



**IN THE MATTER OF THE INJURY OF A MALE  
WHILE BEING APPREHENDED BY MEMBERS OF THE  
RCMP IN THE CITY OF GIBSONS, BRITISH COLUMBIA  
ON MARCH 4, 2019**

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

Chief Civilian Director:

Ronald J. MacDonald, Q.C.

IIO File Number:

2019-062

Date of Release:

December 12, 2019

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## **Introduction**

In the early morning hours of March 3, 2019, the Subject Officer ('SO') was trying to find a place for an intoxicated male—the Affected Person ('AP')—to spend the night. While in the rear of SO's police vehicle, AP deliberately caused significant damage to the vehicle. SO removed AP from the vehicle to arrest him for mischief and there was a struggle, during which AP suffered an injury to his leg. Because the injury met the statutory definition of 'serious harm', and had been caused in connection with the actions of a police officer, 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, three civilian witnesses and three witness police officers;
- video recordings from SO's police vehicle and from the RCMP detachment;
- audio recordings of police radio dispatch messages;
- police Computer-Aided Dispatch ('CAD') and Police Records Information Management Environment ('PRIME') 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, SO has not provided any evidence to the IIO, either directly or through his counsel.

## **Narrative**

At about 2:30 a.m. on March 4, 2019, a Gibsons RCMP member (SO) was called to respond to a complaint about a male (AP) repeatedly ringing the caller's front door bell. The caller later told IIO investigators that AP had appeared to be in some sort of distress, swearing and yelling and very intoxicated.

SO located AP a short distance away. AP said he had been separated from his girlfriend earlier that night, and had been knocking on random doors and screaming her name. AP told investigators he had been drinking vodka (approximately 25 ounces) since the previous afternoon, and described his level of intoxication as "ten out of ten."

SO permitted AP to get into the back seat of the police vehicle with all his possessions, other than a backpack which was placed into the rear cargo compartment. At this point SO did not place AP in handcuffs, even though it is normal procedure for police to do so when arresting someone, for officer safety and other reasons. This was likely because at this point SO had not decided that AP had to be taken into custody. Following AP's

directions SO was able to take AP to the house where AP's girlfriend lived with her parents. AP had told SO that he would be able to spend the night at that home. When they arrived, SO left AP in the back of the vehicle and went to the house to determine whether AP would be permitted to stay there.

The girlfriend's parents were roused from their sleep by the arrival of the police car in their driveway, and came to the front door. They told SO that there had been some sort of falling out between their daughter and AP, that the daughter had come home alone, and that AP was not welcome to stay there.

Speaking later to IIO investigators, the parents described SO's demeanour as calm, understanding and apologetic. He asked to speak with their daughter, and spent some time talking with her, as he evidently had concerns that AP might have hurt the young woman. Once SO had finished speaking to the girlfriend, he left the home, intending to drive AP to the detachment to sober up.

SO had been in the residence for a little over 35 minutes. When he came back to his vehicle, he found that AP had caused significant damage to it. Interior video shows AP applying sustained pressure with his feet to the roof and to the passenger side rear door, resulting in deformation of the door.

AP told investigators that when SO came to the door, he asked AP what had happened, and AP said he did not know. AP stated that SO then opened the door and, as soon as AP stepped out, threw him to the ground. The video recording from the vehicle does not show clearly what happened outside the door, but it does show a period of several seconds after AP steps outside before some sort of physical struggle ensues, which then goes down onto the ground. From his front door, the girlfriend's father heard screaming and swearing, and then saw SO on top of AP beside the rear door of the police vehicle, struggling with him. He said he did not see SO strike AP in the course of securing him.

The vehicle video shows AP being helped back into the rear seat, now handcuffed. SO then drove to the detachment, where AP was placed in a cell.

Arriving at the RCMP detachment, AP recalled, he had what he thought was a bad 'charlie horse', and had difficulty walking. Detachment video shows AP obviously having trouble placing any weight on his right leg and officers, including SO, helping him to walk.

SO told a fellow officer that when he found the damage AP had caused to the police vehicle, he arrested AP for mischief and brought him out of the back seat to complete a search and handcuffing. During this procedure, he said, AP pulled away multiple times and had to be taken to the ground.



AP did not complain to officers about the injury until later that day, as he was being released. He was taken to hospital where he was diagnosed with a spiral fracture of the right femur.

## **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 AP's injury. More specifically, the issue to be considered in this case is whether SO may have committed the offence of assault causing bodily harm during the arrest of AP. If SO was acting as required or authorized by law, on reasonable grounds, he was justified in using as much force as was necessary. Use of unauthorized or excessive force, on the other hand, could result in criminal liability.

SO was clearly acting within his authority in his dealings with AP. In fact, rather than trying to assist AP in finding a hospitable place to spend the rest of the night, SO would have been fully justified in arresting AP at their first encounter, for public intoxication and causing a disturbance. The damage AP caused to the police vehicle certainly made him arrestable for mischief.

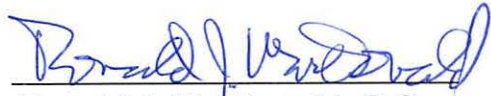
At that point AP was unsecured, with most of his personal possessions within reach, and it would not have been appropriate simply to place him under arrest verbally and transport him without searching or handcuffing him. To do so would be contrary to accepted police practice designed for officer safety and to ensure a person under arrest is a reduced escape risk.

On all the evidence, AP's injury clearly occurred during the arrest. What is more difficult to judge, though, without any explanation from SO, is whether the degree of force used by him in the course of the arrest was necessary and reasonable.

AP's description of the incident is strongly suggestive of an action by SO that was unjustified and excessive. On the other hand, AP's behaviour at the time was unruly if not belligerent, and his admitted level of intoxication calls into question, to some extent, the reliability of his recall.

On the whole the evidence, particularly the video evidence, presents a picture of SO's behaviour throughout as calm and professional, and of AP's as irrational and aggressive. While the video from the car is not conclusive, it does suggest that when AP was first taken from the car there was no significant force applied by the officer as suggested by AP. What appears to occur is that after several seconds AP begins to resist the officer's efforts, and a struggle ensues leading to AP being taken to the ground. In these circumstances, where SO was now dealing with a physically resistant and highly intoxicated individual, this was a reasonable approach.

As a result it cannot be said that the evidence would support a reasonable belief that any officer may have committed an offence, 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", written over a horizontal line.

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

December 12, 2019

**Date of Release**