



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

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

Chief Civilian Director:

Ronald J. MacDonald, Q.C.

IIO File Number:

2018-137

Date of Release:

August 6, 2019

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Introduction

On the morning of October 29, 2018, Surrey RCMP received a 911 call from a male saying that a female acquaintance had assaulted him in his apartment. Two officers went to the apartment and arrested the female. In the course of the incident, the female suffered an injury to her shoulder. She was discharged from hospital later that day after treatment for a fractured humerus bone. The Independent Investigations Office (“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, one civilian witness, one police witness officer and three attending paramedics;
- audio recordings of police radio transmissions and 911 call;
- police Police Records Information Management Environment (“PRIME”) and Computer-Aided Dispatch (“CAD”) records; and
- medical evidence.

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, the Subject Officer (“SO”) declined to provide access to his notes or reports, or to participate in an IIO interview.

Narrative

Civilian Witness

The civilian witness (“CW”) told IIO investigators that on October 29, 2018, he had recently come home from a stay in hospital for an injured hip. He said he had no medications for his pain, and was relying on vodka and beer as his “pain-killer.” A dispute had arisen with a female acquaintance, the Affected Person (“AP”), and she had kicked out at him. He said he had protected his injured hip from her kicks, but she had landed a blow on his face.

At 9:11 a.m., CW had called 911. He told the call taker that AP had kicked him in the face, giving him “a black eye [and a] busted nose.” He said the reason for his call was to have AP removed from his apartment. AP could be heard yelling angrily in the background.

When police came into the apartment, said CW, an officer “yanked” AP from the bed onto the floor. The officer grabbed AP’s arm, CW said, and “twist[ed] her hand in the back and put handcuffs on her, and she was yelling and screaming, she wasn’t resisting arrest, she

was yelling and screaming because of the pain.” Asked to explain in more detail, CW said “She was sitting on the bed, police officer said they charge her for assault, ‘get up here’. She curled down, went flat to the floor, and then a police officer put her hands behind her back and put handcuffs on”. Added CW, “I don’t recall too much, I was drunk at the time.”

In her own interview, AP acknowledged that both she and CW had been drinking. She told investigators that the call to police was “nothing to do with the assault”: it was simply to remove her from CW’s apartment. She said that there was “a white cop and an Asian cop” (both officers attending were Caucasian). She said that when officers took her arms to handcuff her, both she and CW warned them that her left arm was susceptible to injury, but “the white cop, the more I said, ‘Please don’t, it’s painful’, the more he twisted.” She said the officer was trying to twist the arm behind her back, but “the Asian officer, he let go of me.” AP said that “the white cop” continued to “wrench” her arm behind her back, but the “Asian officer said, ‘Well let’s cuff her in front’ ... but by then I was screaming in pain.” She told investigators that once she was handcuffed she never saw the “Asian officer” again.

AP also told investigators that the paramedics “weren’t very gentle” with her. She said she was sitting on the apartment floor, handcuffed in front, and a paramedic “very roughly grabbed me and jerked me up onto something” to move her downstairs. In the ambulance, she said, “the pain was excruciating,” and she was screaming in pain. She told investigators that one of the paramedics, “a guy or girl, I don’t know,” said “well, if you don’t settle down, you know, we know a lot of bumpy roads on the way to the hospital.” AP said she had no memory of having X-rays at the hospital.

Police Witness Officer

The police Witness Officer (“WO”) told investigators that he went to CW’s apartment with SO in response to a dispatch about a “domestic.” At the door of the apartment, WO said, they were met by CW, nude from the waist down, who then went to sit on the bed. AP, he said, was also sitting on the bed, which was a mattress on the floor.

The officers wanted the two civilians separated for questioning, so they asked AP to move to the other side of the small apartment, where she sat down on her mobility scooter. WO said that this was accomplished only after argument from AP. SO went to speak with AP while WO asked CW what had happened. CW said he had been kicked in the face by AP, and WO told investigators that CW had an injury to one eye that “looked like an old bruise.”

