



**IN THE MATTER OF THE SERIOUS INJURY OF A FEMALE
WHILE BEING APPREHENDED AND DETAINED BY
A MEMBER OF THE CENTRAL SAANICH POLICE SERVICE AND
THREE MEMBERS OF THE VICTORIA POLICE DEPARTMENT
IN THE CITY OF VICTORIA, BRITISH COLUMBIA
ON JULY 25, 2017**

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

Chief Civilian Director:

Ronald J. MacDonald, Q.C.

General Counsel:

Clinton J. Sadlemyer, Q.C.

IIO File Number:

2017 - 085

Date of Release:

September 6, 2018

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Facts

On July 25, 2017 at approximately 11:45 a.m., the Affected Person (AP) was arrested by Officer 1. During the arrest, AP assaulted Officer 1 and she suffered a fracture of her right proximal humerus (shoulder) as she was taken to the ground by Officer 1.

The Independent Investigations Office (IIO) was notified by the Victoria Police Department (VicPD) at 3:57 p.m. that afternoon. The IIO commenced its investigation as the injury to AP was within the definition of “*serious harm*” as defined in *the Police Act* and officers were involved.

Evidence collected during the investigation included the following:

- 1) Statements of five civilian witnesses;
- 2) Statement of Officer 1;
- 3) Statements of 2 witness officers;
- 4) CCTV from business premises;
- 5) Emergency Health Services (EHS) records; and
- 6) Medical records.

Pursuant to section 17.4 of the Memorandum of Understanding between the IIO and BC Police Agencies, and consistent with the *Canadian Charter of Rights and Freedoms*, officers who are the subject of an investigation are not compelled to provide a statement, nor submit their notes, reports and data. However, in this case Subject Officer 1 provided a statement to the IIO. In accordance with their Constitutional Rights, Subject Officers 2, 3 and 4 declined to give statements or their notes, reports or data.

CCTV collected shows AP arriving at and later departing a Victoria business. CW 1 appears on the video shortly after AP’s departure, and is shown following the path of AP. The interaction between CW 1 and AP occurred out of the view of the CCTV, as did the interaction between Officer 1 and AP, and later the interaction between Officers 2, 3, 4 and AP.

AP has not provided a statement to the IIO and has not made allegations against Officers 1, 2, 3, or 4 other than those made against Officer 1 while AP was being arrested and detained by him.

CW 1 works in the service industry and told the IIO that AP came into the business as she had on previous occasions. Just after AP left the business, CW 2, who also works there, told CW 1 that AP had taken the tip jar containing staff tip money. CW 1 followed AP and caught up to her in front of another business nearby. CW 1 saw AP holding a cup of milk and the tip jar in her hands. CW 1 told AP “...hey you took that jar...I want that jar back.”

CW 1 told the IIO that AP emptied the jar onto the sidewalk, smashed the jar on the sidewalk, threw the milk on CW 1 and started screaming at CW 1. CW 1 looked down at

the money and AP began striking CW 1 on the head and trying to push CW 1 to the ground. CW 1 told the IIO a man came from a nearby car (Officer 1). (The car was not a police car and Officer 1 was off duty and not in uniform. He was a member of a police force outside of Victoria.) Officer 1 asked CW 1 what happened and CW 1 explained briefly. Officer 1 arrested AP.

CW 3 was at the nearby business and saw AP screaming at CW 1. AP threw something down (the tip jar) and CW 3 could see glass and coins on the ground. AP had her arms raised and lunged at CW 1 while hitting at CW 1's head. CW 1 stepped back, covering their face.

CW 3 said Officer 1 got out of the passenger side of a vehicle and offered assistance. CW 1 advised AP had stolen her tip jar. Officer 1 told AP she was under arrest.

CW 1 said AP began hitting Officer 1. Officer 1 did not hit AP but got her down to the ground and told her several times she was under arrest. CW 1 said Officer 1 put AP on the ground face down with her left arm pinned behind her back. CW 1 said Officer 1 was bleeding badly from his forehead as he held AP down.

CW 3 said AP began screaming at Officer 1 and was hitting him with the heel of a shoe (CCTV evidence collected by the IIO shows AP was earlier carrying a pair of heeled shoes and a pair of shoes were recovered at the scene). CW 3 said it appeared that Officer 1 "*almost hugged*" AP to bring her arms down, then turned AP's face away from him and brought her to the ground. CW 3 said it looked like he knew what he was doing.

