



**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 OCTOBER 6, 2019**

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

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

IIO File Number: 2019-189

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Introduction

On the afternoon of October 6, 2019, two Vancouver Police Department ('VPD') officers encountered the Affected Person ('AP'), who had been the subject of earlier complaints from members of the public. AP was uncooperative and became assaultive. The Subject Officer ('SO') deployed a Conducted Energy Weapon ('CEW') and one of its probes struck and punctured an aerosol can in AP's pants pocket. The can contained a flammable substance, which caught fire, causing serious burns to AP. AP fled but was apprehended by the two officers, both of whom used baton strikes in the course of subduing him. Because AP had suffered serious harm 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, one civilian eyewitness, four paramedics and one witness police officer;
- police Computer-Aided Dispatch ('CAD') and Police Records Information Management Environment ('PRIME') records;
- recordings of 911 calls and police radio traffic;
- photographs of the incident and of the scene, and physical exhibits;
- policing standards and VPD regulations and policies
- police training records;
- download of CEW data; 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 submit their notes, reports and data. In this case, SO gave access to his incident report on PRIME.

Narrative

Affected Person

AP told IIO investigators that on October 6, 2019, he was walking in downtown Vancouver and along the seawall, and was talking to "about a hundred people", saying "Jesus loves you". The people, AP said, "all smiled ... a hundred out of a hundred". However, he added,

At about the hundred and oneth [sic] person ... six, seven or eight Vancouver police officers, they came out of nowhere and they all pulled their batons out ... and they started beating me as hard as they could, from all angles, my legs, my

back, my head ... and they gave me nine staples in the head, they cracked my skull open ... then they pulled out all their Tasers, and it was like one after the other, they batonned me and then they Tasered me, they Tasered me from all angles ... and the last Taser hit an aerosol can in my right pocket ... and engulfed my whole body in flames, from head to toe ... and then I prayed to God, and the fire went out.

Through the course of the incident, AP said, he did not move more than “ten or twenty feet”. AP said that he “stopped, dropped and rolled” to put the fire out, and the officers immediately lifted him onto a bench and started “playing with” his clothes, and “started touching me in the weirdest places”. AP said the police did not say a word to him, either before or during their assaults on him. He could offer no explanation for what had happened.

Complaints from Civilians

Evidence providing an explanation is found in recordings of 911 calls and police dispatch transmissions on the afternoon in question. At 2:12 p.m., the VPD emergency line received a complaint that a male had been harassing a couple in downtown Vancouver. The male was said to have bothered them over several blocks, “talking about heaven and hell and people having sex with children”. One of the complainants said the male had knocked his phone out of his hand while he was trying to call 911, and had spat at him. SO and the Witness Officer (“WO”) responded to the call, but the male had left and was not located.

Then, at 2:59 p.m., a second complaint was received on the police emergency line. A male matching the description of the male who had been the subject of the earlier complaint was said to have been bothering women, touching their arms and telling them he loved them, and Jesus loved them as well. SO and WO again responded, and drove along the seawall in the area where the male was last seen.

Subject Officer

SO wrote in his Occurrence Report that shortly after arriving on the seawall the two officers saw AP, who matched the description of the male they were looking for. SO said AP was yelling at passing cyclists. SO said he noticed an object beside AP that had the appearance of a yellow X-Acto knife (a retractable-blade box cutter). WO stopped the police car and turned on the emergency lights. SO got out of the car, approached AP and told AP the officers wanted to speak with him. SO said that AP started to walk away, and as SO walked up behind him, AP “suddenly swung his right hand/arm towards [SO] (at a back hand striking motion) ... [AP] then faced [SO] and put both his fists up in front of his face, in a fighting ‘boxer’ stance, appearing to be ready to fight”.

SO said that because of AP's pre-assaultive behaviour and the concern he may be in possession of an X-Acto knife, he feared that AP posed a risk of imminent bodily harm to SO or to WO. He drew his CEW and fired it at AP. AP immediately burst into flames, with fire covering most of his body. AP fell to the ground and rolled around for about five seconds, said SO, and managed to extinguish the flames.

SO said that AP then got to his feet and raised his fists again in the fighting stance before running off into an area of bushes, pursued by SO. Finding his way blocked, AP almost immediately turned back towards SO, and SO struck him "two or three times with the issued baton, striking [AP's] lower left leg area".

AP ran on towards the seawall, said SO, but fell in the course of evading the pursuing officers and "fell hard on the concrete". As he ran back onto the grassy area, AP told the officers "I give up", and was taken to the ground and handcuffed.

SO said that while the officers were with AP, waiting for paramedics to attend and deal with AP's burns and bleeding head, and remove a CEW dart embedded in his chest, he called SO "Mom", and told SO he loved him.

While still at the scene, SO discovered that the source of the fire had been an aerosol body spray canister in AP's pocket. What had appeared to be a yellow X-Acto knife was actually a piece of yellow wrapping paper.