The officers decided that AP was “arrestable for assault,” so WO went over to her and placed her under arrest “verbally.” He told investigators that in response AP moved on her scooter into the centre of the room and crossed her arms in front of her in a manner

he interpreted as signifying that “she wasn’t going to do anything that we said.” He said he told her to stand up to be handcuffed, “and she wasn’t having anything of it.” When he tried to apply handcuffs to her right wrist, he said, she started kicking him and started to bite and scratch at his gloved hand.

WO said that AP then pulled away and “catapulted” or “jumped” off the scooter, “with quite some velocity,” landing on her left shoulder. For a while, he said, she held her left arm under her, resisting attempts by the officers to handcuff her. WO was handling AP’s right arm while SO was on her left, trying to get her left arm out from under her. Eventually AP brought her left arm out and she was cuffed in front. After being restrained, WO said, AP started complaining about an injury to her left shoulder, and the officers called paramedics.

When paramedics arrived, said WO, AP was uncooperative and abusive towards them, but eventually got onto their gurney and was transported to hospital. AP was later released on a Promise to Appear, charged with assault and uttering threats.

Medical Evidence

Attending paramedics described AP as angry, aggressive and non-compliant, cursing at the police officers when the paramedics arrived outside the apartment, and swearing continually until she was delivered to the hospital. She was described as kicking at the police officers as they sought to control her, and at one point was said to have pulled away and “flopped” to the floor in a “temper tantrum.” Police officers brought AP out of the apartment and, according to the paramedics, none of them entered the apartment. No medical evaluation was conducted at the scene because of AP’s combativeness.

AP’s left shoulder was X-rayed at the hospital, with a diagnosis of a “mildly comminuted fracture through the proximal humeral neck.” Due to the nature of the injury, it was not possible to determine the cause, and the attending specialist was not able to rule out either AP’s explanation or that of WO.

Photographs of AP taken approximately two weeks after the incident show extensive purple bruising around her upper left arm, of unspecified origin.

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 SO may have injured AP by a use of force that was unlawful, unnecessary or excessive, in which case he may have committed the offence of assault causing bodily harm.

There is no doubt that both involved officers were lawfully authorized and acting on reasonable grounds in arresting AP. They had received a credible complaint that she had assaulted CW in a domestic relationship context, with some visible evidence of an injury to CW. There was also a clear need to remove AP from CW's home, so as to separate her from CW. The question is whether excessive force was used, and whether it was the cause of AP's injury.

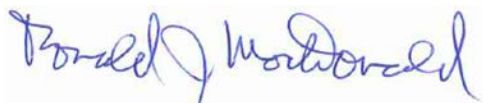
As related above, AP complained that her arm had been "wrenched" behind her back, injuring her shoulder, but that the officers had then relented and cuffed her wrists in the front. By CW's account, on the other hand, AP's arms were almost immediately twisted behind her back to be handcuffed there. CW also said, though, that just before this happened AP "curled down, went flat to the floor," which appears to parallel in one respect the narrative provided by WO.

WO attributed the injury to AP's action in throwing herself from her mobility scooter onto the floor and described a struggle by SO, not to twist AP's left arm behind her back but rather to pull it out so she could be handcuffed in front. As mentioned earlier, the IIO has no evidence from SO regarding his own recollections of how he handled AP's left arm.

From the evidence as a whole, including corroborative evidence from the attending paramedics, it seems clear that the involved officers were tasked with arresting an angry, belligerent and uncooperative AP, and needed to secure her in handcuffs. Whether her injury resulted from a fall to the floor or from being secured in cuffs, or from a combination of the two, there is no reliable basis for concluding that unnecessary or excessive force was used to achieve this lawful objective.

To the extent that there are allegations otherwise, they come from AP and CW, and cannot be viewed as entirely reliable. Both of these witnesses were evidently significantly intoxicated and upset at the time, and the credibility of AP's account suffers further from the rather implausible allegations she made against the attending paramedics.

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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