



**IN THE MATTER OF THE INJURY OF A MALE
WHILE BEING ARRESTED BY MEMBERS OF THE RCMP
IN THE CITY OF SURREY, BRITISH COLUMBIA
ON MARCH 17, 2019**

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

Chief Civilian Director:

Ronald J. MacDonald, Q.C.

IIO File Number:

2019-054

Date of Release:

February 13, 2020

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Introduction

On March 17, 2019, the Affected Person ('AP') in this case was seriously injured in the course of his arrest by RCMP officers for the offence of obstruction of a peace officer, after he refused to stop to be issued a ticket for jaywalking. 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, two other civilian witnesses, and three police Witness Officers;
- police Computer-Aided Dispatch ('CAD') and Police Records Information Management Environment ('PRIME') records;
- audio recordings of police radio dispatch transmissions;
- video recordings from Closed-Circuit Television ('CCTV') covering the area where the incident occurred;
- video and still photographs from AP's mobile device;
- RCMP policies; and
- medical evidence.

Narrative

On March 17, 2019, at 3:48 p.m., AP was walking across Civic Square in central Surrey. A vigil for the victims of the recent New Zealand mosque shootings was planned for that afternoon in the square, and was set to start at about 4:00 to 4:30 p.m. At the time AP was crossing the square, people had not yet gathered for the event. Apart from AP and one or two passersby, the only people present in the immediate area were a group of RCMP members who had arrived in advance of the anticipated vigil.

Wondering about the reason for the police presence, AP held up a mobile phone as he passed and took some short videos and photographs of the officers and their parked vehicles. SO and Witness Officer 1 ('WO1') noticed and decided to check on AP. As they approached him, they saw him leave the square and jaywalk across City Parkway, causing an approaching vehicle to brake to avoid him.

The officers called out to AP to stop, but he said "No," and continued walking. On the far side of the street, SO caught up with AP and took hold of his left arm. AP pulled away, and SO used what WO1 called a "leg sweep" to take AP to the ground, where he was handcuffed by WO1. While being restrained, AP was complaining of pain in his leg, and was yelling and swearing angrily, directed at the officers. The swearing included the use of homophobic slurs.

WO2 told IIO investigators that when he first saw SO and WO1 dealing with AP, it appeared to him that SO wanted to talk to AP, and that AP was refusing. WO2 said AP was flailing his arms, and said he saw AP reach into his pocket. He said that SO then took AP to the ground using what WO2 called an “arm bar” technique that was “pretty close to the technique taught at training.” WO2 said he went to AP and took control of AP’s legs. After the arrest, WO2 said, WO3, the on-scene supervisor, arrived and spoke with SO. AP was taken to hospital, where it was found that he had suffered a fracture to his right leg that later required surgical intervention, so the IIO was notified.

In that notification, RCMP reported that AP had been “acting suspiciously, taking photos of the police vehicles and the crowd, yelling racial slurs, disturbing the peace,” and that he had been arrested for mischief and obstruction. RCMP also published a media release, saying that the incident had occurred at 4:30 p.m. (during the vigil, rather than before it), and that AP had been “disturbing the peace ... yelling racial slurs and taking photos of police vehicles and the crowd.”

The IIO investigation, though, has found no evidence whatsoever that AP was present either at the vigil itself or at a time when attendees were gathering for the vigil, that he uttered any racial slur to anyone, or that he caused a disturbance in any manner until the time of his arrest by SO and WO1.

Those inaccurate allegations first appear in writing in the PRIME report authored by WO3, who stated that AP had been “disturbing the peace and interrupting people that were attending to a peaceful vigil,” and that AP had been arrested for mischief and obstruction. Concerns about the source of the allegations caused IIO investigators to examine SO’s PRIME report, which would normally not be reviewed by the investigative team because of constitutional ‘right to silence’ considerations. However, in these circumstances if SO’s PRIME report was the source of the inaccurate allegations, it could have been the basis for an offence if any misstatements were deliberate, and thus not protected by right to silence considerations. Importantly, though, neither the PRIME report of SO nor that of WO1 makes any mention of racial slurs or of disturbing the vigil. In each report the officer writes that AP was arrested for mischief and obstruction, without referring to any act of AP’s that could amount to the offence of mischief.

