**

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

Chief Civilian Director:

Ronald J. MacDonald, Q.C.

IIO File Number:

2018-142

Date of Release:

October 25, 2019

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Introduction

In the early morning hours of November 4, 2018, Vancouver Police Department (“VPD”) officers became aware that a vehicle driven by the Affected Person (“AP”) in this case was bearing a stolen licence plate. The suspect vehicle was rammed and disabled by an unmarked VPD car. AP fled on foot and was taken down and arrested after a struggle involving several VPD officers. He suffered serious injuries that appear to have been caused in the course of that struggle. The Independent Investigations Office (IIO) was notified and commenced an investigation.

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

- statements of AP and seven police officers;
- police Computer-Aided Dispatch (“CAD”) and Police Records Information Management Environment (“PRIME”) records;
- a VPD accident reconstruction analysis report; and
- medical evidence.

Narrative

In the early morning hours of November 4, 2018, AP was driving on the streets of East Vancouver. He was seen by Witness Officer 1 (“WO1”) making a series of “really aggressive” turns, which caught her attention. AP was not speeding, and WO1 did not suggest that anything in AP’s driving concerned her other than an appearance of evasiveness. It was dark, and raining heavily, with poor visibility.

WO1 followed the suspect vehicle and queried the plate. The response from Dispatch was that the plate was stolen, so WO1 called for other units to attend and assist. There is no evidence that in the minutes leading up to AP’s arrest involved officers were aware of any more serious offence than possession of a stolen licence plate.

The suspect vehicle, WO1 said, continued to make hard turns around several blocks, but was otherwise driving normally, and WO1, following behind it, did not make any attempt to pull it over. WO1 said that at one point, though, another police vehicle, its emergency lights activated, blocked the suspect vehicle’s passage on East 29th Avenue. The driver of the suspect vehicle, said WO1, “made an evasive manoeuvre to try to get round him, and ended up colliding with the police vehicle and a parked car”. The driver of the suspect vehicle, she said, “took off westbound at a full sprint on the north sidewalk.” WO1 pulled in and stayed at the crash scene to secure the vehicles while other officers chased AP on foot, yelling “police, stop.”

WO2 was driving the intercepting police vehicle. It was an unmarked car with a heavy bull bar attached at the front. WO2 pulled out from a side street, drove onto East 29th in the oncoming lane, and turned on his emergency lights. He estimated that at this point the approaching suspect vehicle was travelling at “below fifty, or about fifty [km/hr].” WO3, the front seat passenger in

WO2's police car, estimated the speed of the vehicle driven by AP as "about forty to fifty kilometres per hour."

In response to WO2's manoeuvre, AP swerved to his left, but WO2 countered by swerving right, into AP's path. WO3 said that AP's vehicle was accelerating at the time and struck the police vehicle, which WO2 was now steering diagonally across the path of the suspect vehicle, at the front driver's side corner. Both vehicles then "bounced" sideways into a parked car.

The police vehicle was heavily damaged despite its front-end ramming reinforcements, and the vehicle driven by AP suffered so much damage (including having one wheel torn off) that it was subsequently written off by the insurer, as was the parked car. Despite the extensive damage to the vehicles, though, it does not appear that any of the vehicles' three occupants (AP and two officers) suffered any significant injury in the collision.

AP immediately exited his vehicle and ran off on foot. He was pursued first by WO2, with WO3 following. WO2 pulled AP to the ground less than a block away, on the boulevard area. WO2 acknowledged AP's allegation that a "lateral neck restraint" was used in an attempt to control the struggling AP. WO2 said he had experience of a previous violent encounter with AP, and that on this occasion AP was "thrashing around, fighting, grabbing my face, clawing at my eyes and my arms and whatever ... he was fighting me pretty hard."

WO2 denied using any strikes, but said that some were applied by other officers, though he did not see which officer(s) had done so.

WO3 acknowledged delivering "two knee strikes" to AP's left thigh in an unsuccessful attempt to stop AP's resistance to WO2. He did not provide evidence regarding the use of force by any other officer.

