



**IN THE MATTER OF THE INJURY OF A MALE  
WHILE BEING ARRESTED BY MEMBERS OF THE  
VANCOUVER POLICE DEPARTMENT IN  
VANCOUVER, BRITISH COLUMBIA  
ON FEBRUARY 8, 2022**

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

Chief Civilian Director:

Ronald J. MacDonald, KC

IIO File Number:

2022-019

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## **INTRODUCTION**

In the early morning hours of February 8, 2022, Vancouver police officers were conducting a traffic stop in the Downtown East Side when the Affected Person ('AP'), who was passing on the sidewalk, stopped and sat down nearby. The officers' attempts to have AP move away were unsuccessful and an argument ensued. More officers quickly arrived, and the confrontation escalated. Finally, AP was told he was under arrest, and he began to run away. He was pursued and taken to the ground, and a brief struggle resulted in AP suffering serious facial injuries.

The IIO commenced an investigation, and it became apparent that AP's injuries were more extensive than the notification from police had suggested. The narrative that follows is based on evidence collected and analyzed during the investigation, including the following:

- statements of AP, one other civilian witness, four paramedics and four witness police officers;
- police Computer-Aided Dispatch ('CAD') and Police Records Information Management Environment ('PRIME') records;
- audio recordings of police radio transmissions;
- Closed-Circuit Television ('CCTV') video recordings from commercial security cameras; 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, one Subject Officer gave access to his written duty report in PRIME. The other Subject Officer did not provide any account to the IIO.

## **NARRATIVE**

### **Video Evidence**

At about 1:00 a.m. on February 8, 2022, on East Pender Street in Vancouver, Subject Officer 1 ('SO1') and Witness Officer 1 ('WO1') conducted a traffic stop on a vehicle driven by Civilian Witness 1 ('CW1'). The vehicle pulled over to the curb at a point within CCTV coverage from nearby buildings, so most of the incident was video recorded, though no audio was captured. The video evidence generally corroborates the accounts of WO1 and other Witness Officers about the initial police interaction with AP:

- While the officers were back at their police vehicle after obtaining particulars from CW1, AP approached along the sidewalk and then stopped and bent over, apparently talking to CW1. After about a minute, he sat down about a metre from the curb, a small backpack by his side.
- WO1 came to AP and told him she needed him to move away, as she did not want him immediately behind her while SO1 was dealing with CW1 at the driver's side of the stopped vehicle and WO1 was monitoring the passenger side. AP refused to move, so SO1 came to assist WO1. He took AP's backpack and placed it over against the wall of an adjacent building.
- Another (unidentified) male then approached and spoke with AP, and AP stood up.
- At about this point, a second police vehicle arrived, and WO2 and WO3 joined the group of officers arguing with AP on the sidewalk. SO1 picked up AP's backpack and handed it to him.
- SO2 then arrived on scene with WO4. After continuing to argue, mostly with WO2, AP turned and started to walk away and the group of officers, likewise, turned away.
- After walking a short distance, though, AP stopped and began again to engage with the officers, now turning his attention mainly to SO2. He dropped his backpack on the ground beside him.
- About five seconds later, the officers moved towards AP, and he picked up his backpack and started to run away. All the officers gave chase and AP was taken to the ground at the very edge of video coverage, in a darkened area under a building awning.
- All that can be discerned from the video is that there was a struggle, three of the officers apparently engaged with AP and the other three standing off to one side or pacing around. One officer can be seen delivering knee strikes.

The IIO was able to review SO2's PRIME statement, in which he acknowledges having delivered punches to AP's face. IIO investigators also conducted interview statements with the four Witness Officers. SO1 did not permit access to any of his notes or written reports, and neither Subject Officer consented to be interviewed.

The Witness Officers' accounts were broadly consistent, and particularly so in that they all had difficulty recalling any use of force by other officers, despite having been in close proximity to the struggle. Three of the four said that they had not seen what use of force by another officer might have caused the multiple serious facial injuries suffered by AP.

## **Subject Officer 2**

In his PRIME statement, SO2 wrote that when he arrived on scene, he saw AP aggressively interfering with the traffic stop conducted by SO1 and WO1. AP, he said, was pacing around, yelling and screaming, and was “entering the personal space” of the officers, who were repeatedly directing him to leave. AP began “squaring up to” the officers, clenching his fists, but eventually appeared to agree to walk away. He then turned back, however, dropped the bag he was carrying and started to challenge SO2 to fight, saying he was going to “fuck him up”.

