



**IN THE MATTER OF THE INJURY OF A MALE
WHILE BEING APPREHENDED BY MEMBERS OF THE
RCMP IN THE MUNICIPALITY OF PORT HARDY, BRITISH COLUMBIA
ON MARCH 22, 2019**

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

Chief Civilian Director:

Ronald J. MacDonald, Q.C.

IIO File Number:

2019-057

Date of Release:

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Introduction

On the afternoon of March 22, 2019, RCMP members responded to a report of a domestic disturbance at a residence in Port Hardy. Outside the home they encountered a male, the Affected Person (“AP”) in this case, who appeared intoxicated and who was aggressive and uncooperative. In the course of his arrest for causing a disturbance, AP was injured. When he complained of ongoing pain he was transported to hospital, where he was diagnosed with broken ribs and a punctured lung. The IIO was notified and commenced an investigation.

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

- statements of AP and three other civilian witnesses, including two jail guards;
- statements of four witness police officers;
- cell phone video of part of the incident;
- scene photographs;
- 911 call and radio transmission recordings;
- police Computer-Aided Dispatch (“CAD”) and Police Records Information Management Environment (“PRIME”) records;
- video from the RCMP cell block;
- RCMP detachment jail log, prisoner report and prisoner policies;
- medical evidence, including photographs of AP and police officer injuries; and
- statements and reports of Subject Officer 1 and Subject Officer 2.

Pursuant to section 17.4 of 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, Subject Officers 1 and 2 (“SO1” and “SO2”) provided IIO investigators with access to their notes and reports, and provided voluntary statements.

Narrative

At 3:51 p.m. on March 22, 2019, Port Hardy RCMP received a report from Civilian Witness 1 (“CW1”) that AP had assaulted and frightened her in her home. AP was under a court-ordered condition that he was to leave the house if requested by CW1, so when she told him she had called the police, he packed some personal items into a basket and went outside to wait for them on the driveway.

When SO1 and SO2 attended, AP and CW1 were involved in an argument, he on the driveway and she from an upstairs window. AP was pacing back and forth, yelling, with clenched fists. The officers waited briefly to see if the situation would calm down but when

it did not, SO1, who had been intending to simply remove AP from the situation, told him he was under arrest for causing a disturbance.

AP told investigators that he did not recall being told he was under arrest, but said he was taken to the ground face-down, told to stop resisting, punched in the side of his face and kned in the ribs on his left side. He acknowledged threatening one of the officers.

SO1 said that he took AP down because when he told AP he was under arrest, AP began fighting, throwing punches at SO1. SO1 wrapped an arm around AP's head in an effort to control him, and kned him in the chest. At about the same time, SO2 pulled AP's legs from under him, and AP fell to the ground with SO1 on top of him.

When AP stopped "throwing punches," said SO1, the officers rolled him onto his front and handcuffed him. Video recorded from the upstairs window by CW1, which she only started after the police had applied the handcuffs, shows AP shouting angrily as he is taken to the police vehicle. He is resisting violently and kicking as the officers try to get him into the back seat. When he complains, "you took me down," SO1 responds, "because you started fighting us."

SO2 described AP kicking and "flailing" as the officers tried to place him under arrest. He said he decided against using his Taser or baton against AP, as he felt he and SO1 would be able to gain control of AP without resorting to weapons. Once on the ground, SO2 said he delivered three knee strikes to AP's left side to "take the wind out of him" and stop him fighting.

SO2 said that in the course of the struggle he suffered "road rash" from the gravel driveway, and he saw that SO1 had a fat lip and skinned knuckles.

By 4:17 p.m. AP had been transported to the RCMP detachment. He complained to officers that his ribs were sore, and SO1 decided that if necessary an officer from the next shift should take AP to hospital, as he felt it advisable to separate AP from the arresting officers. A new shift came on duty at 6:00 p.m. At 10:00 p.m., AP complained of trouble breathing and at 10:19 p.m. he was taken to hospital to have his ribs checked. He was told he had six broken ribs and a pneumothorax (collapsed lung).

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. More specifically, the issue to be considered in this case is whether an officer may have committed the offence of assault causing bodily harm. If the officers were acting as required or authorized by law, on reasonable grounds, they were justified in using as

much force as was necessary. Use of unauthorized or excessive force, on the other hand, could result in criminal liability.

There is a difference in the evidence about the confrontation that led to the injury, between the account of AP and that of the officers. The evidence as a whole, though, is consistent with the statements of SO1 and SO2:

- according to CW1, AP had been aggressive and assaultive towards her, and had consumed alcohol that was adversely affecting his behaviour;
- during the segment of the incident captured on CW1's video, AP is clearly belligerent and aggressive towards the officers, while the officers are not shown to utilize any more than moderate force to control him with their open hands—indeed their actions are relatively restrained.;
- on the evidence, SO1 was injured in the struggle, apparently from a punch from AP;
- it does not appear that any significant force was used by either officer once AP was under control and handcuffed; and
- the spontaneous utterance “you started fighting us” also has to be considered as corroborative of the subject officers’ subsequent accounts.

The officers were clearly acting within their lawful authority and in accordance with their duty, both in removing AP from CW1's residence and—based on his continuing behaviour—arresting him for causing a disturbance. On the evidence as a whole, it is clear that he resisted them in the execution of those duties, so that it was necessary for them to use force to restrain him and to defend themselves.

In essence, AP chose to fight with the police when they attempted to lawfully arrest him. When he did, the police used force in response. That force was proportionate to the force they were facing, and ended as soon as AP no longer posed a threat to them. In the circumstances, it cannot be said that the degree of force used was excessive.

Accordingly, as the Chief Civilian Director of the IIO, I do not consider there are reasonable grounds to believe that an officer committed an offence under any enactment. Therefore the matter will not be referred to Crown counsel for consideration of charges.



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

July 19, 2019

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