



**IN THE MATTER OF THE SERIOUS INJURY OF A MALE
WHILE IN THE CUSTODY OF
MEMBERS OF THE VICTORIA POLICE DEPARTMENT IN
THE CITY OF VICTORIA, BRITISH COLUMBIA
ON MARCH 27, 2017**

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

Chief Civilian Director:

Ronald J. MacDonald, Q.C.

IIO File Number:

2017 - 029

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March 12, 2019

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Facts

On March 27, 2017, the Victoria Police Department was advised of a concern that a male, the Affected Person (AP), may harm himself. Officers attended a residence and AP was spoken with and eventually agreed to go to the hospital and got in an ambulance for that purpose.

AP then opened the rear door of the ambulance and was subsequently pulled out and taken to the ground by officers. During this interaction, AP suffered a fracture to his left facial area which required surgery.

The Independent Investigations Office (IIO) was notified by the Victoria Police Department the next morning when the extent of the injury became apparent. The IIO commenced its investigation as the injury to AP was within the definition of “*serious harm*” as defined in *the Police Act* and an officer was involved.

Evidence collected during the investigation included the following:

- 1) Statement of AP;
- 2) Statements of 6 Civilian Witnesses (CW) including a BC Emergency Health Service (BCEHS) paramedic (CW 1);
- 3) Statements of 11 police officers;
- 4) Video recorded by media personnel; and
- 5) Medical records.

The completion of the investigation was delayed somewhat by a court application that was required to obtain the video recorded by media personnel. This was one of the first such applications carried out under new provisions within the Criminal Code of Canada in relation to attempts to seize materials from media outlets.

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 or data. In this case, the Subject Officer (Officer 1) did not provide a statement, his notes, reports or data to the IIO.

AP told the IIO that he had a telephone discussion with someone from a utility company regarding a deposit he had paid. AP said that during the call he told the call-taker “...*fine whatever, give the money to my wife because I’m going to be dead by then because I’m probably going to kill myself.*” AP said he then ended the call.

AP told the IIO that shortly after the call two police officers arrived at his residence. AP said the officers stood back and he picked up a rock that was sitting near the house and dropped it into the garden. He said he did not threaten them or throw the rock at anyone. AP said he went back in his residence and refused to come out.

AP spoke with an officer (Officer 2) over the telephone and requested an ambulance attend and, after several discussions, Officer 2 agreed to get an ambulance to the scene. AP said that when an ambulance arrived he put his jacket outside so police could search it because, "...I didn't want them touching me and searching me..."

AP said eventually he went to the ambulance, got in and sat down. Two officers sat down with him. AP said he opened the back door of the ambulance and spoke to some people and, as he was about to close the door, one of the officers grabbed him. AP told the IIO that as the door opened fully he said to the officers "...so, what, you going to fucking hit me now?" AP said the officers "hauled" him out of the ambulance and were grabbing him and "...the next thing you know....Bam, I'm getting kneed in the head....and they're pulling my arms apart, and I look down and there's a guy Tasering me..."

Officer 4 deployed his Taser twice in the "dry stun" mode, meaning he did not shoot the probes but rather made direct contact with AP. These actions did not stop AP from fighting the police.

AP told the IIO he was then handcuffed and put onto a stretcher and that it was Officer 1 who kneed him.

AP was taken to the hospital and told the attending doctor that he was dragged out and they "...beat the shit out of me."

CW 1 is a paramedic with the BC Emergency Health Service with experience working with people in a mental health crisis. CW 1 attended the scene and was advised of concerns that AP was a threat to himself or others and that police were trying to get AP to come out of his house. Officer 2 directed them to park where AP could see them.

CW 1 said AP came out of the house a few times and CW 1 heard AP tell the police multiple times, "why don't you just shoot me." CW 1 said eventually AP came voluntarily to the side door of the ambulance on the passenger side. CW 1 said AP entered the ambulance with the two officers and CW 1 got in last. AP sat opposite the two officers.

CW 1 said AP refused to allow CW 1 to check vital signs or blood pressure and didn't want to be touched or spoken to. CW 1 said AP became upset when he saw media personnel at the edge of the police blockade and started raising his voice. AP then opened the rear door of the ambulance and stuck his head and upper body out. CW 1 said AP began yelling at the officers to "...*hit him.*"

CW 1 said AP "...*kind of half jumped, half dove out of back of ambulance*" to where at least one officer was standing. The two officers inside the ambulance followed him out of the ambulance while CW 1 went to the rear door and saw AP was face down on the ground with at least three officers controlling him.