Told that he was now under arrest for breach of the peace, SO2 continued, AP turned and ran away, and several officers chased him. SO2 and other officers brought AP to the ground, where he landed on his buttocks. SO2 said that AP grabbed hold of SO2’s leg, and SO2 shouted for him to let go. Unable to free himself and fearing that AP could easily take possession of the pistol holstered on SO2’s front hip area, SO2 “delivered one closed fist punch” to AP’s face. As this was not successful in getting AP to release his grasp, SO2 then delivered a second punch to AP’s face.

SO2 said that AP then disengaged from SO2’s leg and was turned face down and handcuffed. Because his nose was bleeding and he appeared to be losing consciousness, he was turned onto his side in the recovery position.

## **Witness Officer 1**

WO1 described AP as having been “heavily intoxicated”. She said she asked him to move away for officer safety reasons, but he refused. She said AP was “posturing” towards SO1, challenging him to fight. WO1 said that when WO2 arrived, he warned AP that he was obstructing the officers.

WO1 said that when AP started threatening officers, they decided to arrest him. People in aggressive moods in that area, she said, “tend to get assaulted themselves”, so need to be arrested for their own good. She said that, for that reason and because AP had threatened SO2, SO1 and WO2 decided to “grab this guy”. She said that SO2 and WO2 got to AP before the other officers. As SO2 grabbed him, she said, AP started fighting, and SO2 yelled, “He’s got my leg”.

WO1 told the IIO investigators that she missed part of the struggle because she turned back to lock the police vehicle, and was then behind other officers. She said she did see WO4 helping SO1 and SO2 get AP under control. SO1 was “close to [AP’s] head”, trying to grab his arm. SO2 was beside SO1 and WO4 was holding AP’s legs.

Pressed for more detail about officers' use of force against AP during the struggle, WO1 responded that she did not know, that it was dark and she had turned away to lock the police vehicle: "I joined the fight too late". She added that officers all have different "threat personalities".

WO1 did recall seeing AP lying on his side in handcuffs, swearing and spitting and bleeding from his nose. She started to "read him his rights", but his eyes closed and he became unresponsive. She said the officers removed the cuffs, placed him in the recovery position and called for an ambulance. AP then recovered consciousness.

Asked why her written report described only "a slight struggle", WO1 explained that she only saw "a bit of a struggle" to apply handcuffs. Asked about WO4's actions, WO1 said that WO4 "might" have given AP a knee strike, "I don't know". Later in the interview, after being questioned further, she acknowledged that she had seen a knee strike.

WO1 said she was at the hospital subsequently with SO1, who said he had punched AP in the face, and had been trying to help SO2.

Given the importance of any information related to a use of force, it is expected that WO1 would have provided the information about the knee strike and SO1's admission of a punch earlier in the interview, when asked to tell what happened.

## **Witness Officer 2**

WO2 told investigators that when he arrived on scene, he heard "loud shouting and profanity". AP, he said, was "irate". After briefly walking away, AP turned back, threw his backpack "at the wall" and said he wanted to fight SO2, posturing with his fists clenched.

WO2 said he did not know how AP was taken to the ground because he went back "to where the bag was" and found it empty. He said he heard SO2 saying that AP had his leg. AP was then arrested and placed in cuffs, WO2 said, in "maybe ten seconds".

WO2 explained that he did not see what happened after AP was taken down, because he was looking for WO3 (who was in training with WO2), and also looking for the second civilian male, who had left earlier. All WO2 could tell investigators was that there were "three or four" officers involved in the struggle. Asked why he could not identify the officers who took AP to the ground, even though he said he was reaching to grab AP himself, WO2 said he was "pushed off" by the others.

WO2 said that he decided to chase AP because he had thrown his bag at the wall and had issued a death threat.

It is important to note that the video at no time shows AP throwing his bag at any wall. Rather, he placed it down at one point by his feet, then picked it up and ran off after being told he was under arrest. In addition, WO2 could not have “gone back” from the arrest site to look at the bag, as AP carried it to where he was taken down.

### **Witness Officer 3**

Asked how AP was taken to the ground, and by whom, WO3 said he could not remember, even though he was “right near it”. He said he “stood by to contain the scene”. He added that he saw AP on the ground, “moving a lot ... the situation was dynamic”. WO3 said that AP was handcuffed in about five seconds, but said he did not know who applied the handcuffs.

WO3 said he did not notice AP’s serious injury and apparent loss of consciousness, other than saying he “saw some blood on” AP, from his nose. He said he did not need to get involved, as other officers were dealing with AP.

Questioned further, WO3 acknowledged seeing SO1 punch AP “in the general face area”. WO3 said that AP was on his back at the time. He said he saw SO2 and WO4 there also, but did not see what they were doing.

As with WO1, one would have expected WO3 to have been forthcoming with this very relevant information about SO1’s punch when initially asked about the event.

