



**IN THE MATTER OF THE INJURY OF A MALE
WHILE HE WAS ASSAULTING A MEMBER OF THE
VANCOUVER POLICE DEPARTMENT IN
VANCOUVER, BRITISH COLUMBIA
ON AUGUST 17, 2021**

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

Chief Civilian Director:

Jessica Berglund

IIO File Number:

2021-228

Date of Release:

December 5, 2024

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The release of this public report was delayed pending the conclusion of concurrent court proceedings. The decision in this matter was initially reported on [November 3, 2021](#).

INTRODUCTION

On the early morning of August 17, 2021, the Subject Officer (“SO”) responded to a call requesting assistance removing a male from a downtown Vancouver hotel lobby. The SO found the Affected Person (“AP”) lying on a couch in the lobby and attempted to rouse him. The AP attacked the SO and a fight began, during which the AP took possession of the SO’s expandable steel baton and started to beat the SO with it. The SO drew his pistol and shot the AP, wounding him. Both the SO and the AP were transported to hospital. 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 two civilian witnesses and two witness police officers;
- police Computer-Aided Dispatch (“CAD”) and Police Records Information Management Environment (“PRIME”) records;
- Closed-Circuit Television (“CCTV”) video recordings of the incident; and
- BC Emergency Health Services records.

The IIO does not compel officers who are the subject of an investigation to submit their notes, reports and data. Neither the SO nor the AP provided an account of the incident to the IIO.

NARRATIVE

At about 5:30 a.m. on August 17, 2021, the AP entered the lobby of a downtown Vancouver hotel, despite having been refused entry by hotel staff. Staff advised him that they had called the police, but the AP lay down on a couch and appeared to fall asleep. Civilian Witness 1 (“CW1”), a hotel employee, told IIO investigators that the AP appeared to be under the influence of alcohol or drugs.

About five minutes after the 911 call, CW1 said, the SO arrived at the hotel and was let into the lobby. He approached the AP and touched his ear, apparently to get his attention. CW1 said that the AP immediately stood up and started punching the SO, who said repeatedly, “I’m police, I’m police”.

The struggle is recorded on lobby CCTV. On the video, the SO is seen approaching the AP and reaching down to touch him. The AP jumps up with his fists swinging, and the SO backs away several metres, swinging an extended police baton in an apparent attempt to

fend off the AP's blows. The video shows that the AP grabs the baton with his left hand. The two individuals fall to the floor in the corner of the lobby, with the AP on top of the SO and continuing to punch him. The AP then wrests the baton from the SO and stands over the SO, who is on his knees, and begins to deliver full-strength blows from the baton, first to the SO's hands and then to the SO's head or upper body area. Several times during the fight, the SO is heard to shout, "Stop!"

On the video, a discharge of smoke is then seen past the AP's lower body and legs, in the direction from the AP's front to his back, accompanied by the sound of two gunshots. The AP falls in evident pain to a sitting position on the floor, his hands clutching at the upper back area of his thighs. The SO stands and steps to one side as two other Vancouver police officers enter the lobby, roll the AP face-down and handcuff him.

CW1 recalled seeing a struggle that he described as lasting "at least two minutes". He said that the SO fell backwards and the AP crouched over him punching him. CW1 did not recall hearing the AP say anything during the struggle. CW2, another hotel employee, said she saw the AP punch the SO several times in the head, and ran to lock herself in an office. As she did so, she heard two gunshots.

CW1, who had moved away from the lobby area, told investigators that he too heard two shots. He said he did not hear any commands being given during the fight. As the AP was being arrested, CW1 said he heard him say, "You shot me", and heard the SO reply, "Yes". CW1 said he saw a small amount of blood on the floor, and noticed that the SO's hand was swollen.

Witness Officer 1 ("WO1") said that she and WO2 responded to the hotel to back up the SO. As they arrived, she said, she looked through a window into the lobby and saw what appeared to be a fight. As the two officers ran to the lobby doors, she heard two gunshots. Upon entering, she said, she saw an extended police baton on the floor, and the AP "squirming" and asking why the SO had shot him.

WO2 described hearing the sounds of a scuffle and then two gunshots. As she entered the hotel lobby, she saw the AP lying bleeding on the floor, making noises as if in pain. WO2 did not know what had happened, but was told by the SO that the AP was to be arrested for assaulting a police officer. She said that the AP did not acknowledge her recitation to him of his *Charter* rights, but "did make comments that he had been drinking, and was lost, and was wandering around, and didn't know where he was, and kept on saying he had been shot and 'what's going on?'". She said he asked her whether he had taken any drugs, and he responded, "Lots of meth".

The AP suffered non-lethal gunshot wounds. The SO was also taken to hospital, with head and hand injuries.

LEGAL ISSUES AND CONCLUSION

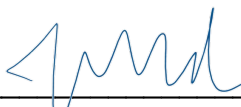
The purpose of any IIO investigation is to determine whether there are reasonable grounds to believe that an officer, through an action or inaction, may have committed any offence in relation to an incident resulting in serious harm or death. More specifically, the issue to be considered in this case is whether the SO may have committed an offence when he discharged his firearm at the AP.

The SO was acting in the lawful execution of his duty in responding to the call from hotel staff to deal with an unwanted individual on the premises. His only action with respect to the AP before the AP reacted violently was to reach down and touch him. There was no opportunity for the SO to attempt de-escalation, given the immediacy of the AP's attack. Nothing in what the SO had done could justify the AP's unrestrained assault upon him.

When that assault moved up a very significant step from the AP striking blows with his fists to violent strikes with the SO's own baton, including baton strikes to the SO's head, there was a very real risk that the SO was about to suffer grievous bodily harm or death. Further, given that the AP had already taken the SO's baton from him, it is possible that the AP could have taken the SO's pistol too, if he had been able to render him unconscious or otherwise unable to resist. The SO had no choice but to choose a more serious force option to defend himself.

The use of potentially lethal force in self-defence is justified in law to protect against an assault reasonably appearing to threaten grievous bodily harm or death. This was just such an assault. The SO was justified in discharging his firearm at the AP in these circumstances, and the use of the firearm was reasonable and proportionate. It is also worth noting that no further force options were used against the AP by any of the officers once he had been disabled by the gunshot wounds.

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 the matter will not be referred to Crown counsel for consideration of charges.



Jessica Berglund
Chief Civilian Director

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