



**IN THE MATTER OF THE INJURY OF A MALE  
WHILE BEING APPREHENDED BY MEMBERS OF THE  
VANCOUVER POLICE DEPARTMENT IN  
VANCOUVER, BRITISH COLUMBIA  
ON JUNE 10, 2021**

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

Chief Civilian Director:

Ronald J. MacDonald, Q.C.

IIO File Number:

2021-153

Date of Release:

January 27, 2022

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## **INTRODUCTION**

On the evening of June 10, 2021, officers from the Vancouver Police Department ('VPD') responded to a complaint that a male was yelling at a female in a car, at an address in East Vancouver. Officers entered a residence nearby and engaged in a physical interaction with the Affected Person ('AP'), who was injured during the interaction. 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, three other civilian witnesses and two witness police officers;
- police Computer-Aided Dispatch ('CAD') and Police Records Information Management Environment ('PRIME') records;
- audio recordings of a 911 call and police radio transmissions;
- B.C. Emergency Health Services records;
- civilian witness cell phone video;
- VPD policies; and
- medical evidence.

The IIO does not compel officers who are the subject of an investigation to submit their notes, reports and data. In this case, neither of the two Subject Officers has provided any account of their actions to the IIO.

## **NARRATIVE**

At about 8:50 p.m. on June 10, 2021, Civilian Witness 1 ('CW1') called 911 to report that she had heard a male and a female arguing in a parked vehicle. She said that the male had thrown a can towards her and had told her to "fuck off". CW1 told the call-taker that the male was yelling and had threatened to hurt the female. CW1 stated that the female had been crying and "screaming for help".

Witness Officer 1 ('WO1') told IIO investigators that he arrived on scene at 9:12 p.m. and spoke with CW1. He said that CW1 told him the male had threatened the female that he would "smash her face in". WO1 said that he went and spoke with the female (CW2), who appeared to have been crying. She told him that she had been in an argument with her boyfriend, the Affected Person ('AP'). WO1 was then approached by AP's sister CW3,

who came from a nearby residence and told him that the argument had been “no big deal”. CW2 and CW3 then went into the residence.

WO1 told the IIO that as two other officers, Subject Officers 1 and 2 (‘SO1’ and ‘SO2’), arrived, CW2 came out of the residence and told him, “I can’t talk to you”. WO1 said that CW2 was looking back towards the house, and appeared afraid. He said that he could see AP inside the house, yelling and screaming, moving around and closing blinds. WO1 told the Subject Officers that he believed AP had assaulted and/or threatened CW2. SO1 and SO2 went to the house and were met at the front door by AP, who described what he recalled happening next:

*I said it didn’t have anything to do with me, so there was nothing to talk about. I went to close the door, but the cop put his foot in the door. I walked away from the door. Both cops followed me in. One officer pulled out his baton, and he and his partner both threatened me. They swung at me and I tried to grab the baton.*

AP said that both Subject Officers struck him with batons. He said he was never told he was under arrest, and was never charged with anything. The next day, he said, he went to the hospital and was found to have a broken arm.

CW2 told the IIO that as police pushed their way into the house, she heard one officer express concern because AP is “a big guy”. CW2 continued:

*Then one cop had his baton out and was hitting [AP] non-stop. [WO1] was blocking us from going to the living room where one officer was beating up [AP]. I have never seen anything like that. They were screaming at him and beating him. [AP] wasn’t doing anything aggressive. On the way out, [AP] said his face hurt, his arm hurt and his leg. He thought his jaw was broken.*

CW3 told IIO investigators that she came home to find that CW2 and AP had been arguing outside the house, and she told them to go inside. She said that AP was angry, and that he was “swearing a lot”. She described police officers arriving outside and asking her to tell AP to come out of the house. She said that AP refused, saying, “No, they don’t have a warrant”, but she persuaded him to come to the door to talk with the officers. She said that one of the officers put his foot in the door, and when she tried to close it, two officers came in, backing AP farther into the residence. CW3 said that AP backed into the living room with the two officers following him. She said that AP asked them, “What are you guys doing? You don’t have a warrant”.

CW3 said that the two Subject Officers immediately pulled out their batons and started hitting AP, while WO1 stood blocking the entrance to the living room. She said that AP was trying to defend himself by grabbing at the batons, but said she heard a crack and believed that this was when AP's arm was broken. CW3 said she did not recall anything being said by police to indicate that AP was under arrest or detention. He was handcuffed and was walked outside, and as she followed she was told AP was being arrested for disturbing the peace.

WO1 stated that he saw SO1 and SO2 go to the residence, and saw AP come to the door. WO1 said that AP was presenting "pre-assaultive cues", swearing, yelling, puffing up his chest and clenching his fists. AP told the officers his name, but would not come outside and tried to close the door. SO1 blocked the door with his boot and told AP he was "detained for domestic assault". WO1 said he saw AP turn and walk back into the house, and his risk assessment "immediately escalated", as "we don't know who is inside, what he has access to".

SO1 and SO2 followed AP into the living room, where, WO1 stated, AP raised his fists and said, "Fuck you, let's fucking go". WO1 said he only saw one baton strike, which seemed to have no effect. He told investigators that he then turned away to deal with CW2 and CW3, and when he looked back, AP was on the floor. The video referred to below confirms this. He said AP was helped up by the two Subject Officers and was walked out of the house.

