



**IN THE MATTER OF THE INJURY OF A MALE
IN CONNECTION WITH THE ACTIONS OF AN OFF-DUTY MEMBER
OF THE PORT MOODY POLICE DEPARTMENT IN
THE CITY OF COQUITLAM, BRITISH COLUMBIA
ON NOVEMBER 23, 2019**

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

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

IIO File Number: 2019-217

Date of Release: July 15, 2020

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Introduction

In the early morning hours of November 23, 2019, as patrons left a public house in Coquitlam, there was a physical altercation on the street between the Affected Person ('AP') and an off-duty police officer, the Subject Officer ('SO'). The incident resulted in injuries to both participants, and the injuries suffered by AP were sufficiently serious that the 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 three civilian witnesses and six witness police officers;
- an unsolicited allegation from the subject officer;
- police Computer-Aided Dispatch ('CAD') and Police Records Information Management Environment ('PRIME') records;
- audio recordings of 911 emergency line and RCMP radio transmissions;
- scene and other photographic evidence;
- Closed-Circuit Television ('CCTV') recordings from commercial premises; and
- medical evidence.

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 provide evidence to the IIO. In this case, SO made a brief unsolicited statement and provided access to his medical records, but provided no other evidence.

AP declined to provide a statement to the IIO, but gave consent for investigators to take photographs of his injuries and to access medical records related to them.

Narrative

At about 1:30 a.m. on November 23, 2019, AP was with a group of patrons leaving a public house in Coquitlam. They had been drinking alcoholic beverages, and Civilian Witness 1 ('CW1'), AP's girlfriend, said "I wouldn't say [AP] was hammered, but he was almost getting to that point".

CW1 told IIO investigators that at the end of the pub parking lot a man was lying unconscious on the ground, and she called 911. Police and paramedics arrived and dealt with the man. Meanwhile, AP, who had been "told [by police] to walk away", had moved on along the street. CW1 noticed that he was now in the company of three other males.

CW1 said that she saw one of the males, subsequently identified as SO, turn round and punch AP “repeatedly” in the face. CW1 said AP stumbled backwards and fell to the ground unmoving, with SO and one of his companions on top of AP, “stomping” on his chest and face. CW1 said she tried to push the attackers off AP, but they grabbed her and pushed her away. She said she was left with bruises on her arm and scratches on her knee. Uniformed police officers came from the location along the street where paramedics were tending to the unconscious man, and SO was arrested and placed in handcuffs. AP had suffered a broken orbital bone as well as scrapes and bruises. In giving this account to IIO investigators, CW1 acknowledged that she was quite intoxicated at the time of the incident.

CW2, AP’s sister, rated her own level of intoxication that night as “seven out of ten”. She described seeing fighting break out down the street between AP and three males. She said that AP fell down and was kicked by “maybe” two of the males. She said she tried to break up the fight but was pushed and fell down. She said she took AP to the hospital in a taxi because he refused to go in an ambulance.

CW3, another member of the group, said she had consumed only three drinks and was relatively sober. She said that someone had approached them and told them that they should go to check on AP because he was “down the street without his shirt on”. She said she found CW1 across the parking lot, tending to a man who was lying on the ground with abrasions on his head. AP had continued on down the street, and his three female companions started walking after him. As they did so, three males that CW3 had seen earlier in the pub passed, and CW3 said that AP’s sister CW2 “chatted” with the males and appeared to be flirting with them.

As the three males continued on and passed AP, CW3 said, she thought one of them said something to AP like “where’s your shirt?” and one of them (SO) then “lunged” at AP and they started hitting each other. CW3 said that both AP and SO were punching, though her impression was that AP’s punches were not effective, possibly because of his intoxication. CW3 said that SO’s two companions became involved, apparently trying to break up the fight. CW1 and CW2 were pushed aside when they tried to intervene, and ended up on the ground. CW3 said that a blow from SO appeared to knock AP out, and he fell to the ground. Police arrived shortly afterwards and arrested SO.

SO’s two companions on the night in question were Witness Officers 1 and 2 (‘WO1’ and ‘WO2’). All three men were off-duty police officers. WO1 told IIO investigators that as the three walked away from the pub along the street they encountered a “bigger” male (AP) who was shirtless and in the company of three or four females. WO1 said that WO2 asked AP “Hey, where’s your shirt, man?” and AP became “focussed” on WO2. WO1 said that

SO stepped between AP and WO2 and AP took a fighting stance and began throwing punches at SO. The females then intervened, WO1 said, and a “grappling match” ensued, obstructing his view. He said he saw AP go down to the ground, and saw SO put his foot down towards AP’s chest, as if to try to hold AP down.

WO1 said that SO was initially arrested by attending on-duty police officers, but was subsequently released. Later that night, WO1 said, SO complained of pain in his shoulder and said he could not move his arm, saying that the injury had been caused by AP. WO1 told investigators that SO acknowledged kicking at AP, striking him in the face.

WO2 was also interviewed by IIO investigators. He described spending about four hours at the pub on the night in question in the company of SO and WO1. He said that when the three men left the pub he was “not super intoxicated” but would not have been fit to drive. As they walked along the street, he said, a shirtless male (AP) came over to them and seemed to have “an issue” with SO. WO2 said that AP appeared to be drunk and aggressive, with fists and teeth clenched. WO2 said that AP threw a punch at SO, who defended himself and knocked AP to the ground. WO2 said that because SO was between him and AP, he did not see what SO had done to cause AP to go down. AP got up, WO2 said, but then fell back to the ground, apparently unconscious. WO2 told investigators that SO is a black belt martial artist.

