



**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 DECEMBER 12, 2018**

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

Chief Civilian Director:

Ronald J. MacDonald, Q.C.

IIO File Number:

2019-016

Date of Release:

December 5, 2019

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Introduction

The incident in this case occurred on December 12, 2018, but the IIO was not notified until January 22, 2019, following a complaint to the Office of the Police Complaint Commissioner. The report was that there had been an interaction between Vancouver Police Department officers and the Affected Person ("AP"), and that AP had subsequently been taken to hospital. His injuries did not initially appear to be serious, but were subsequently found to include broken ribs and a collapsed lung. Once the IIO was notified, investigators determined that the injuries were sufficiently serious to meet the threshold for IIO jurisdiction, and an investigation was commenced.

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

- statements of AP, a civilian witness, two paramedics and seven police witness officers;
- 911 line and police radio audio recordings;
- police Computer-Aided Dispatch ("CAD") and Police Records Information Management Environment ("PRIME") records; and
- medical records.

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 Subject Officers ("SO1" and "SO2") permitted access to their PRIME reports about the incident.

Narrative

Affected Person

On the evening of December 12, 2018, AP found himself, lost and confused, in the backyard of a home in East Vancouver. He had not eaten, slept or taken his prescription medication for several days, and was in what he later described as "a sleepwalking state." He told IIO investigators that he had been in the yard for fifteen to twenty minutes, going up and down the back steps in confusion, when an unidentified man came into the yard. The man asked him if he was on drugs, AP said, and then punched him twice in the face. AP stated that the man then did a "spinning kick," striking AP in the back of his head and causing him to fall to the ground.

AP said that two other men then joined the first, and said the first man jumped and stomped on AP's back for a period AP estimated as about 45 minutes. AP said he was

vomiting, and felt as if he was drowning because he was inhaling vomit and water from the ground.

After this, AP said, he was handcuffed and taken to the front of the house, where he was deliberately tripped so that he fell onto his tailbone. He was then taken to hospital, where he said he “woke up” on December 15 or 16.

At the hospital, medical records show AP acknowledged having consumed ketamine on the day in question. He was diagnosed as suffering from broken ribs and a pneumothorax (collapsed lung). He was committed at the hospital under the *Mental Health Act*. Three days later, on December 15, 2018, he was discharged.

Civilian Witness

IIO investigators received a rather different account of the incident from the resident of the home where it took place.

This civilian witness (“CW”) said that on the evening of December 12, 2018, she had been at home with her two young children. She described becoming aware of a man (AP) in the backyard, behaving strangely. He was dancing and jumping around waving his arms, she said, and appeared to be under the influence of drugs. CW called to AP, asking him what he was doing in her yard and, receiving no response, she told him to go away. When she saw him repeatedly leaving but then returning, CW called police. SO1 arrived and called out to AP in what CW described as a friendly manner. AP, though, went to the officer and started fighting with him, taking SO1 down onto the ground. CW, who was still on the phone with police dispatch, told the dispatcher what was happening. As she watched, she saw AP punch SO1 angrily several times.

A second officer (SO2) then arrived, said CW, and was able to get AP handcuffed, although he was still struggling furiously, “growling like a bear.” CW saw punches being delivered to AP’s side and back as officers fought to restrain him.

Police Evidence

In his PRIME report, SO1 stated that on the evening in question he was dispatched to a call about a suspicious person who was standing at the door of the complainant (CW) and refusing to leave. When he entered the back yard, said SO1, he saw a male (AP) standing at the back door, and questioned him. Based on AP’s behaviour and his admission of drug use, SO1 told AP he was under arrest for being intoxicated in a public place, and told him to put his hands behind his back.

After initially complying, SO1 said AP suddenly turned and tackled SO1 to the ground. SO1 struck the back of his head on the ground, and found AP now on top of him, hitting him in the face. As they struggled, SO2 came on the scene and knocked AP partially off SO1. The struggle continued on the ground, and SO1 said that in the course of it he was kicked and knocked to the ground again by AP, and lost his handcuffs, flashlight, pen, notebook, pistol magazine and radio microphone. SO1 acknowledged having punched at AP several times in an attempt to stun him, though he believed only one or two blows had landed. He said that he and SO2 were only able to restrain AP after other officers arrived to assist. SO1 suffered relatively minor injuries in the incident, including scrapes and soreness.

SO2 wrote that he and SO1 were called to attend at a residence where there was a complaint of a male dancing and jumping around in the back yard and refusing to leave. SO1 made contact with the male, said SO2, and shortly afterwards SO2 heard the sounds of yelling and fighting. Running to the scene, SO2 saw AP mounted on top of SO1, and ran forward to push AP off. SO2 said the officers repeatedly told AP he was under arrest and to stop resisting. When they were unsuccessful in controlling AP, SO2 radioed for assistance from other members. SO2 acknowledged having struck AP several times with a closed hand in an attempt to gain compliance.