Cell phone video of part of the incident was taken by another party in the home who did not provide a statement to the IIO. It was taken through the opening into the living room from the kitchen, and seems to begin at the start of the confrontation between SO1 and SO2 and AP. It is clear from the video that AP is a bigger man than either SO. He is taller and broader, and appears large and strong. Initially the officers can be seen in the room and AP is mostly out of view to the left. SO2, who is to the right of the room, can be seen to swing his baton at AP. It appears as though contact is made with AP's left forearm. AP then quickly enters the scene from the left with his right hand out and clenched in a fist, and his left arm out as if to block blows. The SO's have placed themselves several feet apart, so that AP has two targets. AP 'dances' toward the SO's in an aggressive manner, looking as though he is about to throw punches. SO1, closest to the camera, swings his baton in AP's direction, although it does not appear that strike made contact with AP. SO1 can then be seen to swing his baton again. Again it is unclear what if any contact is made. Each of SO1's baton strikes utilize a compact swing with the baton starting at the shoulder. Then SO2, who had been out of the scene to the right, comes at AP while holding his baton in each hand parallel to the floor, using it to push AP to the floor. Once AP is down it is not possible to confirm if other baton strikes are taken, although it seems

as though SO1 struck AP in the legs. No other strikes are seen. This entire sequence takes approximately 6 seconds. AP is quickly controlled and held down by the two SO's, with handcuffs fully applied by the 43-second mark, and with AP being walked out by the officers after a minute and twenty-five seconds. As he walks by CW2 he is heard to say to her, "Is that what you wanted?"

During the interaction CW2 can be heard screaming, "stop hitting him", and WO1 can be seen blocking the doorway, telling the family members to "relax". As the officers handcuff AP, face down on the floor, CW3 tells WO1, "Please, I need you out of my house", and WO1 responds, "I tried to tell you we're here for an assault, okay?" Multiple voices tell him, "There was no assault". WO1, very calmly, then says,

*But that's what we're trying to figure out, okay? ... So we're here to make sure that [CW2's] okay, that you guys are okay, okay? We're just trying to talk to him, okay? All he had to do was come outside and have a chat with us. If everything was fine, we were going to leave, okay? But he was pretty confrontational and clearly wanted to go.*

While at the scene, AP complained of pain in his jaw, but not his arm. Paramedics came to the scene to assess AP, but he declined medical treatment. Once taken to cells he was examined by the nurse on staff there. AP said he had been hit a couple of times by a baton, and the nurse noted some bruising. She said AP did not complain of other injury. AP was released from cells a few hours later. In spite of the evidence from CW1 and other evidence, AP was not charged with any offence.

The following day he went to hospital where x-rays revealed the fracture to his forearm, of a nature consistent with being hit by a baton. He had no other injuries that constituted serious harm.

## **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 an officer may have used unauthorized, unnecessary or excessive force against AP, thereby committing the offence of assault with a weapon or assault causing bodily harm.

The officers were acting lawfully, in execution of their duty, when they attended outside the residence in response to a report of a domestic argument and threatening language.

The information they had gave them reasonable grounds to believe AP had uttered a significant threat to harm CW2, giving them grounds to arrest him. Their observations indicated that AP was inside the residence, and that he was angry. They had a duty to investigate the matter, and to ensure CW2 was safe. This included taking AP into custody for at least some period of time to fully assess the situation. Thus it was fully appropriate for them to approach and detain or arrest AP in order to question him about the allegations, and to ask him to open the door of the residence for that purpose.

The *Criminal Code* requires a police officer to seek judicial authorization before effecting an arrest in a dwelling house (a private residence). Thus when the two Subject Officers pushed their way into the home and followed AP to the living room, an issue arose as to the continued lawfulness of their actions. That requirement, though, is subject to limited exceptions for 'exigent circumstances', specified in the *Code* as including where there are 'reasonable grounds to suspect that entry into the dwelling house is necessary to prevent imminent bodily harm or death to any person'.

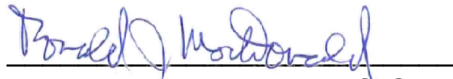
Given the information the police had, the risk of bodily harm to CW2 was very real. It was even more relevant given that AP was observed to be angry inside the home. In addition, when police arrived, CW2 had been in the home. When she came out, she told police, "I can't talk to you", certainly suggesting some form of pressure being placed on her. Had police simply left the scene, it was reasonable to expect that CW2 would re-enter the residence and AP might actually "smash her face in" as he had been heard to threaten.

The cell phone video amply demonstrates that AP was refusing to cooperate with SO1 and SO2, that he was an imposing physical threat to each of them, and that he was attempting to fight them. In addition he was in a home with other people sympathetic to his cause, which reasonably in the officers' minds would favour a quick resolution to the incident before matters could get out of hand.

AP had been given the opportunity to leave the home peacefully with the police. He made it very clear by his words and physical actions he would not do so. In those circumstances the measured use of the batons was a reasonable response to the threat the officers faced. Based on the video and the lack of other significant injury, this is what they did. It is noted that CW2's suggestion that an officer struck AP "non-stop" with his baton is inconsistent with the video.

While the one blow to AP's arm caused the fracture, there was no other serious injury. Once AP was down, the force used was solely to keep him down and place him in handcuffs. In all the circumstances the officer's actions were entirely reasonable.

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.

A handwritten signature in blue ink, reading "Ronald J. MacDonald", is written over a horizontal line.

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

January 27, 2022

Date of Release