### **Witness Officer 4**

WO4 remembered giving chase with the other officers, but said she did not recall who caught up with AP, though it was not her. She said that AP “landed on his backside”, and then saw him “hugging” SO2’s leg. It looked as if AP was going to bite, she said, and was close to SO2’s gun, the holster for which had lower safety retention than usual because SO2 was in plain clothes.

Because of these concerns, WO4 said she ran to AP and delivered several knee strikes to his lower body area, legs and hip. She said he rolled onto his side and she was able to grab his arm. “Someone else”, she said, took hold of AP’s other arm and he was placed in handcuffs. At this point, she noticed that AP’s face was bleeding and bruised, and that he then became unresponsive, subsequently recovering consciousness.

Pressed for more detail, WO4 said that it was “the whole group” that gave chase, and that it was “other officers” who took AP to the ground. She explained that it was dark and that she was occupied providing a radio update: “I believed they had the situation under

control". Within seconds, though, she confirmed, she saw AP grab onto SO2, but she did not know which officers were assisting SO2: "I was possibly blocked by one of the other constables".

WO4 told the investigators that she did not see what caused AP to let go of SO2's leg, despite being engaged physically with him at the time, because she was looking at his side, hands and arms: "I did not see what was happening in the top of his body". Although AP was holding onto the front of SO2's right thigh as she was delivering knee strikes to the right side of AP's body, she asserted that SO2's back was turned towards her, so she did not see what he was doing. She said she did not even realize that SO1 was involved.

Afterwards, WO4 said, "someone" said that "someone" had struck AP in the face, so that the paramedics could be informed.

WO4 said it was her who searched AP's backpack, and said that she found some documents and some money, but nothing of significance.

### **Medical Evidence**

AP was found to have suffered multiple facial fractures and a broken rib. His blood alcohol concentration, measured at the hospital, was 0.229 gm/100ml, which for reference is approaching three times the legal limit for driving in Canada. AP told paramedics at the scene that he had been "beaten up" and "stomped" by police, but when interviewed by the IIO, he said he had little memory of the incident. He said that he had been "in a blackout" after drinking heavily, and remembered running away from police but could not recall why.

## **LEGAL ISSUES AND CONCLUSION**

The Independent Investigations Office of British Columbia has been given the task of investigating any incident that occurs in the province in which an Affected Person has died or suffered serious physical harm and there appears to be a connection to the actions (or sometimes inaction) of police. The aim is to provide assurance to the public that when the investigation is complete they can trust the IIO's conclusions, because the investigation was conducted by an independent, unbiased, civilian-led agency.

In the majority of cases, those conclusions are presented in a public report such as this one, which completes the IIO's mandate by explaining to the public what happened in the incident and how the Affected Person came to suffer harm. Such reports are generally



intended to enhance public confidence in the police and in the justice system as a whole through a transparent and impartial evaluation of the incident and the police role in it.

In a smaller number of cases, the evidence gathered may give the Chief Civilian Director reasonable grounds to believe that an officer has committed an offence in connection with the incident. In such a case, the *Police Act* gives the CCD authority to refer the file to Crown counsel for consideration of charges.

In a case such as this one, involving the use of force by officers, one of the threads of the IIO investigation will be the gathering of evidence about potential justifications for that use of force. The CCD will then apply legal tests such as necessity, proportionality and reasonableness to reach conclusions as to whether officers' actions were lawful, or whether an officer may have committed the offence of assault.

Resolving that issue is often difficult, and was especially so in this instance. The IIO was presented initially with the bare facts that an Affected Person had been arrested by a group of several officers and had suffered serious injuries after falling on his face. AP had almost no memory of the incident. There were no civilian witnesses, and the video evidence was of little assistance in determining exactly what happened in the moments when the injuries occurred. As officers were questioned, though, it became apparent that AP actually fell on his buttocks, and his injuries were caused by punches to his face and knee strikes to his side.

At that point, it was vital for the IIO to receive clear, detailed accounts from the involved officers, who were the only available eyewitnesses. Unfortunately, when it came to reporting the actions of colleagues, especially actions involving the use of force, those officers' accounts were unsatisfactory. While it is understandable that witnesses to a dynamic event sometimes have imperfect recollections of it, these witnesses were professional police officers, trained to be careful and accurate reporters of their observations, especially involving incidents of violence with the potential for legal repercussions. Instead of complete and reliable reports, though, IIO interviewers received accounts that were vague and inconsistent, with rather implausible gaps on the topic of exactly how AP came to be so seriously injured. Indeed, three officers initially failed to give obviously relevant evidence until pressed further during an interview. This evidence should have been disclosed when first questioned, not after being pressed for answers.

The most complete narrative, in fact, came from one of the Subject Officers himself, as detailed above. That account was corroborated by fragments of the evidence obtained with some difficulty from the Witness Officers, and appears itself to be reliable.

