



INDEPENDENT
Investigations Office of BC

**IN THE MATTER OF THE INJURY OF A FEMALE
WHILE BEING APPREHENDED BY MEMBERS OF THE RCMP
IN THE MUNICIPALITY OF WHISTLER, BRITISH COLUMBIA
ON AUGUST 17, 2019**

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

Chief Civilian Director:

Ronald J. MacDonald, Q.C.

IIO File Number:

2019-151

Date of Release:

January 15, 2020

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Introduction

On August 17, 2019, the Affected Person ('AP') was intoxicated and repeatedly riding a bicycle past RCMP members in the pedestrian zone of Whistler Village. She was arrested for a bylaw offence and for obstruction of a peace officer, and was injured in the course of the arrest. 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, two witness police officers and attending paramedics;
- police Computer-Aided Dispatch ('CAD') and Police Records' Information Management Environment ('PRIME') records;
- audio recordings of police radio transmissions;
- RCMP prisoner log;
- RCMP cell block video recordings; 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') provided a statement to the IIO.

Narrative

Civilian Witness 1 ('CW1') told IIO investigators that in the early morning hours of August 17, 2019, after leaving an apartment in Whistler Village, he had been involved in an altercation with a group of males. CW1 was with his friend CW2, and at some point in the confrontation CW2 was punched and knocked unconscious. CW1 said that two police officers arrived and were questioning CW2, who was sitting on a bench, dazed. On the evidence, both CW1 and CW2 were significantly intoxicated, and CW2 was later diagnosed with a mild concussion.

The two officers, SO and Witness Officer 1 ('WO1'), had been patrolling the Village on foot, and were in full police uniform. As they were dealing with CW2 they saw AP riding a bicycle through the pedestrian-only area, which is clearly marked with 'no cycling' signs. AP, they said, was cycling at high speed and endangering pedestrians in the area, and they told her to stop and dismount.

WO1 described his attention being brought to AP when she "zoomed" past, close behind him. He said she passed so close that "I could feel the wind of the bike against me." He said he watched AP ride away, "riding the bike absolutely wild." He decided to stop her, and moved out into the middle of the pathway. He said that as AP rode back at him he

yelled at her several times "Get off the bike!", but AP ignored these commands and swerved around him. The next time she came around the area, he grabbed her handlebars and told her to "get off the bike, I'm seizing the bike." AP, he said, yelled "No, no, you're not taking the bike." WO1 said he became engaged in a struggle with AP over the bike, and SO came to assist. SO pulled AP in one direction, and WO1 pulled the bicycle in the other. As he took it to place it against a wall, he said, AP was "flailing" and yelling, and when he turned back, SO had taken AP to the ground and was trying to handcuff her.

SO also recalled AP disregarding several commands to stop and twice riding directly at the officers. She said that as AP was riding towards WO1, SO saw WO1 put out his arms to brace himself against the collision and took hold of AP and the bicycle. AP was told she was under arrest and asked for identification, but did not provide any. SO said she held AP by the arm as WO1 took the bicycle to one side. By this time, said SO, other intoxicated people in the area were becoming hostile and she was concerned that the situation might escalate. She decided to handcuff AP, who was resisting her physically. In order to get control, SO said she used a hip toss/tripping manoeuvre to take AP to the ground. AP, said SO, landed on her left side and rolled onto her back, still resisting. Both officers then turned AP face-down and handcuffed her. SO said AP was now complaining that her ankle hurt.

AP told IIO investigators that she had borrowed the bicycle after leaving a bar at about 3:15 a.m. She acknowledged hearing someone telling her to slow down, but said she could not operate the brakes because she was not familiar with the bicycle. She admitted she had been "really drunk" at the time. She said she recalled seeing a person in black in front of her, and being pulled aggressively off the bicycle. She said that she was told "you are going down" and "we will break your leg." She remembered being taken to the ground and handcuffed, and thought she had been tasered before the handcuffing.

Civilian Witness 3 (CW3) told IIO investigators that while walking through the square, he had come across a friend, CW2, who was sitting on a bench talking to two police officers. CW2 appeared dazed, and was bleeding from his lip. He told CW3 he had been assaulted. While talking to CW2 and the police officers, CW3 said, he saw a female who appeared "drunk", riding a mountain bike around the square. One of the officers tried to wave the female down, but she continued circling the square. CW3 said the male officer stopped AP by grabbing her handlebars and one arm, and told her to get off the bicycle. CW3 said AP "might have" resisted and pulled away, and the female officer grabbed her around the neck or shoulder area and took her to the ground. Asked whether he heard either of the officers make any threats to AP, CW3 said he did not hear anything like that.

CW1 described the incident in essentially similar terms, except that he recalled there being at least five police officers on top of AP when she was tackled and taken to the ground, and considered it a case of “police brutality.”

CW2 also recalled “four or five” officers running at AP and tackling her. He said he heard one officer say “if you don’t come off I will break your leg.” CW2 said that he gave AP his contact information, encouraged her to file a complaint and said he would be a witness for her against the police. CW2 described the police actions as “an abuse of power.” He acknowledged that he had discussed the incident with AP subsequently.

AP told investigators that despite not being able to walk properly and complaining about pain in her ankle, she was pushed and hurried, and not given any assistance or support by police. When the male officer who had arrested her got her to the RCMP detachment, she said, he was rough with her and pushed her against the wall when taking her photograph. It was about twenty minutes after she was lodged in a cell that an officer finally brought her an ice pack for her ankle, she said. She was released in the early morning, and police called an ambulance for her when she requested one.

AP was subsequently diagnosed as suffering from a fracture to her right ankle.

Legal Issues and Conclusion

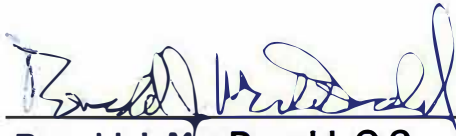
The purpose of any IIO investigation is to determine whether there are reasonable grounds to believe that an officer, through an action or inaction, may have committed any offence in relation to an incident resulting in serious harm or death. More specifically, the issue to be considered in this case 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.

Both WO1 and SO were acting lawfully, in the execution of their duty, in taking action against AP to stop her riding a bicycle around a pedestrian zone. There is no ambiguity in the evidence on this point, and AP acknowledges having been told to stop. It is also clear that WO1 stopped her in as measured a manner as possible, essentially by placing himself in her path and forcing her to a halt with his arms.

From this point on, there seems little doubt that AP was resisting both officers to a significant degree, and SO was justified in deciding to control her using handcuffs. It is likely that AP’s ankle injury occurred when SO took her to the ground, but that manoeuvre too was justified, given the continued physical resistance displayed by AP, and there is no reliable evidence suggesting that unnecessary or excessive force was used.

The suggestion from both AP and CW2 that one of the officers made a direct verbal threat to break AP's leg would be troubling if it appeared reliable. Both individuals, though, were clearly highly intoxicated at the time, and CW2 was also suffering from a concussion. They had discussed the incident afterwards, and CW2 was evidently motivated to help AP in pursuing a complaint against police. The reliability of CW2's recall, like that of his friend CW1, is further placed in doubt by the fact that both witnesses described the confrontation as involving four or five police officers rather than just two. CW3, as set out above, provided investigators with what appeared to be a more accurate account of the incident, and said he did not recall any threat being made.

Accordingly, as the Chief Civilian Director of the IIO, I do not consider that there are reasonable grounds to believe 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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