



**IN THE MATTER OF THE INJURY OF A MALE
WHILE BEING APPREHENDED BY MEMBERS OF THE
RCMP IN THE CITY OF PENTICTON, BRITISH COLUMBIA
ON AUGUST 17, 2018**

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

Chief Civilian Director:

Ronald J. MacDonald, Q.C.

IIO File Number:

2019-094

Date of Release:

December 10, 2019

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Introduction

On May 16, 2019, the Independent Investigations Office (IIO) received a letter from the Affected Person ('AP') in this case, alleging that in August 2018 he had been seriously injured in the course of an unlawful arrest by RCMP officers. The IIO commenced an investigation. The narrative that follows is based on evidence collected and analyzed during the investigation, including the following:

- statements from AP, a civilian eyewitness, three witness police officers and the Subject Officer ('SO');
- police Computer-Aided Dispatch ('CAD') and Police Records Information Management Environment ("PRIME") records;
- police dispatch radio audio recordings;
- police vehicle dash cam video;
- RCMP detachment Closed-Circuit Television ('CCTV') video; and
- medical records.

Narrative

AP's allegation was that on August 17, 2018, he was pulled over by an RCMP officer while driving in Penticton. He said that when he got out of his vehicle and went to the police car to ask the reason for the stop, he was taken by the arm and marched back to his vehicle. When he resisted, he said, he was told he was under arrest for assaulting a peace officer. He said that when he bent to retrieve his wallet, which had been knocked from his hand, the officer "slammed" him to the ground. Finally, he said, another officer had used knee strikes against him while he was handcuffed. AP said his injuries included broken and displaced ribs, a collapsed lung, abrasions and soreness.

Evidence gathered by IIO investigators, including witness statements corroborated by video and audio recordings of the incident, is not consistent with the more significant allegations in AP's account.

The incident began when AP slowed his vehicle at the driveway of a Tim Hortons, intending to let Witness Officer 1 ("WO1") out into traffic. WO1 did not immediately take the offered opportunity, so AP drove on, making some sort of hand gestures towards WO1 as he did so (AP described having gestured with both hands to say "what if?").

What followed was captured by the dash camera of WO1's police vehicle.

The video shows WO1 pulling out behind AP's vehicle, closing the distance and activating his emergency lights. After a short distance, AP pulls over to the curb. WO1 goes to the driver's window of AP's car and after a short conversation returns to his own vehicle with

AP's driver's licence. WO1 told IIO investigators that AP had been yelling angrily at him throughout their interaction.

A few seconds later, though, AP exits his vehicle and walks back towards WO1's police vehicle. He can be seen to be a large, strongly built individual, and his body language is very assertive, if not aggressive. Despite being told to go back to his car, AP continues to approach, asking loudly why he has been stopped. Audio from the police dashcam recording includes WO1 saying "I'm stopping you because it looked like you were in distress. Get back in your vehicle."

AP does not return to his vehicle, and after a short time during which he and WO1 are out of the view of the police dashcam, he can be heard saying "Get your hands off me!" The video then shows him being pushed down towards the front of the police vehicle with one of WO1's hands on AP's right arm, and the other on the back of AP's neck. AP then appears to lose his balance and falls, with WO1 falling on top of or beside him.

As WO1 rises to his feet, his chest-mounted radio handset can be seen dangling. He tries to help AP up, but AP pulls away, and a cable of some sort can be seen to fly out of WO1's hand. As AP stands, WO1 is attempting to control him by holding onto his shirt and right arm. AP is actively resisting, saying "Get your hands off me!" and "No, I'm not under arrest!"

At this point, while still engaged face to face with AP, WO1 replaces his radio handset in its chest holster, and an alert tone can be heard over the police radio. WO1's '10-33' (officer needs assistance) button had been pressed. This appears to have been accidental, and WO1 is subsequently heard apologizing for it on the radio dispatch channel.

After a few more seconds of resistance on AP's part, WO1 partially releases his hold and appears to try to re-engage AP in conversation, which continues for approximately thirty seconds. WO1 subsequently told IIO investigators that he had been (unsuccessfully) trying to de-escalate the situation, and that is consistent with his demeanour on the video. During this time, AP bends and retrieves his wallet from the ground, with no interference from WO1. In particular, he was not "slammed to the ground" at this point. On the radio channel, a call can be heard from Dispatch for backup to WO1's location. WO1 then tries to hold AP against the back of AP's vehicle, evidently trying to effect an arrest. However, the two stumble sideways and WO1 takes AP down onto the ground again, this time onto the sidewalk.

Dash cam video from the police vehicle driven by the Subject Officer ("SO") shows him arriving at the scene a few seconds later. Nearby civilians can be seen approaching and attempting to provide assistance to WO1, who is struggling to control AP on the sidewalk.

SO runs forward and joins in the attempts to control the resistant AP. SO is seen trying to control one of AP's arms before delivering a knee strike to AP's chest or abdomen, following which AP can be heard yelling in pain.

The two officers are then able to wrestle AP onto his front on an adjacent grassy area, and secure his wrists in handcuffs. There is no further resistance or use of force. As other officers arrive, AP is raised to his feet by WO1 and SO, escorted to SO's police vehicle and transported to cells.

From there AP was subsequently taken to hospital, where he was diagnosed with fractures of the fourth and fifth ribs on his left side.

Legal Issues and Conclusion

The purpose of any IIO investigation is to determine whether there are reasonable grounds to believe that an officer, through an action or inaction, may have committed any offence in relation to the incident that led to the injury to AP's ribs. More specifically, the issue to be considered in this case is whether any officer used unauthorised or excessive force during the arrest. 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.

When WO1 decided to conduct the initial traffic stop of AP, he was responding to an ambiguous gesture by AP that was apparently an expression of frustration but which could equally have been a sign of distress. It was lawful and reasonable for WO1 to exercise the broad powers provided to peace officers under the *Motor Vehicle Act* to detain a motorist briefly for purposes of ensuring safety, compliance with regulations, etc.

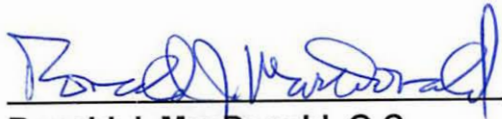
It was also lawful and reasonable for WO1 to insist that AP remain in his vehicle while WO1 was checking his documentation, to ensure the safety of both AP and the officer. After all, it is not safe for a motorist to be standing on a roadway near the lane of travel during a traffic stop. AP's continuing refusal to comply led to the physical confrontation, including two occasions when both men went to the ground. The second of these occasions appears to have been an intentional 'take down', but there is no evidence to support AP's allegation that he was "slammed" to the ground while trying to pick up his wallet.

SO, responding to a call for backup and finding WO1 in a struggle on the ground in which two civilians had evidently felt it necessary to intervene, was justified in acting swiftly and decisively to get AP under control. In particular, it is worth noting that a '10-33' alert is considered the most urgent call for backup, usually signifying that an officer is in a seriously threatening situation. SO had no way of knowing that the alert on this occasion

had been issued accidentally. The single knee strike to the body that SO delivered was, in these circumstances, reasonably necessary and not excessive. Once AP had been controlled and was in handcuffs, no further use of force was deployed.

The unfortunate reality of this situation is that AP turned what started as a routine traffic stop into a physical confrontation. His decision to leave his car, and then continually refuse to follow directions from a police officer, resulted in force having to be used against him. In that regard, the force used by each officer was only what was necessary, which ended as soon as AP's resistance ended.

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.

A handwritten signature in blue ink, appearing to read "Ronald J. MacDonald", is written over a horizontal line.

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

December 10, 2019

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