CW 3 said AP was screaming at Officer 1 and flailing her body around.

CW 1 said Officer 1 was trying to comfort AP as he held her down and AP was saying things like "*...you are breaking my arm...get off me*" and "*Fuck you, you are killing my babies.*"

CW 1 said Officer 1 repeated to AP that she was under arrest and he was waiting for the police. CW 1 said although Officer 1 was holding AP's arm behind her back it was AP's struggling that was hurting her.

CW 3 tried to calm AP while Officer 1 was holding her. Officer 1 was bleeding badly and it seemed to CW 3 that AP believed it was her (AP's) blood. CW 3 held napkins to Officer 1's forehead while he held AP. AP was face down with her left side on the ground and her right arm by her face. Officer 1 was at AP's left side, with his right knee down on the ground, sitting next to her on one knee. CW 3 said Officer 1 had one hand by AP's left wrist and his other hand was on her back; he held her in that position.

CW 3 said some blood from Officer 1's injury fell on AP and CW 3 tried to comfort AP by telling her that she was not bleeding and that it was the officer's blood.

CW 3 said AP was screaming to Officer 1 that he was "...*breaking [her] arm.*" Officer 1 told her to stop moving, stay calm, and stop struggling. CW 3 said AP was making it worse by the fact that she kept moving. CW 3 said Officer 1 was calm and told AP he was not breaking her arm. CW 3 said AP continued resisting almost continuously.

CW 1 said several other police officers arrived including Officers 2, 3 and 4. CW 1 said Officers 2, 3 and 4 took control of AP. CW 1 said one officer had a knee in AP's back, and believed with the help of the other two officers, they handcuffed AP. CW 1 said the three officers brought AP from a sitting to a standing position. CW 1 then went back to check in at her place of employment.

CW 1 told the IIO that she heard Officer 1 tell other officers that AP had stolen from and attacked CW 1.

CW 3 said other officers (Officers 2, 3, and 4) took AP's right arm, another took AP's left and they brought them to her back and once they had control of AP, Officer 1 stepped away. CW 3 said the officers took AP fairly quickly to a police car. AP continued to scream and yell.

CW 3 told the IIO that at no point did she feel Officer 1's use of force was inappropriate. CW 3 said Officer 1 was very efficient and calm and appeared to know what to do. CW 3 said that Officer 1 "*saved the day.*"

CW 4 also witnessed the interaction. CW 4 said as AP was striking Officer 1, he took her to the ground to protect himself. CW 4 said Officer 1 took AP in a hold by "*grabbing her left arm and put[ting] it behind her back.*" Officer 1 swept AP's legs and took her slowly and carefully to the ground, "*...as much as you can when someone is trying to hurt you.*"

CW 5 was stationary in the vehicle he was driving and saw about 20 seconds of the interaction prior to moving off. CW 5 said Officer 1 was holding AP face down and had her left arm up in the bar. CW 5 said Officer 1, whose face was covered in blood, was struggling to control AP who looked to CW 5 to have extraordinary strength. CW 5 said AP was fighting by rolling, trying to stand up and trying to get out of the arm bar. CW 5 said AP was screaming for help and that she was being attacked. The light changed and CW 5 drove on.

When Officer 5 arrived he noted Officers 2, 3 and 4 had control of AP. Officer 5 said the three officers were kneeling beside and handcuffing AP behind her back. Officer 5 was not asked by Officers 2, 3 or 4 for assistance and it did not seem to him that they needed assistance.

Officer 6 arrived and noted that Officers 2, 3 and 4 had AP on the ground face down and handcuffed behind her back. Officer 6 said AP was thrashing around, yelling and trying to turn around. Officer 6 said the situation was under control in that AP was in

custody and “*the victim*” (Officer 1) was off to the side. Officer 6 told the IIO he did not observe anything about the handling of AP that raised concerns.

Officer 1

Officer 1 is a police officer with decades of experience. He was off duty and sitting in the passenger seat of his parked private vehicle when he saw, just a few metres away, AP and CW 1.

Officer 1 said he saw AP was carrying a drink and a clear glass jar containing what appeared to be change and bills. CW 1 appeared to be trying to speak to AP but was ignored. CW 1 tried to stop AP who dropped her drink. Officer 1 next saw AP strike CW 1’s head with her arm and CW 1 moved away from AP.

Officer 1 said AP shook the money out of the jar. He told the IIO he felt duty bound as a police officer to intervene and got out of his vehicle and asked CW 1 what had happened. He said CW 1 told him AP “*stole our tip jar.*”

Officer 1 believed he had witnessed a robbery and took hold of AP’s arm and told her he was a police officer and that she was under arrest.