Witness Officer

SO's partner, WO, described the incident in an interview with the IIO. He said he was the driver of the police vehicle in which he and SO responded to the complaints about AP. He recalled first seeing AP, whose appearance matched the description of the male they were looking for, sitting on a bench beside the seawall bicycle path, yelling at passing cyclists.

SO was the first out of the vehicle as WO activated the emergency lights. WO said that as he approached AP, calling out "Hey, Vancouver Police", he saw that SO was already with him. WO said he saw AP, still on the bench or partway off it, "take a swing, with his right hand, towards [SO]. At that time, or shortly after that, he got up and he started running away from us". WO said that SO was able to dodge AP's swing, but in WO's mind the incident had now changed from an assault to an assault on a peace officer.

Both officers chased AP across the park. WO said that AP was not running in a straight line, so some times WO was closer to him, and at other times SO was. "At some point", as WO managed to close the distance with AP, with SO behind and to WO's right, WO

heard a “pop” and saw that SO had deployed his CEW. Immediately there were flames from AP’s knees up to his chest. Alarmed, WO said he yelled at AP to stop.

WO said AP ran a further few steps into the park, then fell to the ground and tore off his shirt. He then got up and ran again, chased by the officers. By this time the fire in his clothes was out. As WO ran, he radioed for paramedics. He said AP ran into some bushes on the far side of an open grassy area, then reversed direction and ran back across the grass with the officers still in pursuit. WO said he felt he needed to “increase his use of force”, so he struck at AP’s left thigh “several times” with his duty baton, which was not initially effective. After a little more time, though, WO was able to bring AP down onto the ground using a head lock.

Asked about his risk assessment in dealing with AP, WO told investigators that, given the earlier complaints about AP’s behaviour and his assault on SO, he judged that it was necessary to “interact with” AP to avert the risk of continued offending, “at a minimum breaching the peace”, and the danger that might involve to people walking in the area.

Asked to describe exactly what was happening at the moment SO deployed his CEW at AP, WO said that at that moment, AP was running away from the officers in an animated “zig zag” manner, three to five feet ahead of WO. He said he did not hear SO say anything before firing the CEW.

Asked how he was planning, himself, to apprehend AP, WO said he would have taken him down using an “arm bar lock” or similar technique, but was having difficulty deciding when and how to do that, where to place his hands on AP, because AP was running “all over the place”, erratically and “not in a clear direction”. WO said he had not considered it necessary, up to this point to take out either his baton or his OC (pepper) spray (his CEW was in the trunk of his patrol vehicle).

WO also said, though, that he was not surprised that SO used the CEW: “[SO] must have assessed something and determined that there was... that was the appropriate force required, and ... as long as there is a potential for imminent bodily harm, the Taser is a tool to assist us in safely bringing somebody into custody”. WO said he felt, himself, that at the time he was at an imminent risk of bodily harm from the fleeing AP, because “I knew that we were dealing with a person that is unpredictable, assaultive, and if I was by myself I would be extremely nervous and afraid for my own safety if I had to deal with him by myself”. The presence of his partner SO, said WO, “does not mean that the risk or potential of imminent bodily harm to myself is completely eliminated”. Asked why he felt he was still at risk of imminent bodily harm from a person who was running away from him, WO explained that this was “because any time I interact with somebody there is always that potential of them punching me, kicking me ... people have kicked me, people have punched me, so there is definitely the risk”.

Asked why he felt it necessary to use his extendable baton on AP as he ran from the officers, WO said “I thought that this guy had superhuman strength and maybe he was under the influence of something, because he wasn’t giving up and he wasn’t complying with our commands”.

Once he had AP under control on the grass, WO said, he noticed blood from a wound on AP’s head. Asked how the injury had occurred, WO said he had no idea.

Asked if he interacted with the paramedics, or went with AP in the ambulance, WO said no, that had been SO. WO said he did not hear any interaction between AP and the paramedics: “It was [SO] who was with the male when he was transported to VGH in the ambulance”. WO drove some distance behind in the police vehicle, and heard SO broadcast for assistance in controlling AP in the back of the ambulance, but the situation was resolved before WO arrived to help.

Asked about discussions between the two officers after the incident, WO said SO told him that:

he had initially observed an object, a yellow object, that resembled to him as an X-Acto knife ... he said, basically, the male had immediate access to this object that he was talking about, and [SO] told me that the Taser was deployed because he thought he saw that object, which he thought was an X-Acto knife.

WO confirmed that no weapon was found in AP’s possession. Subsequently, WO said, SO said he had recovered an item that he had perceived to be an X-Acto knife.

Civilian Eyewitness

A civilian eyewitness (‘CW’) told investigators that shortly before the incident he was walking on the seawall. He saw a “homeless man” (AP) sitting on a bench “screaming ‘hi’” to passersby. CW said he said hello to AP who responded with surprise, saying that CW was the only one who had said “hi” back.

