



**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 AUGUST 3, 2019**

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

Chief Civilian Director:

Ronald J. MacDonald, Q.C.

IIO File Number:

2019-139

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Introduction

On the evening of August 3, 2019, Vancouver Police Department ('VPD') officers were called to David Lam Park in Vancouver to deal with a nuisance complaint about people drinking and partying in the park. An officer attempted to detain the Affected Person ('AP') on the grounds that AP had not left the area as ordered and was apparently in possession of open liquor. AP fought with police and fled, finally jumping from a raised area and breaking his wrist before being arrested. Because of the injury had occurred in connection with the actions of police officers, 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 two civilian witnesses;
- statements of seven witness police officers;
- scene examination, including photographic and video evidence;
- police Computer-Aided Dispatch ('CAD') and Police Records Information Management Environment ('PRIME') records;
- 911 line recordings; 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 Officer ('SO') permitted access to his PRIME report.

Narrative

AP told IIO investigators that on the evening of August 3, 2019, he was at a park in the Yaletown area of Vancouver with some friends, "listening to music and having a good time, drinking some stuff." At about 11:30 p.m., he said, police officers came and told the group to leave. AP said that his friend had left his wallet behind, so AP returned to the park. While he was there, he said, a plain-clothes officer called out to him. Someone told AP to run, and he did. He said the officer chased him and "tackled" him "to the floor." AP said his shirt was torn and his chest started bleeding from being scraped on the ground. He said he was able to escape from the officer and ran off again, with police officers chasing him, ripping his shirt off and trying to "Taser" him. AP said he saw Tasers in the hands of officers, and heard the sounds of "electricity" as they were fired at him.

After evading the pursuit, AP said, he hid for a few minutes, and then went back towards the park. He said he talked briefly with a group of young women, asking for directions to the Skytrain station. He said he then saw a vehicle pull up, and the driver came running

towards him, yelling "Stop!" Scared, AP ran again, and climbed over the railing at the edge of a raised patio area beside the park. Looking down, he said, he realized that there was a long drop below onto concrete, but seeing officers close behind him he "dropped" to the ground below, landing on a small grassy area beside the concrete. "When I jumped from the balcony, I broke my wrist," he said, and finding himself in "so much pain," he decided to wait for police. He said officers arrived and took him to the ground, handcuffing him despite his protests that his wrist was injured. He was taken from the scene by ambulance to hospital, where it was confirmed that he had suffered a broken wrist.

AP told investigators that he was drinking beer at the park party. He acknowledged that when he fled from police he was holding a bottle of vodka, but said that it was not open. He said that he was "a little confused" on the evening in question.

What prompted police to go to the park that evening was a complaint about a noisy group of partiers. Witness Officers 1 and 2 ('WO1' and 'WO2') attended, and were also made aware of a previous complaint about a homeless encampment nearby. Shortly after 11:00 p.m. the two officers, who were in plain clothes, approached a group of approximately thirty to fifty young people who were drinking alcohol and playing loud music. WO1 and WO2 illuminated their badges with their flashlights and identified themselves as police officers. They announced that the park was closed and that the crowd must leave.

The group cooperated, pouring out their open alcohol and dispersing, and the two officers then moved toward the area involved in the earlier complaint. When they got there, they saw a smaller group of the youths who were still at the park, AP among them. WO1 told IIO investigators that he noticed a half-full bottle of what he believed to be gin or vodka in AP's hand, and called out to AP to stop. WO2 described AP walking away from WO1, "obviously trying to avoid" him. WO2 went towards his police vehicle as WO1 started to chase AP on foot, shouting "Vancouver police, stop!"

WO1 said that running after AP he found him stopped half a block away in the middle of the street. He said that when he approached AP and told him he was under arrest for a liquor offence, AP "started fighting," and they fell to the ground, causing the liquor bottle in AP's hand to smash. AP was trying to strike WO1 with his hands and was struggling to get away, said WO1, adding "I began to fear for my safety as the male now appeared to turn assaultive towards me and not just actively resisting me." In response, WO1 said, he struck AP "with one punch to the face to subdue him, so I could get him into handcuffs." AP, though, was able to pull free, his shirt being ripped from him as he did so.

As AP ran off, WO1 activated his emergency radio tone and broadcast that AP was arrestable for assaulting a peace officer. Seeing the fight, WO2 ran after AP, but lost sight of him. He broadcast for additional police units to attend to set up containment and search

for AP. WO3 and SO arrived in response to WO1's call, and found him "disoriented" and "possibly concussed." AP had fled in a westerly direction.

A few minutes later, WO2 located AP as AP headed back towards the park. WO2 followed AP at a distance, watching as he walked out onto a small plaza on top of the False Creek Pump Station, on the west side of the park. At about this time, WO6 parked nearby, and WO3 and SO also arrived in their police vehicle and parked. All the officers started to converge on the plaza where AP was located. WO6, who was a canine officer with a Police Service Dog ('PSD'), saw AP with a group of young women, and saw people turning towards WO6, saying "Cops!" WO6 said AP "disappeared into the darkness," and WO6 did not pursue, but returned to his vehicle.

