



**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 JULY 29, 2021**

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

Chief Civilian Director:

Ronald J. MacDonald, Q.C.

IIO File Number:

2021-206

Date of Release:

August 11, 2022

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Introduction

In the early morning hours of July 29, 2021, Vancouver Police Department ('VPD') officers were called to deal with the Affected Person ('AP'), who was walking down a busy street weaving in and out of traffic. While the officers were arresting AP, an interaction occurred which resulted in a break to AP's orbital bone.

As the injury may have occurred as a result of the actions of a police officer, 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 three civilian witnesses;
- statements of two witness police officers;
- written statement from one subject officer;
- police Computer-Aided Dispatch ('CAD');
- Police Records Information Management Environment ('PRIME') records;
- police radio to radio transmissions; and
- medical records.

The IIO does not compel officers who are the subject of an investigation to submit their notes, reports and data. In this case, Subject Officer 1 provided consent for the IIO to review his written statement. Subject Officer 2 did not provide consent.

Narrative

On July 29, 2021 at 1:58 a.m., Civilian Witness 1 ('CW1'), who is a Transit security officer, received a dispatch over the radio reporting that a male [Affected Person 'AP'] was walking down the middle of Broadway Street in Vancouver. Broadway Street is a busy six lane street in the centre of Vancouver.

CW1 drove to the location and saw AP walking against traffic into the path of vehicles, including a dump truck which had stopped just in time to avoid hitting AP. CW1 identified himself and his occupation, and told AP that he could get hit by a vehicle and that he was endangering himself and other vehicles. AP replied that he did not care.

CW1 described AP as babbling and incoherent, and AP stated to CW1 that he had people following him. CW1 believed AP had mental health issues. Two of CW1's coworkers also arrived. They also described that they saw AP purposely walk in front of moving vehicles. Civilian Witness 2 ('CW2') heard AP say that someone was after him and he did not care

if he died. CW2 also heard AP say something about being deported. CW1 called for police assistance, and reported that a male was walking in the street in traffic.

At 2:14 a.m, three VPD police officers arrived and spoke with CW1 and CW2. AP was sitting on the sidewalk curb when they arrived. Subject Officer 1 ('SO1') asked AP if he was okay, as there were concerns because he was walking in traffic. AP said he was fine, and he was walking around waiting for a morning meeting with the Canada Border Services Agency.

Witness Officer 1 ('WO1') and Witness Officer 2 ('WO2') described an odour of liquor on AP's breath as they were speaking to him, and said that he was slurring his words. WO1 believed AP to be intoxicated. WO1 queried AP on PRIME and saw that police had interacted with AP several times earlier that evening for incidents, including where AP was walking in roadways.

According to WO1, AP was yelling and would not get up from the sidewalk. The officers offered AP the option of getting a ride home, or being arrested for being intoxicated in a public place, and AP accepted the ride home.

At 2:15 a.m., the police transport van arrived to pick up AP. AP was calm and cooperative at that point, and WO2 and SO1 assisted him to stand up. As AP walked over and looked inside the police transport van, AP stopped abruptly and said the compartment was small and he felt panicked. AP expressed concern that he was being taken to jail and WO2 assured him he was not. AP said he no longer wanted a ride home.

The officers then arrested AP for breach of the peace. SO1 told AP he could sit in a larger compartment, and SO1 placed his flat palm on AP's back and said "we will make sure you are ok". SO1 said that he felt AP tense at that point and clench his fists. This was corroborated by WO2.

SO1 was concerned that AP would strike WO2 so SO1 controlled AP's left arm. AP screamed and pulled his left arm away. WO1 said that AP then "exploded with anger" and lunged forward towards SO1. WO2 saw AP reach for SO1's shirt. WO2 then applied a joint lock technique on AP's wrist, which was ineffective. AP stomped WO2's foot which caused WO2 to go backwards and lose balance. WO2 then saw AP's fist swing.

SO1 was caught off guard by AP's change in behavior, and used his right leg to kick out AP's legs from beneath him. SO1 said that AP continued to become more violent, as AP was thrashing and kicking his arms and legs. SO1 held AP's right arm while Subject Officer 2 ('SO2') held AP's left arm, and the other officers attempted to control AP's legs. While AP was on the ground, AP kicked WO2 in the leg several times.

CW2 was a short distance away, and described the officers on the ground as "struggling" to place AP in handcuffs. It appeared to CW2 that AP was resisting arrest and that police

were trying to control AP in order to get the handcuffs on. CW2 said that he felt like it was taking longer than it should, and he considered assisting the officers but there were four officers and no space for him to help.

At one point, SO1 used his forearm to push AP's face away, which resulted in AP attempting to bite SO1. WO1 saw AP attempt to gouge out SO1's eyes, and saw SO1 respond by punching AP one time in the face, while AP continued to thrash on the ground. After approximately 15 seconds, the officers were able to get handcuffs on AP and take him into custody.

SO1 called Emergency Health Services to attend, but due to a backlog of cases they could not arrive for two hours. Instead, police transported AP to hospital. AP received medical treatment and was diagnosed with a broken orbital that required surgery to repair.

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.

A police officer who is acting as required or authorized by law is, if they act on reasonable grounds, justified in doing what they are required or authorized to do and in using as much force as is necessary for that purpose. If a police officer uses unreasonable or excessive force, those actions may constitute a criminal offence.

In this case, the question is whether the officers may have committed a criminal offence by using unjustified or excessive force.

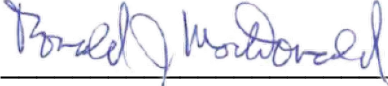
In these circumstances, the officers were acting lawfully, in execution of their duties, when they arrested AP for breach of the peace. AP was seen by many witnesses walking into traffic, which was liable to cause harm both to AP and the drivers who needed to stop and swerve to avoid injuring him. It had been reported several times throughout the evening that he was doing this, and it was highly likely that it would occur again if the officers left him there. Despite the officers' best efforts to get AP home safely without the need to arrest him, they were justified in taking him into custody: it would be dangerous to leave him out in public the way he was acting.

Initially, police officers were trying to assist AP to get him home so he would no longer be endangering himself or others. However, during their interactions, and inexplicably, AP went from being cooperative with officers, to resistant and assaultive. This occurred in a very brief period. As a result, it became necessary for the officers to try to control AP quickly, and SO1 did that by taking his legs out from under him and taking him to the ground. This is consistent with police practice, as it is easier and safer to handcuff resistant individuals when they are on the ground.

While on the ground, AP kicked WO2 several times and attempted to bite and gouge SO1's eyes. At that time, it was reasonable for SO1 to punch AP in an attempt to control him and to prevent further injury to himself or others.

The actions of SO1 and SO2 were limited in nature, and appear to be proportionate to the degree of resistance and force used by AP against the officers. It cannot be said that this use of force was unreasonable 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

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