WO3 told investigators that she was on duty on the night in question, and responded to a call about a male said to be acting in a loud and aggressive manner. When she arrived she found AP standing beside a male lying unconscious and injured on the ground. CW1 was also present. WO3 said she told AP to leave, as he was “obviously intoxicated”. She said that AP had no top on, and wanted his sweater, which was under the head of the male on the ground. Two or three minutes after AP and CW1 left, WO3 said, she heard yelling and screaming from a couple of blocks down the street. WO4 and WO5 left the scene and went to investigate.

WO4 described attending at the scene where an injured male was lying on the ground near the pub, and seeing AP standing nearby. She said AP was clearly intoxicated, with slurred speech and unsteady on his feet. WO4 then heard a female screaming down the street and when she went there she found AP lying on the ground and CW1 yelling at the three off-duty officers. WO4 said that CW1 accused SO of being the aggressor, so she placed SO in handcuffs. She said that SO was calm, and did not appear to be intoxicated.

WO4 said SO told her that AP “took a swing” at him, so he swung back. AP got back up and took another swing, SO continued, so SO hit him with a “one-two jab” and AP fell unconscious to the ground. Questioning WO1 and WO2, WO4 said, she received similar

accounts from them. WO4 acknowledged at her IIO interview that she had made no notes of these matters. WO4 said she concluded that there had been a consensual fight, and released SO.

WO5 told investigators that he was with WO4 at the scene, and reported similar observations. He said he talked to CW2, and she told him that the group had been drinking at the pub and that she did not know what had happened. WO5 said that both WO1 and WO2 urged him to check the video from nearby commercial premises. He said that before leaving for the hospital, AP told him that he could not recall what had happened.

WO6 also attended at the scene shortly after the incident. He said he first saw AP near the pub, and said AP was highly intoxicated and disruptive, so was asked to leave. WO6 said he next saw AP sitting on the curb down the street being tended to by three females, and saw the three off-duty officers standing some distance off. WO6 described AP as brash and uncooperative, and said AP refused initially to go to hospital. WO6 said he received an account from WO1 and WO2 that was similar to that reported by WO4. WO6 said that SO appeared remorseful, and was saying he did not intend to hurt anyone.

Though he declined to provide a formal statement to the IIO after being designated as a subject officer, SO said “I have a freedom of information request regarding my shoulder injury after he attacked me, I would like to provide them”. He later provided the IIO with a copy of his medical records.

IIO investigators canvassed the neighbourhood for useful CCTV recordings, but were unable to find any that showed 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 SO may have committed an assault causing bodily harm against AP.

The attending police officers viewed the incident as a consensual fight that should not result in a criminal charge. However, under Canadian law a person cannot consent legally to the infliction upon them of deliberate force causing non-trivial harm. The real issue here was not whether AP and SO entered into a consensual fight, but whether SO was entitled to rely on self-defence. The quality of eyewitness evidence in that regard was less than perfect:

- AP has not given any account, either to the police or to the IIO;
- CW1, AP's girlfriend, described an apparently unprovoked attack by SO involving repeated punches and "stomping", but was evidently highly intoxicated at the time;
- CW2, AP's sister, was also significantly intoxicated, could only give a rather vague description of the incident, seen from a distance, and told attending officers that she did not know what had happened;
- CW3, who does appear to have been fairly sober at the time, described an initial "lunging" by SO at AP, but also told investigators that the two men were hitting each other;
- WO1 and WO2, both friends of SO, and who had both been drinking—although apparently not to excess—gave accounts that were not entirely consistent but were both clear in saying that AP had been the initial aggressor in the fight (both told IIO investigators that they could not see what SO did in the interaction, even though they were standing very close by and looking in the direction of the incident, suggesting they should have been able to see most, if not all, of what happened);
- SO has not given evidence formally to the IIO, but he is on record as alleging that AP attacked him, and is said by WO1 both to have accused AP of having injured him and to have acknowledged kicking at AP, possibly striking AP in the face.

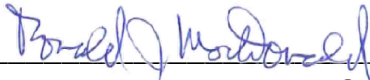
The reported demeanour of the parties when police attended is informative. AP was said to have been brash, uncooperative and highly intoxicated. SO, on the other hand, even after having been handcuffed, was reported as being calm and cooperative, as were his two companions. Particularly instructive is the report that both WO1 and WO2 urged attending officers to obtain video evidence of the incident, strongly suggesting they believed the video would support their contentions that SO was acting in self-defence.

It is not possible, on the available evidence, to be sure what actually happened in this case. The more likely sequence of events appears to be that the three off-duty officers were passing AP when one of them made a remark about his shirtless state on a cold night, AP reacted aggressively and was met with a robust physical response from SO. It seems unlikely that any of the officers would have had any motivation to attack AP, a large intoxicated man, and more likely that the blows that SO struck were struck in self-defence.

The most likely cause of AP's main injury was a punch to the face from SO, though on the evidence it is possible that it was the result of a kick that was intended to keep AP

down and that struck him in the face, either deliberately or accidentally. Neither would amount to an assault if it was intended to prevent or deter AP from continuing his initial aggression.

Accordingly, as the Chief Civilian Director of the IIO, I do not consider that the evidence is capable of creating 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

July 15, 2020

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