Officer 1 said he placed his left hand on her left wrist, his right hand on her left elbow but she pulled away and within seconds she turned and struck him twice in his face. He stated he did not know what she was using but it felt like a hammer, it was very hard.

Officer 1 told the IIO that that he tried to manipulate her left arm and elbow but it did not work, she was heavy and strong. Officer 1 said, “*I took her to the ground in a way that I would call an arm bar takedown,*” which he said means he pivoted her to the left and pushed her to the ground, using his right foot to block her ankle. He said:

...in the process I know that she, she was thrown to the ground by that action of mine, quite hard. But I feel I had no, no other options because at this point I was first and foremost worried that she would continue to assault me.

Officer 1 said at this point he could not disengage for public safety reasons and that as soon as AP was on the ground he moved to “*a shoulder pin.*” He said he did not kneel on her back to avoid injuring her. He said he kept control by holding his left hand on her left wrist of the stretched out arm, his right hand on her left shoulder, in her armpit.

Officer 1 said his forehead started to gush blood while he was holding the shoulder pin. He said he repeated to AP that he is a police officer and that she was under arrest. He said some of his blood was landing on AP and she started screaming. Officer 1 told AP she would be okay, that it was his blood and not hers.

Officer 1 said AP asked him to let her go and promised that she would not run away. Officer 1 told her no and that he was waiting for the Victoria police. He said he made sure AP could breathe freely. He told her to stop resisting but she continued to try to escape.

Officer 1 said CW 3 held a napkin to his head while he continued to restrain AP.

Officer 1 told the IIO that he does not recall AP saying he was breaking her arm and recalls saying to her something to the effect of "*Stop resisting,*" or "*Stay still and you'll be fine.*"

Officer 1 recalls other officers arriving within a few minutes and they took hold of AP and he moved away. Paramedics arrived and he was transported to the hospital where he received stitches to his forehead.

Officer 1 told the IIO he did not lose consciousness.

Relevant Legal Issues and Conclusion

The purpose of any IIO investigation is to determine whether an officer, through an action or inaction, may have committed any offence in relation to the incident that led to the injury to AP.

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

More specifically, the issue to be considered in this case is whether Officer 1 may have used excessive force when he arrested and detained AP and whether Officers 2, 3 or 4 may have used excessive force when they took custody of AP from Officer 1. Had any of the officers used excessive force they may have committed assault causing bodily harm.

Officer 1 saw an assault being committed against CW 1 by AP and on inquiry found it was also a robbery. Officer 1, even though he was off duty, had a duty to protect CW 1 and to arrest AP for serious offences. He performed his duty. Upon being arrested, AP attacked Officer 1 with one of her shoes causing injury to him. Officer 1 used force to defend himself by taking AP to the ground.

Officer 1 was entitled to use force to defend himself and all the witnesses are in accord that the level of force used by Officer 1 was proportionate and reasonable. Indeed, as one witness said, "*he saved the day.*" His explanation of his actions to the IIO assisted in reaching conclusions in this matter.

Officers 2, 3 and 4 came to Officer 1's aid. No allegations from the AP have been recorded concerning their treatment or handling of her and no witnesses suggested that any of the three used any unreasonable force when they dealt with AP. Accordingly, there is no evidence that would support a report being forwarded to Crown counsel with respect to their actions.

The force used in this incident was not excessive. All four Subject Officers acted as required by their duties and in accordance with the law. The evidence collected does not provide grounds to consider any charges against any officer. In particular, Officer 1 acted while he was off duty to protect innocent citizens from a woman who had committed an act of violence. In spite of being injured, he acted with as much care as he could to protect everyone, including AP, the civilians, and himself. In so doing AP suffered an injury that appears only to have occurred due to her continued fighting against the reasonable actions of Officer 1.

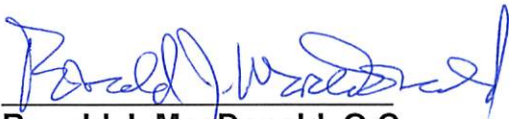
Accordingly, as the Chief Civilian Director of the IIO, I do not consider that an officer may have committed an offence under any enactment and therefore the matter will not be referred to Crown counsel for consideration of charges.



Clinton J. Sadlemyer, Q.C.
General Counsel

September 6, 2018

Date of Release



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

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