WO4 arrived at the arrest scene and tried to control AP's right arm, concerned, he said, that AP might have a weapon. He acknowledged kicking AP once on the right side, "to his kind of arm, kind of side body area." Unable to pull AP's right arm out from under him, WO4 said he then also "delivered one knee strike into this area of his upper right-side body." WO4 described AP as "huge ... really strong ... screaming and yelling," violently bucking and struggling under WO2 with "super strength," trying to throw him off.

WO4 told investigators he could not recall where other officers were situated around AP during the struggle.

WO5 said that when he arrived at the scene, AP was "pulling away and trying to get up," displaying more strength than "a normal person would." WO5 said he tried unsuccessfully to control AP's legs with a "leg lock," and then delivered several knee strikes and closed fist punches to AP's lower back.

WO5 said he did not notice the actions of the other officers, although he did know, he said, that the others were on the upper half of AP's body.

WO6 said that during the struggle AP “was reaching towards his waistband and he kept reaching there so in order to get his arms out from underneath him I knee struck him several times in his right thigh, upper thigh area, just in the large muscle mass of the thigh, like quadricep hamstring area.” WO6 characterized AP as “fighting super hard ... pulling away, thrashing all over the place,” and described AP as “really big ... like wide and like quite thick.” WO6 viewed AP as particularly dangerous, he said, as he believed AP had “rammed one of our police cars ... he’s already, in my mind, used a high level of force against us, using his vehicle to hit, potentially try and injure one of us.”

WO6 said that he did not see any specific use of force by any other officer.

WO7 arrived last to the scene, and although the officers were still having trouble holding AP down and controlling him, he said, he was able to get handcuffs onto AP’s wrists.

WO7 said he did not see any force option applied by any other officer.

AP told IIO investigators that as he lay on the ground, unresisting, even after he was handcuffed, officers had passed by “hitting my head, kicking my face ... for maybe two to three, four minutes ... they don’t stop, kick me, punch me on the head, that I don’t know who’s punching me, I don’t know who’s hurting me.”

AP was diagnosed with displaced fractures of the right ninth, tenth and eleventh ribs, two other fractures of the right tenth rib and a displaced fracture of the left transverse process of the L4 vertebra. He also had some facial abrasions.

Legal Issues and Conclusion

AP has made allegations that, if credited, would warrant charges of assault against unidentified officers. Those allegations though—unprovoked kicks and other blows to the face and head—are not borne out by the medical evidence. The only injuries to AP’s face or head appear to have been some scratches attributable to his having been taken down onto the ground and the ensuing face-down struggle. The allegations are also contradicted—or at least not corroborated—by the evidence of all the involved officers.

When one considers the circumstances—an extended struggle to control and arrest a large, strong, aggressive man who had just been involved in a serious collision with a police vehicle and had immediately fled on foot—the levels of force used by the officers cannot be said to have been excessive.

Regardless of the cause of the collision, AP’s actions following it certainly made WO2 and WO3 aware that AP was strongly motivated to escape. WO2 was not alleged by AP to have used excessive force, other than AP’s complaint that a neck hold was applied, and on the evidence provided, WO3 only struck AP’s thigh.

Officers arriving subsequently were apparently under the impression that the vehicle collision had been a violent assaultive act by AP, so their risk assessments were correspondingly heightened.

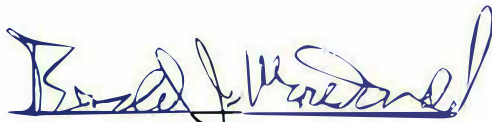
WO5, on the evidence, dealt principally with AP's legs and back, and does not appear to have used any force that caused injury.

WO6's strikes, according to his account, were only to AP's thigh area, and his partner WO7 does not appear to have delivered any strikes at all.

The injury to AP's ribs on his right side appear most likely to have been the result of a kick and a knee strike used by WO4, which he said were delivered in aid of gaining control of AP's right arm and hand at a time when the officer was concerned about the possible presence of a weapon. It cannot be said, in the circumstances, that those strikes were beyond what was justifiable in bringing AP under control.

In summary, there is insufficient evidence with respect to the manner of the take-down and arrest to conclude that any officer committed an offence during that part of the incident.

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.



Ronald J. MacDonald, Q.C.
Chief Civilian Director

October 25, 2019

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