CW said he saw a police cruiser come along the seawall and pull up beside AP. He said that he saw two officers get out of the car and go over to AP. Feeling that something might happen, CW took out his camera. He said that he watched as the two officers stood in front of AP, who was still sitting on the bench, talking to him. Then, after “ten to fifteen seconds”, AP suddenly ran away. CW described what happened this way:

[AP] throws a couple of punches at them, but he misses, and he keeps running. So the police officers tell him to get down and they pull out a Taser and they shoot him, and then he bursts into flames, and then he’s running away on fire, screaming...

As soon as he started running, they chased him. And then probably a couple of seconds in, maybe ten seconds into the chase, [AP] started throwing punches at them, at the police officers, but the punches, they all missed, and then sort of like probably five seconds after those punches were thrown, the Taser was brought out and then he was shot with the Taser...

When they were chasing him, [AP] turned around for probably a second to try to throw punches. At this point I think the officers were probably six or seven, maybe six feet away, so there's no chance that they would land, um, and then that's when [AP] turned around to run away and then the officers tased him...

It looked to me like [AP] just wanted to get away, like he just wanted to run.

CW said AP was “ten to fifteen feet” from the officers when he was shot, facing or turning away from them. He said that after bursting into flames AP fell, stripped off his upper clothing and ran off into the bushes, with the officers chasing him. He said they “got their batons out” and after a few minutes more were able to apprehend AP. He described AP running from the grass onto the concrete walkway for a short distance before turning back onto the grass, but did not mention AP falling on the concrete.

Photographic Evidence

CW took a series of photographs of the incident. The most significant is one showing the physical relationship of AP to SO and WO at the moment SO deployed the CEW. AP appears to be running from left to right in front of the two officers, and WO is attempting to kick AP with his left leg. SO is slightly behind and to the right of WO, and the CEW wires can be seen extending to an area around the front of AP's right side. This confirms that AP was close to and facing SO when the CEW was used.

Paramedic Statement

Professional Witness 1 ('PW1'), an attending paramedic, told investigators that an officer who “may have been the arresting officer” explained that AP “was running from them. They used a Taser to stop him, and when they tased him they basically just saw a flash and flames”. PW1 said that “the arresting officer” seemed “like quite concerned about the whole incident. I guess the flash for him was totally unexpected, and he just showed concern over having injured this guy”.

Policing Standards

B.C.'s Provincial Policing Standards prohibit an officer from discharging a CEW at a person unless that person is either actually causing bodily harm to someone at the time,

or is doing something that causes the officer reasonably to believe that the person will imminently cause bodily harm to someone.

Medical Evidence

AP suffered second- and third-degree burns to his thighs, genitals and buttocks covering 7.5 per cent of his total body area. He also had a three centimetre laceration on the left side of his forehead, requiring several staples to close. A CEW barb was removed the right side of his abdomen.

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 the offence of assault with a weapon or assault causing bodily harm when he deployed the CEW, and whether either officer may have committed an offence in their subsequent use of police batons against AP. 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.

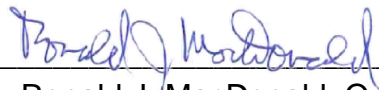
The officers were acting lawfully when they approached AP and attempted to apprehend him in response to reports that he had previously committed assaultive acts against civilians. On the evidence of the officers and of CW, AP then committed further assaultive acts against SO. Given this, and AP's continued non-compliance and resistance, the officers were justified in using a reasonable degree of force in taking AP into custody.

WO, who was not carrying a CEW, said he would have used physical control techniques, whereas SO chose to use his CEW, which is considered an intermediate force weapon. It is important to note that there was potential for injury to AP from either technique, and in fact deployment of a CEW is generally more likely to result in an individual being taken into custody safely and without significant harm. That would almost certainly have been the outcome in this case if the entirely unforeseeable interaction between the CEW and the aerosol can had not occurred. The fire caused by that occurrence can be characterized as a freak accident, and can not in any way have been anticipated by SO.

It is perhaps understandable that AP continued to flee from police, considering what he had just experienced. His continued flight and aggressive resistance, however, gave the officers little option but to pursue him and bring him under control as expeditiously as

possible, both for the safety of the public and to obtain urgent medical attention for AP himself. The use of baton strikes to the legs was reasonably necessary and proportionate in those circumstances, and evidently led to an effective conclusion to the incident. AP did suffer a cut to his head which may well have been unintentionally caused during a baton swing toward the legs. The photographic evidence suggests AP was “bobbing and weaving” during the encounter, which could explain such a strike. However, other than the unexpected fire and the laceration to the head, he suffered little other injury. This suggests the police use of force was not excessive, but what was necessary in the circumstances.

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

July 17, 2020

Date of Release