



**IN THE MATTER OF THE INJURY OF A MAN
WHILE BEING APPREHENDED BY MEMBERS OF THE
VANCOUVER POLICE DEPARTMENT IN
VANCOUVER, BRITISH COLUMBIA
ON JULY 10, 2023**

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

Chief Civilian Director:

Jessica Berglund

IIO File Number:

2023-273

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INTRODUCTION

On July 10, 2023, the Affected Person (“AP”) suffered injuries while being arrested by Vancouver Police Department (“VPD”) officers for causing a disturbance in a downtown Vancouver fast food outlet. The incident was not reported to the Independent Investigations Office (“IIO”) until the VPD’s Professional Standards department reviewed the evidence on the file, including video of the arrest. On September 7, 2023, the IIO was notified by the VPD and commenced an investigation.

The narrative that follows is based on evidence collected and analyzed during the investigation, including the following:

- statements of the AP, two civilian witnesses, two first responders and three 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;
- VPD Professional Standards investigative file;
- data download from a Conducted Energy Weapon (“CEW” or “Taser”);
- video recordings from the incident scene and from VPD jail cells;
- VPD jail records; and
- medical evidence.

The IIO does not require an officer who is the subject of an IIO investigation to provide evidence to investigators. In this case, the subject officer has not given any account to the IIO.

NARRATIVE

The Affected Person (“AP”) told VPD Professional Standards that in the early morning hours of July 10, 2023, he finished a night shift at a downtown restaurant, spent some time at a pool hall, and then went to a fast-food restaurant. He said he had drunk one shot of alcohol and two to three beers at the pool hall. He said that, at the restaurant, he ordered his food at the kiosk and then walked to the front with his receipt and phone in his hand. He was wearing headphones.

The AP said that when he patted his pocket to check for his debit card, his hand was slapped away by a police officer. He said that he did not hear any verbal directions, but

put his hands out in front of himself, saying, “I’m not resisting.” Despite this, he said, he was “tased.” He said he dropped to his knees, still showing his hands, and was “tased” again. He said he felt pressure on his back, and may have then hit his head, because he could not remember anything further until he woke up four or five hours later in a jail cell.

The AP said that his injuries included two chipped front teeth, bruises and five wounds from a Conducted Energy Weapon.

The AP’s medical records, from a hospital visit on the day after the incident, note two “Taser marks” on his lower left abdomen, as well as abrasions and bruising, specifically in the area of his chin. The records indicate that the AP also reported broken teeth, but there is no mention of broken teeth in the physician’s findings following an examination, and no mention either in a report following a CT scan (that report does, however, document finding a cavity in one molar, which suggests that close attention was paid by the analyst to the AP’s teeth).

IIO investigators also obtained an account of the incident from Civilian Witness 1 (“CW1”), a staff member at the restaurant. CW1 described seeing a man (the AP) approach the counter carrying a bag. CW1 said the AP asked for the food he had ordered, and was told he had already been given it. She said he went to the bathroom, then came back and again asked for his food. The AP, she said, then became agitated and angry, shouting and pounding on the counter. She said he was swearing and yelling at staff, and threw his bag across the counter.

CW1 said her manager called the police. She recalled three or four officers entering the restaurant and attempting to control the AP, who was resisting. At one point, she said, the AP “was like using some abusive language, so the police used a taser gun.” During this struggle, CW1 was struck in the arm with a prong from a Conducted Energy Weapon and walked away from the counter. When she returned a little later, she said, the AP was no longer there. This aspect of the incident is discussed later in this report.

Civilian Witness 2 (“CW2”), a restaurant security guard, recalled that he had given the AP access to the restaurant washroom. The AP started yelling when he exited the washroom, CW2 said, and then threw his bag at staff, so CW2 called police. CW2 said he saw the AP “attack the policemen” and get “tasered.” CW2 said he did not see police strike the AP and did not see any injuries on the AP.

On the audio recording of CW2’s 911 call, a man can be heard yelling and swearing in the background. CW2 tells the call-taker that the AP had tried to hit CW2 and had thrown his bag at staff.

