



**IN THE MATTER OF THE INJURY OF A MALE
WHILE BEING APPREHENDED BY MEMBERS OF THE RCMP
IN THE CITY OF SURREY, BRITISH COLUMBIA
ON SEPTEMBER 29, 2018**

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

Chief Civilian Director:

Ronald J. MacDonald, Q.C.

IIO File Number:

2018-124

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Introduction

On the evening of September 29, 2018, the Affected Person (“AP”) was involved in a minor collision between the electric scooter he was riding and a parked car. Police were called and officers attended. There was a confrontation between AP and the Subject Officer (“SO”), and AP was taken to the ground and arrested. AP subsequently complained of a sore ankle and was transported to hospital, where X-rays showed a fracture at the base of the fibula bone, close to his ankle. The fracture was later repaired with a plate and several screws.

The narrative that follows is based on evidence gathered and analyzed by IIO investigators, including:

- statements of AP and three civilian eyewitnesses;
- the statement of a witness officer (“WO”);
- police computer-aided dispatch (“CAD”) and PRIME records;
- probation office records;
- police non-emergency line and dispatch channel audio recordings;
- police vehicle GPS data;
- forensic scene analysis and photographic evidence; and
- medical records.

Pursuant to the Memorandum of Understanding between the IIO and BC Police Agencies, officers who are the subject of an investigation are not compelled to submit their notes, reports and data. In this case, SO did not agree to provide his notes or reports, nor to participate in an IIO interview.

Narrative

Shortly after 8:30 p.m. on September 29, 2018, Surrey RCMP received a call on the non-emergency line. They were told that a male (AP) on an electric scooter had collided with a parked car outside business premises, and was engaged in a discussion with two civilian witnesses from the business (“CW1” and “CW2”). CW1 was the owner of the car. CW1 told the operator that the male was holding an open can of beer, and appeared to be intoxicated. Officers were dispatched to the location.

A few minutes later, there was a second call from CW1 saying that the situation was “*getting heated*,” that the male was becoming “*belligerent*,” and that he appeared to be about to leave the scene. The call concluded as SO was arriving.

AP told IIO investigators that before police arrived he was arguing with CW2, trying to pay cash for the damage rather than pursuing an insurance claim. CW2, he said, was “*ranting*

and raving" at him. AP's recollection was that two officers arrived in one vehicle, one approaching him while the other dealt with the witnesses.

AP said he had been *"waiting for them to show up,"* but as SO arrived he was walking towards his scooter, and SO asked him *"where are you going?"* AP told investigators that when he provided identification, SO stated that AP was on a court-ordered condition not to be in possession of alcohol, which AP denied. He had purchased alcoholic beverages that evening, but said he was sure he was not in breach of any probation conditions. At this point, AP told investigators he *"started getting upset"* and he and SO *"started getting in each other's faces."* AP said his spouse, CW3, arrived and tried to calm the situation, and AP decided to back away from SO, to *"de-escalate the situation."* The officer, he said, was screaming at him, and *"sucker punched"* him in the face.

AP's spouse CW3 told investigators that there was *"a shoving match"* between SO and AP, and then SO *"sucker punched [AP] in the face."* CW2 described an *"altercation"* in which *"the gent [AP] was being a little bit unruly, and the officer was asking him to back up a couple of times."* CW2 said that SO told AP to *"step back and calm down."* At one point, CW2 said, *"it appeared that he was coming at the officer ... and then the officer had to detain, apprehend, took him down and which ended up he fell backwards into his bike and knocked his bike over."*

As AP fell to the ground, he told the investigators, both officers *"pummelled"* him, trying to hold him down, and he felt something hit the side of his ankle, injuring it. At that time, he said, *"I ceased and desisted trying to wrestle with them."*

As SO was handcuffing AP, WO arrived in his own police vehicle. The timing of WO's arrival is confirmed by his radio transmissions. He told investigators that by the time he arrived, SO already had AP under control on the ground.

WO assisted SO in lifting AP up, and noticed that AP was *"hobbling"* on one foot and complaining of pain. The officers, he said, assisted AP into the back of a police vehicle. Subsequently WO transported AP, whom he described as *"pretty intoxicated,"* to hospital.

Police communications records show that while AP was detained in the back of SO's vehicle, SO ran a computer background check on AP. The computerized information indicated that AP was on a number of court conditions, including a no-alcohol condition. That, however, was incorrect: IIO investigators were able to confirm that the conditions listed had expired over two months earlier. While AP was still subject to some conditions, none concerned alcohol.

As AP was complaining about pain, WO transported him to hospital, where he was found to have a broken fibula just above the ankle that was subsequently treated and repaired.

He was released from the hospital, and was not charged with any offence arising from the incident.

Legal Issues and Conclusion

The purpose of any IIO investigation is to determine whether an officer, through an action or inaction, may have committed an offence in relation to the incident that led to the injury to AP. If SO was acting as required or authorized by law, on reasonable grounds, he was justified in doing what he was required or authorized to do, and in using as much force as was necessary for that purpose. If he was not so authorized, or used unnecessary or excessive force, he would be liable criminally for the unauthorized act or for the excess.

The issues to be considered in this case, therefore, concern the lawfulness of SO's arrest of AP, and the reasonableness of the force used against AP in the course of that arrest.

AP has told investigators, as noted above, that SO believed erroneously that AP was breaching court-ordered conditions by possessing and/or consuming alcohol, and that it was a heated argument about this issue that led to AP being taken to the ground and placed under arrest. On the evidence as a whole, though, it is clear that SO had not yet run a background check at the time of the arrest, so there would have been no basis for that disagreement. The argument must have occurred, in reality, while AP was sitting in SO's police vehicle.

In addition, AP's evidence that both officers pummeled him while he was on the ground appears to be unreliable, as it is not supported by the evidence of the witnesses, and it is clear that WO did not arrive until the altercation was ended.

Evidence from civilian witnesses, including AP's spouse, provide a somewhat different account. It appears from that evidence that it was AP's general belligerence and an immediate physical confrontation between AP and SO that provoked SO's strike to AP's face and AP's consequent fall to the ground. The IIO does not have direct evidence from SO about his initial grounds for arrest, but in these circumstances he could have relied on a number of justifications, such as assault, obstruction of a peace officer or causing a disturbance, for detaining or arresting AP.

The record of radio traffic indicates that after running a computer check on AP, SO subsequently told Dispatch he was arresting AP for a breach "as well." It is now clear that, through no fault of SO, he was in error in that regard. It is unfortunate that a failure of some sort had caused the police database to be significantly out of date at the time of the incident. AP was correct in his assertion that he was not on a no-alcohol condition that evening. The confusion about probation conditions, though, does not render the initial arrest unlawful.

Regarding the degree of force used, the evidence establishes that SO and AP were in a face to face confrontation. AP's spouse confirmed it was a shoving match, and CW2 described AP as being "unruly" and was told by SO to back up and calm down. CW2 also described AP as "coming at" SO. Faced with this aggressive and intoxicated male SO delivered a single blow to gain control over him. In the circumstances, that action by SO was not unreasonable.

By his own admission, AP then tried to "wrestle" with SO, and it appears that no more force than necessary was used to restrain and handcuff him. The injury to AP's leg must have happened either in the fall itself or in the short struggle on the ground. He was uninjured beforehand, but was said to have been "hobbling" when he regained his feet in handcuffs. From that point on, there is no allegation or evidence of any force being applied to AP by either involved officer.

The apparent error concerning probation conditions did not cause any unwarranted further detention of AP, as he was transported from the scene to hospital to deal with his injury, and was then released.

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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