Interviewed by the IIO, WO3 said that as the supervisor at the scene he had advised the arresting officers to arrest AP for mischief after they told him they had removed AP from the area of the vigil because he had been “yelling racial slurs at people.” Asked who had told him that, WO3 said, “I believe it was [SO]. Yes, it was [SO].”

In his IIO interview, WO1 was asked what he knew about the source of the allegation that AP had been yelling racial slurs and causing a disturbance. WO1 said that he had observed AP while AP was in the square and had not observed AP do those things. WO1

said he had not made the allegation himself, and had not heard anyone else make it. He said that he had not heard everything said between SO and WO3 after the arrest.

As noted earlier, SO wrote a brief occurrence report on PRIME, but IIO investigators have not received any evidence directly from him.

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 issues to be considered in this case are whether an officer may have used unauthorized or excessive force in the arrest of AP. In addition, as part of determining whether the arrest of AP was justified, the investigation had to consider the grounds given for that arrest by police. This therefore included a consideration of what offences AP was alleged to have committed. While examining those aspects, it became clear that the allegations that AP had made racist comments during the vigil were unfounded. Thus, the IIO investigation also considered whether any officer may have committed an offence in relation to unfounded allegations of criminality made against AP after the arrest.

Use of Force

At the time AP came to the attention of SO and WO1, the officers were in attendance to keep the peace in anticipation of an emotional event with the potential for disturbance or conflict. In the circumstances, there was some justification for them to approach AP and engage with him. Initially, though, there was no legal basis for them to detain him, and AP was within his rights to keep walking.

That changed when he walked across the street at a place where there was no crosswalk. Under Surrey City by-laws it is an offence to do that where there is a crosswalk available within one hundred metres. Because eyewitness and video evidence shows that AP also caused an approaching vehicle to brake to avoid him, he also committed an offence under the *BC Motor Vehicle Act* by failing to yield the right of way to a vehicle when not crossing at a crosswalk. The officers were now legally authorized to detain him for the purposes of identifying him and issuing him a violation ticket (ultimately, in fact, the only charge AP was left to deal with was that ticket offence).

It is clear from the evidence, including AP's, that he was resistant to the officers when they told him to stop and then took hold of him physically when he refused. There is also evidence that he reached into a pocket as he was pulling away from them which, in a confrontation, is an action likely to heighten a police officer's risk assessment. Even though it was unfortunate that AP was injured by SO's act in taking him to the ground, it

cannot be said that it was unjustified or excessive for SO to do so in these circumstances. No further significant force was applied to AP, and his injury was dealt with appropriately once it was identified.

Unfounded Allegations Against AP

Of some concern is the fact that unfounded allegations were made against AP, initially within RCMP systems but then publicly in a media release. Those allegations were potentially serious and damaging to AP.

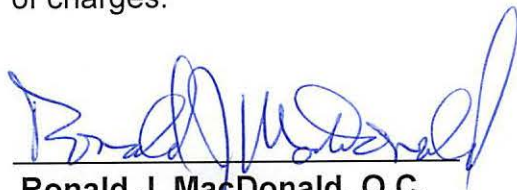
Under section 140 of the *Criminal Code*, a person may commit the offence of public mischief if he makes a false and misleading statement to a peace officer that another person has committed an offence. The difficulty in this case is determining, from the available evidence, where the unfounded allegations against AP originated, and/or whether they were deliberate or the result of an unfortunate misunderstanding.

A potential motivation for a deliberate false allegation by either SO or WO1 would be to provide more substantial justification than jaywalking for AP's detention and the resulting injury. As noted above, though, neither of those officers reported any 'racial slur' in their PRIME statements, which makes it less likely that either of them was the source of the allegation. WO3, for his part, had no reasonable motivation to fabricate more justification for the actions of the other officers.

The most likely explanation, then, is miscommunication. Heightened concerns about the potential for disruption of an emotionally-charged gathering may well have coloured WO3's interpretation of the arrest of an angry, shouting person close to the location. It is particularly unfortunate that this inaccurate interpretation was reported in an RCMP media release, and into the public sphere, but the evidence does not give rise to a reasonable belief that an officer thereby committed an offence by deliberately reporting false information.

Conclusion

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