The evidence as a whole, including that Subject Officer account and the video of events leading up to the chase and take-down of AP, leads to the following conclusions:

- At the time of the incident, AP was severely intoxicated and was not behaving rationally. For reasons known only to himself at the time, he decided to involve himself in the traffic stop of CW1.
- AP's behaviour gave the officers involved in the traffic stop reasonable safety concerns, and they were therefore justified in asking him to move away.
- AP was not cooperative with the request, and became argumentative and then increasingly confrontational.
- The allegation that AP threw his backpack angrily at the wall is contradicted by video evidence. He did no more than drop it beside his feet for a few seconds, and then pick it up again before running away when officers indicated he was to be arrested.
- AP was taken to the ground by a group of officers, primarily the male officers including SO1 and SO2, and landed on his behind, almost immediately grabbing at the front of SO2's leg. This act by AP put him within reach of SO2's firearm, which was housed in a concealed-carry holster, so was not as well secured as it would be in a regular duty holster. While there is no evidence whatsoever that AP had any intentions regarding the pistol, this situation would have created reasonable concern in the officers' minds.
- WO4 delivered knee strikes at that point, and is likely to have caused AP's rib injury. Those strikes were reasonably necessary and proportionate to the risk posed by AP in the moment, given his evident anger and irrational behaviour, and for those reasons did not amount to the use of excessive force.
- At about the same time, both SO1 and SO2, who were standing beside each other in front of and over AP, delivered one or more punches to AP's face, causing fractures to his nose and facial bones. While blows to the face and head are a higher and more dangerous level of force and require a correspondingly higher level of justification, at time they can be justified. In this case, the available evidence makes it difficult to prove definitively that the blows were justified. However, it also cannot be said that the evidence shows these blows exceeded the range of what was reasonably justifiable in the circumstances. Those circumstances included previous persistent angry and aggressive behaviour and threatening remarks on AP's part, and his physical resistance and assaultive act in grabbing SO2's leg, which risked pulling SO2 to the ground as well as potential access by AP to SO2's gun.

This report would be remiss were it not to discuss the issue of de-escalation and whether there was a definitive need for arrest.

For a good portion of the event, officers did show restraint and seemed to be attempting to de-escalate AP. After all, AP was acting irrationally, attempting to interfere in a police stop of a car to which he seemed to have no connection. It is likely his high level of intoxication played a role in his behaviour. This type of behaviour is no doubt encountered by police on many occasions. It is suggested that in such circumstances, where the behaviour is not dangerous in itself, but mostly just annoying, applying the law to the letter by arresting the person for a minor offence is overall likely not a preferred approach. Rather, police should attempt de-escalation and persuasion to convince the person to move on, to minimize the incident as much as possible.

To be fair, as noted, this appears to be what several officers did in this case for some period, leading up to AP turning to walk away and the officers doing the same. However, AP then stopped and yelled at the officers more, including, according to them, the use of threatening remarks. He was then told he was under arrest, at which point AP turned to run and the officers followed.

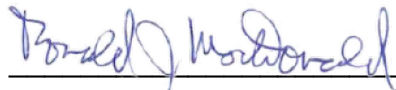
AP had behaved in a manner that arguably gave the officers grounds to arrest him for obstruction, uttering threats, breach of the peace and even simply public intoxication as a result of the totality of these behaviours. It is for that reason I concluded that it can not be said the force used was unjustified. However, a very reasonable option when he ran away would have been to let him go. Yes, AP was intoxicated and verbally aggressive, but little else. WO1's additional justification for his arrest, that he was in an area of the city where annoying drunks are likely to be assaulted, seems tentative as a valid justification if at all. In any event, it loses validity when the remedy to prevent him from facing force from others means he is going to face force from the police.

The bottom line here is that once AP had clearly decided to leave, there was no reason for concern that he would continue to interfere with the officers or otherwise offend, and just letting him leave would have been a much better result than what occurred. I can only conclude that an element of frustration or annoyance played at least a contributing role in the officers' decision to arrest. If so, it should not have.

However, it cannot be concluded that the officers were acting unlawfully when they chased and apprehended AP. When he offered physical resistance and raised a reasonable apprehension of risk to the officers' safety, a proportionate level of force was justified in subduing him.

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.

I also note that consideration was given to referring this matter to the Crown in relation to the statements given by Witness Officers and how they gave their evidence. In the end, it was determined that their actions did not rise to the level of a potential criminal offence. However, the matter has been referred to the Office of the Police Complaint Commissioner for further consideration of the officers' actions.

  
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Ronald J. MacDonald, K.C  
Chief Civilian Director

January 19, 2023  
Date of Release