Witness Officer 1 (“WO1”) told IIO investigators that he and his partner WO2 arrived at the restaurant at the same time as the Subject Officer (“SO”). WO1 said he saw the AP “kind of leaning over the counter in an aggressive manner,” yelling at staff members. WO1 said that it appeared to him that the AP was trying to climb over the counter, so he “announced that we were police,” and grabbed the AP’s arm. WO1 said that the AP turned around, tried to pull away and grabbed at WO1’s face. Struggling with the AP, WO1 said, he heard the sound of a CEW being deployed, “at which point [the AP] fell to the ground.” WO1 described the way the AP fell as “dead weight,” and said he fell onto his knees beside the AP, still holding onto him. WO1 stated that he heard only one deployment of the CEW. He also stated that he did not see the AP being struck on his face or head, or anywhere else on his body.

WO2 described the AP as appearing to be “under the influence of some substance.” She said that WO1 was in front of her, and said she saw the AP turn towards WO1 with a raised clenched fist. She said she took hold of the AP’s left arm while WO1 was on the AP’s right side. WO2 said she then heard the SO say, “Taser, taser, taser,” and then heard the sound of the CEW being activated. She said the AP went to the floor with WO1 and the SO struggling to control him, and the SO activated the CEW at least one further time. At the time, she said, she was holding the AP’s ankles, “so he could not kick or turn over.” Asked if she recalled seeing any kicks or knee strikes, WO2 said she did not remember, but “it may have happened.” WO2 stated that she did not recall noticing any injuries to the AP.

Video from inside the restaurant was obtained and analyzed. There is no audio track. On the video, the AP can be seen approaching the restaurant counter and speaking with staff. Over approximately ten minutes, the AP appears to become increasingly agitated, waving his arms and apparently yelling. He appears unsteady on his feet, and can be seen to throw a bag he is carrying over the counter. He approaches a group of customers, waving his arms, and a security guard (CW2) tries to separate him from the group.

WO1 then enters the restaurant and approaches the AP from behind. It is not apparent from the video that WO1 makes any announcement as he approaches the AP. WO1 reaches to take hold of the AP’s left arm, and places his right hand on the AP’s neck, pushing him down toward the floor. As WO2 also reaches for the AP, the AP turns and makes a grabbing motion at WO1’s face. There is a struggle as the SO joins the group, and the light and wires from a CEW are visible. As the AP goes to the floor, he is no longer visible on the video, obscured by the counter.

The SO then appears to make a kicking motion towards the AP. The SO still has the CEW in his right hand, and as he bends over the AP, he places that hand on the counter. At

that moment, a wire can be seen traveling from the CEW over the counter, and a staff member (CW1) flinches and moves away. Then, as the SO and WO1 continue to struggle with the AP and WO2 appears to move to control the AP's legs, the SO twice lifts his left leg and lowers it quickly in the direction of the area where the AP is apparently lying on the floor.

Finally, all three officers stand up. A female staff member approaches them and points to her left shoulder. She then walks away and returns with CW1, who appears to speak with the SO and then moves away, rubbing her right shoulder.

The AP is then lifted to his feet with his hands cuffed behind his back. He is patted down and escorted out of the restaurant. There is no clear view of his face.

CW3, the paramedic who conducted an examination of the AP before he was transport to cells, described the AP as appearing to be in an altered state of mind, perhaps because of substance use. CW3 said he asked the AP if he wanted to go to the hospital, but the AP said he did not, and just wanted to go home, as he had work in the morning. CW3 said the AP reported having been assaulted three weeks earlier, and had rib pain from that event, but said he would follow up about that once he was released. CW3 told the IIO that he checked the AP's head, neck, back, chest, ribs, arms, hips and legs. He said the AP confirmed that he had not hit his head or lost consciousness, and did not complain of any facial or head pain. CW3 did not note any injuries.

WO3 was the officer who drove the wagon transporting the AP to cells. WO3 told investigators that he had no recollection of the incident, but said that he had made no note of any injury to the AP, and that he would have if he had observed any. Similarly, WO4, who authored the jail intake assessment for the AP, noted no sign of injury other than a small cut on his face. CW4, the jail nurse on duty at the time, told the IIO that she routinely documented any complaint or sign of injury to a detainee, and made no such note with respect to the AP.

Video recordings from the jail show the AP walking from the police van, escorted by two officers holding his arms. The video quality is imperfect, but the AP does not appear to have visible facial injuries. When he is uncuffed in the booking area, he appears to stagger and fall partway towards the floor. His head does not strike the floor. In the cell over the next few hours, the AP is moving constantly, standing, sitting, walking around and rolling on the floor, often holding his arms across his ribs as if in pain. He also repeatedly bangs on the cell door and can be seen talking in the direction of the door and the video camera. When he is looking up at the camera, there appears to be a gap in his front teeth, which can also be seen when the AP is released at the front counter, about four and a half hours

after his arrest. He does not appear to have hit his face against anything while in cells, and no officer entered the cell during the AP's time there.