CW 1 said an officer used a taser and AP was then handcuffed. CW 1 said officers stood AP up and, with his partner, CW 1 laid AP on a stretcher. AP refused CW 1's offer to assess him, although CW 1 noted AP "...*had a black eye left side and bloody nose...*"

CW 1 said they transported AP to the hospital. It was CW 1's opinion that AP was having a mental health crisis.

CW 2 told the IIO that police pulled a man (AP) out of the ambulance and he was handcuffed. CW 2 did not see a Taser used nor any blows delivered and only saw officers using physical force to restrain AP.

CW 3 took video of portions of the incident. He saw AP walk down the stairs of the residence voluntarily and without struggle or handcuffs and then walk to the ambulance in a manner CW 3 considered to be submissive. CW 3 said he stopped looking at the ambulance until he heard shouting. When he turned back and looked underneath the ambulance (CW 3's vantage point was from the front of the ambulance some distance away) CW 3 could see AP on the ground at the back of the ambulance. CW 3 saw a foot appear to strike AP (not seen on CW 3's video) but couldn't say whether it was the toe or ankle that struck AP.

CW 3's video camera was recording after the back door of the ambulance opened. It is clear AP was struggling with police and yelling loudly. He had changed from being quite cooperative to being physically uncooperative quite quickly. As the struggle moved toward the driver side of the ambulance the officers can be seen attempting to handcuff AP. Officer 1 can be seen in this video applying one knee strike to the right side of AP's shoulder/head area and AP was immediately handcuffed. The knee strike was controlled and not overly forceful, and given its position can not be said to have struck AP on the left side of his face where the injury occurred.

CW 3 said AP was restrained and placed back into the ambulance which departed soon after. CW 3 told the IIO that “...I don’t believe I saw any overtly aggressive actions towards the individual, other than that one possible situation of the foot or ankle at the back of the ambulance.”

CW 4 also saw AP walk to the ambulance and get in. CW 4 said there was “...a commotion,” a noise and a bang. CW 4 said AP was next on the ground with several officers restraining him. CW 4 heard a Taser go off, AP yelled out and then it was quiet. CW 4 said the officers finally got AP under control and they put him into an ambulance.

Officers 2 and 3 both told the IIO that based on AP’s words and actions, he was subject to apprehension pursuant to the *Mental Health Act*.

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 he acts on reasonable grounds, justified in doing what he is 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.

More specifically, the issue to be considered in this case is whether Officer 1 may have used excessive force when he kned AP. Had he done so, he may have committed assault causing bodily harm. There were no complaints by AP that he had been struck by the toe or ankle of any officer and CW 3 could only say that it “*appeared*” to have happened. No one else observed AP being struck by an ankle or toe.

In this case, police received a complaint that AP had spoken about killing himself to an employee of a utility company. Officers 2 and 3 attended AP’s residence and formed the grounds to apprehend AP under the *Mental Health Act*. That Act allows a police officer to apprehend and immediately take a person to a physician for an examination where the police officer is satisfied that the person is acting in a manner that is likely to endanger their own safety or the safety of others and appears to have a mental disorder.

The evidence was clear that AP threatened suicide and invited the police to “*shoot [him].*” CW 1, who had experience with people having mental health crisis, believed AP was

having a mental health crisis. Thus the police had ample grounds to apprehend AP under the *Mental Health Act*.

Once officers determined that AP should be apprehended pursuant to the *Mental Health Act* they attempted to have AP come willingly to the hospital; AP agreed and entered the ambulance. Once AP was in the ambulance he refused treatment and opened the back door and either dove out or was pulled out and then brought under control by police.

The physical force used in this incident to restrain and handcuff AP that was caught on video does not appear to be in excess of what was required to bring AP under control and he was clearly resisting the officers.

Officer 1 was acting within his duty to assist his fellow officers in maintaining the custody and control of AP who was at the time of the interaction clearly not under control. His knee strike to AP helped bring AP under control, and based on a review of the video was not excessive in nature. Indeed, it does not appear to have caused the injury to the left side of AP's face. How that occurred remains uncertain, but certainly could have occurred as AP left the back of the ambulance and was pulled down to the ground by police. Therefore, the evidence collected does not provide grounds to consider any charges against an officer.

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.



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

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