WO2 saw AP react to the presence of police by running across the plaza to a railing at the far side. WO2, WO3 and SO were all moving towards the plaza but before they could reach it, AP climbed over the railing and jumped. WO2 said that when he reached the railing and looked down, he saw AP on a patch of grass about 25 feet below, making a "grunting sound" before getting up and running away. WO3 ran to a staircase on the north side of the plaza, followed by WO2 and SO. As they descended, they saw AP running northeast into the park.

Meanwhile, WO4 and WO5 had just arrived on the north side of the park to assist in the arrest of AP, on the understanding that he had committed an assault on a peace officer. WO3 said that as AP was running about fifteen or twenty metres ahead of her, she saw WO4 come through the bushes and collide with AP.

WO4 told investigators that as he came down the steps from the side of the park he saw a shirtless male (AP) run past, and tackled him, but slipped on the wet grass and was unable to hold onto AP. As WO4 got up, he saw SO on AP's legs as AP "flailed" on the ground, resisting the officer. WO2 said that as he arrived he saw both WO4 and SO trying to restrain AP, who was "kicking and thrashing violently."

WO2 told investigators that he was thinking "okay, this guy has already assaulted my partner, now he is doing everything he can to get away, I'm thinking this guy needs to be brought under control right now just to prevent any more injuries to anybody. So I take out my baton, I extend my baton, and I strike him on his calf and buttocks area, three to five times, to bring him under control and eventually we are able to place him in handcuffs."

WO5 also assisted with the arrest, helping to hold AP down, and confirmed that he saw WO2 deliver baton strikes to AP's legs, but said that the strikes were initially ineffective in bringing AP under control. WO3 joined in, holding onto AP's right arm and noticing that

there was an injury to his wrist. WO7 was finally able to place handcuffs on AP trying, he said, to place them so they would not aggravate the injury.

WO4 told investigators that he understood SO had also delivered baton strikes to AP, but could not say what part of AP's body had been struck. It was uncertain initially whether those baton strikes had caused or increased an injury to AP; this uncertainty led to SO's designation. The IIO was subsequently provided access to SO's PRIME report, the relevant part of which reads as follows:

[SO] observed the male running east across the large open field at which time the suspect was tackled [by] a PC. The suspect began to stand up and [SO] believed that the male was determined to either continue to flee or attack PCs as he had already demonstrated his propensity for violence. Based on the above [SO] categorized the suspect's behaviour as assaultive and drew his Peacekeeper baton and extended it. The male stood up and [SO] delivered a baton strike to the suspect's left thigh, bringing him to the ground. The male began flailing his arms at PCs and kicking towards them. In response [SO] delivered a second baton strike to the suspect's left thigh which was effective and the suspect was handcuffed without further issue.

It is now clear that the only serious injury suffered by AP was a broken right wrist. That injury, by AP's own admission, was caused when he jumped from the plaza railing.

There is no evidence that any officer deployed a Taser during the incident.

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 an incident resulting in serious harm or death. More specifically, the issue to be considered in this case is whether any officer may have used excessive force or otherwise acted improperly in connection with the apprehension of AP and with the injuries he suffered.

On their initial attendance, WO1 and WO2 were acting lawfully, in execution of their duty, when they dealt with a group of youths who were causing a disturbance and committing provincial liquor offences by drinking in a public park. They simply broke up the crowd and moved them on as they were authorized to do.

Subsequently, when WO1 saw one of the group (AP) who had either not moved away, or had come back to the park, and also saw that he was still in possession of open liquor, he was justified in seeking to stop and deal with him. From both AP's account and that of WO1 it is clear that AP was non-compliant and unwilling to be detained, and that there was a physical struggle, in which AP suffered a torn shirt and some scrapes to his chest.

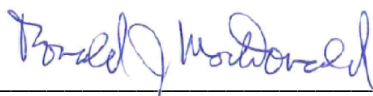
WO1 was acting within his lawful authority and did not use excessive force in trying to arrest and control AP in this part of the incident.

When AP later returned to the park a second time, it was his own action in jumping from the plaza railing that caused the injury to his wrist. There is no suggestion that any action by any officer contributed to that injury, other than the fact that police were (with justification) approaching AP and he was unwilling to submit to their authority.

Having jumped from the plaza at the southwest edge of the park, and having broken his wrist in the fall, AP told investigators, he waited where he was until officers arrived. That assertion does not accord with the physical layout of the park and the established movements of the officers. The evidence shows that AP ran a significant distance across the grassy area of the park to the point where WO4 and WO5 came through the bushes on the north side and AP was tackled to the ground. It is clear that he was still trying to evade capture at this time, and was struggling vigorously against the arresting officers.

In those circumstances, particularly considering that AP was now arrestable for assaulting a peace officer, WO2 and SO were justified in deploying baton strikes to gain compliance so that AP could be handcuffed and finally brought under control, which took the combined efforts of six officers to achieve. There is no evidence that AP suffered any injury from those strikes or from any other application of force during the arrest.

Accordingly, as the Chief Civilian Director of the IIO, I do not consider that there are reasonable grounds to believe 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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