Accidental CEW discharge

Data downloaded from SO's CEW indicate:

- an initial deployment of a cartridge, with electricity activated for 4.429 seconds;
- almost immediately, deployment of a second cartridge, with activation for 4.960 seconds;
- immediately after that second deployment, the trigger was pulled again, but the device did not activate; and
- there were then three further activations, over a period of approximately half a minute.

As part of the initial notification to the IIO by VPD Professional Standards, note was made that video from the restaurant showed that a staff member had been "tasered" but this had not been documented by officers on PRIME.

As mentioned above, CW1 told IIO investigators that, during the struggle between police and the AP, she had been impacted by barbs from a CEW. She said that one of those darts struck her right arm and the second hit her apron and fell to the floor. After police had removed the AP from the restaurant, she said, her manager took her to one of the officers and told him what had happened. CW1 stated that her arm was sore and swollen from the wound, and she missed four or five weeks of work because of it.

WO2 told the IIO that as WO1 and the SO were escorting the AP out of the restaurant, a staff member indicated to her that one of the female staff had been hit. WO2 said that when she mentioned this to WO1, he said that he had already spoken to the staff, and had confirmed that no medical assistance was required.

WO1 told the IIO that after the AP was placed in the police wagon, the SO acknowledged having accidentally fired his CEW once more after the initial deployment. WO1 said he went and spoke with a female (believed to be CW1), who showed him a mark on her arm about the size of a "pinprick." WO1 confirmed that it was the SO who brought the matter to his attention, and stated that none of the restaurant staff approached him about it.

Given no injury from the CEW discharge was reported that meets the threshold of serious harm, this aspect of the incident was not investigated further by the IIO.

LEGAL ISSUES AND CONCLUSION

The Independent Investigations Office of British Columbia is mandated to investigate 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 ('CCD') 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, the IIO investigators collect evidence with respect to potential justifications for that use of force. The IIO then analyzes this evidence using 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.

In this case, all of the involved officers were acting in lawful execution of their duty when they went to the restaurant and arrested the AP. They had been told that the AP was causing a disturbance in a public place and had engaged in assaultive behaviour. While the AP's account suggests that officers, essentially, assaulted and detained him for no reason, that account is contradicted by objective video evidence, as noted above. The video does corroborate WO1's allegation that the AP grabbed at WO1's face. While this may have been an instinctive reaction by the AP to being taken hold of unannounced from behind, it was not unreasonable for the officers to conclude that the AP was being actively resistant/assaultive and that an escalated level of force was necessary, particularly when the AP continued to struggle. On that basis, I cannot conclude that the SO's deployment of his CEW was excessive or unreasonable.

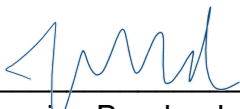
As set out above, records from the AP's attendance at hospital on the day after the incident did not confirm any recent damage to his teeth, though bruising to his chin was noted. If the AP did suffer damage to his front teeth during the incident, the potential

mechanism by which it may potentially have occurred is unclear. While video evidence from the jail appears to show a gap in the teeth, there does not appear to have been any event at the jail that could have damaged them. The evidence does show that the AP fell quite hard when taken down by WO1, who described him as falling “dead weight,” so it is possible his face struck the floor at that time.

Another possibility is that the SO kicked or stomped on the AP. The SO can be seen on video making movements consistent with kicks, which could have been to the AP’s head area. That, however, can not be determined from analysis of the video, and there is no clear evidence from the witness officers or from any civilian witness about kicks by the SO. Significantly, the AP only says that he hit his head, and does not attribute that to anything more than the fall itself. The evidence as a whole, therefore, does not support a conclusion that any officer used force that was excessive or otherwise unjustified.

Accordingly, as 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.

The statutory jurisdiction of the IIO does not extend to accidental discharges of weapons by police where serious injury has not resulted. Responsibility to respond to complaints of that nature, where they involve municipal police officers in B.C., rests with the Office of the Police Complaint Commissioner. In this case, as noted above, VPD’s Professional Standards department had been made aware of the incident, and of the injury to CW1, prior to the IIO’s involvement.



Jessica Berglund
Chief Civilian Director

January 22, 2025
Date of Release