Witness Officer 1 ("WO1") told investigators that he had responded to a call of a male fighting with a police officer in a back yard. Arriving on scene, he found SO1 and SO2 fighting with AP, and said he assisted by controlling one of AP's legs as the officers attempted to apply handcuffs. WO1 said that in doing so, he delivered two or three punches to AP's leg to get compliance. He said that once AP was under control he was escorted to the front of the residence and taken to hospital.

WO2 arrived with WO1, approximately two minutes after receiving the initial call about a male fighting with officers. He found SO1 and SO2 still struggling to control AP, who he said was screaming profanities and lashing out in what WO2 described as appearing to be "drug-fueled rage." WO2 said he struck AP several times in attempts to distract AP sufficiently for other officers to get handcuffs on him.

WO3 initially arrived at the scene shortly after SO1 and SO2, answering the call about a suspicious male. Seeing that other officers were already there, WO3 left, but was recalled shortly after in response to an update saying that the male was fighting with officers. He said he found officers attempting to control AP, who was now lying face down on the ground. WO3 was able to gain control of AP's right arm, and applied handcuffs.

WO4 was riding with WO3. He told investigators that when they were called back to assist the officers trying to arrest AP, he heard shouting from the back yard: "Police, stop

fighting.” Running forward, WO4 said, he found officers pinning a struggling male to the ground, and helped control and cuff the male’s wrists.

When WO5 arrived on scene, AP had stopped struggling and was sitting on the ground in handcuffs. WO5 described seeing AP stand up on his own and walk to the front of the residence, where she said he was cooperative and apologetic as he waited for an ambulance to arrive to transport him to hospital.

The accounts from the police officers are consistent with the parts of the incident observed and described by CW, and are also corroborated by the audio recordings of police radio transmissions during the incident.

Paramedics

Two attending paramedics were interviewed by IIO investigators. They described finding a relatively calm scene: AP in handcuffs, sitting against a police vehicle; police officers standing around with relaxed demeanours.

AP was “not very compliant” with the assessment procedure. He was seen to have cuts on his face, and was complaining of a sore back. He did not appear to have any serious injury, and was able to walk to the ambulance by himself without difficulty. The transport to hospital, with a police officer escort, was described as uneventful.

Legal Issues and Conclusion

The purpose of any IIO investigation is to determine whether there are reasonable grounds to believe that an officer, through an action or inaction, may have committed any offence in relation to the incident that led to AP’s injuries. More specifically, the issue to be considered in this case is whether an officer may have committed the offence of assault causing bodily harm through the use of unjustified or excessive force. If the officers were acting as required or authorized by law, on reasonable grounds, they were justified in using as much force as was necessary. Use of unauthorized or excessive force, on the other hand, could result in criminal liability.

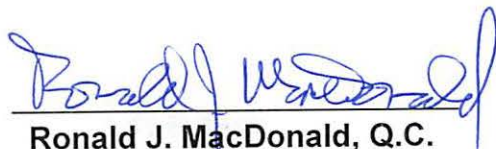
AP’s recollection was of a serious unprovoked attack against him by SO1, an attack that was continued for a very lengthy period by SO1 and other officers. If that account were reliable, it would constitute reasonable grounds to find that an assault had been committed. In the circumstances, though, it cannot be said that AP’s recollection of the evening in question is reliable. The account itself is somewhat implausible, and is contradicted by those of several police officers and, significantly, by a civilian eyewitness. The difficulties with AP’s recall are not surprising, given what he has told IIO investigators—and what was observed—about his condition that evening. Indeed, his

statement that he did not “wake up” until some days later has the ring of truth as AP was never actually reported as being unconscious during the incident or later in hospital.

On the evidence that appears reliable, all involved officers were acting in the execution of their duty in responding to the complaint that AP was trespassing in CW’s back yard, and to the further call that he was fighting with police. That evidence also indicates that AP was the initial aggressor, that for a while he had the upper hand over SO1, and that he fought long and hard against the efforts of several officers to restrain him and place him under arrest.

The force used to overcome his resistance, including blows from fists, was clearly significant, but in these circumstances was not unreasonable or excessive. Indeed, based on the credible evidence that force was necessary: first to protect SO1 from an unlawful assault by AP, and then to control him so he could be handcuffed and successfully placed in custody. None of this evidence supports a finding that force was used against AP once he was under control.

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

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