



**IN THE MATTER OF THE INJURY OF A FEMALE
WHILE BEING APPREHENDED BY MEMBERS OF THE RCMP
IN THE MUNICIPALITY OF LANGFORD, BRITISH COLUMBIA
ON DECEMBER 11, 2019**

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

Chief Civilian Director:

Ronald J. MacDonald, Q.C.

IIO File Number:

2019-227

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Introduction

On the evening of December 11, 2019, the Affected Person ('AP') suffered an injury to her left arm while being taken into custody by two RCMP officers on an allegation of fraudulently failing to pay a taxi fare. Because the injury had occurred in connection with the actions of police officers, 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 civilian witnesses, two paramedics and three witness police officers;
- police Computer-Aided Dispatch ('CAD') and Police Records Information Management Environment ('PRIME') records;
- Closed-Circuit Television ('CCTV') recordings from a taxi and from the RCMP detachment; 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, Subject Officers 1 and 2 ('SO1' and 'SO2') declined to provide any account to the IIO.

Narrative

At about 8:30 p.m. on the evening of December 11, 2019, Civilian Witness 1 ('CW1'), a taxi driver, took AP to the Westshore RCMP detachment, at AP's own suggestion, after she was unable to pay her cab fare from downtown Victoria to a location in the Western Communities. At that point, he said, AP seemed "quite positive, upbeat" and content to be dealing with the police, as if it was "part of the night's entertainment". CW1 had judged initially that AP was "drunk", but said she seemed "a lot more lucid" once she was at the police station.

CW1 said he and AP went to a telephone outside at the front of the police station, and when he called two officers quickly responded. Standing outside the glass doors of the police station lobby, the officers asked CW1 "what was going on", and he explained the situation. When the officers asked AP how she was going to pay what she owed, CW1 said, she "just shrugged her shoulders. And they asked her again, and at some point ... they put handcuffs on her, and she didn't want the handcuffs on, and she was yelling at the policeman to take them off, and she tried to get away from the guys' arms".

CW1 remembered an officer phoning AP's mother to come and get her,

but there was some other interaction between the officers and her, about, you know, to the effect that she didn't seem to be taking this very seriously or something. So we were standing there a couple of minutes, and at some point they just said 'well, we're going to take you inside', and he stood in front of her and told her she was under arrest for fraud, and then she said 'No, no, no!', she started screaming and they were arguing. One was on one arm, and the other officer was on the other arm, she had her handcuffs on, the handcuffs were already on, behind her back. So they tried to start moving her, and they had a bit of a distance to go away. They had to go down the sidewalk and then around, so say like half a block along, and she was struggling against them the whole time. Eventually she got out of my view as I was leaning against a wall in front of my taxi. And she was just basically telling them, you know, 'No, I'm not under arrest', and 'I'm not going', and she was dragging her, sort of, they were kinda like frog-marching her down the sidewalk, like they weren't carrying her. I think the only thing they could have done was tie her up and carry her. But she was trying to get away from them. And I think she would have just run out into the middle of Veterans [Parkway] or something crazy like that. They were having a hard time moving her down the sidewalk.

CW1 said that at that point he got in his taxi and drove off. As he drove past the spot where the officers were trying to move AP along the sidewalk to the security gate into the detachment, he could hear her screaming "No!", and he believed he heard her say, "You broke my arm', or something":

She may have been on the sidewalk at that point. She may have sort of... you know if you see in a mall when parents are trying to pull somebody, a kid, it was sort of like that... she was trying to use her weight to sort of pull down... they were trying to hold her up and push her forward.

For her part, AP told IIO investigators that she went willingly to the police to "sort things out" and "move forward", but was not received sympathetically. Her memory was of sitting in a chair in a room inside the station talking to two male officers and one female officer. AP said the officers called her mother, who told them she could be at the detachment "in ten minutes" to pick AP up. While they waited, AP said, conversation continued between herself and the officers, and "I believe they did not like the way I was speaking with them ... and I felt like they wanted to punish me at that point, for my attitude ... so then they said, 'Actually, you are under arrest'". She said she was handcuffed, but did not resist.

AP described two male officers then taking her by the arms and leading her away. She remembered being taken outside the building, and being pulled forcefully. She said, “I was moving a little bit, in the sense that I was uncomfortable with the force that they were using on me”, and demonstrated the movement by wriggling her shoulders. She told investigators that she had felt “trapped”. She said that, “at a certain point, they said, ‘you know what, that’s enough’, and they put me down on the ground”. She demonstrated for investigators how she said she went down in a twisting motion, first with her right shoulder leading and then her left. She said the movement ended with the right side of her face on the ground.

Witness Officer 1 (‘WO1’) told investigators that she became aware of the incident when she was called to take a wheeled restraint chair outside the detachment. She said that when she got there, she found AP sitting on the sidewalk clutching her left arm, screaming that she was hurt. SO1 and SO2 were crouching beside AP. WO1 described AP as belligerent and intoxicated. WO1 told the IIO of a conversation with SO1 after the incident, which included the information from SO1 that while being taken down the sidewalk AP “dropped her weight very suddenly”, and there was the sound of a “pop”. WO2, who assisted in getting AP into the chair and into the detachment, described hearing a similar explanation from the Subject Officers.

Video cameras inside and outside the detachment entrance recorded the initial interaction between AP and the two Subject Officers. Unfortunately, only the interior camera recorded audio as well as video, and it is muffled by the glass lobby doors.

- 9:09 to 9:13 p.m.: CW1 is seen walking up to the outside police phone. He is followed a few seconds later by AP. AP can be heard talking to CW1, and laughing.
- 9:13 to 9:17 p.m.: SO1 and SO2 arrive outside the doors and AP greets them. SO2 asks CW1, “What’s going on?”, and CW1 explains. The officers then engage in conversation with AP that is only partly intelligible. AP appears cheerful, and can be heard to tell the officers that the debit machine in the taxi was not working, which CW1 denies.
- 9:17 p.m.: SO1 walks from his position between AP and the doors, keying his radio microphone and looping around to a position between AP and the street. A corresponding radio transmission appears to be SO1 asking another member to meet SO2 in cells.
- 9:19 p.m.: SO2 steps towards AP and tells her she is under arrest for fraud. She responds, “I’m under arrest?” AP appears to be arguing and resisting as the two officers take her arms behind her back and handcuff her.

- 9:20 p.m.: SO2 asks, “How are you going to pay?” AP says she can call her mother, and the officer responds, “You said you weren’t going to call”. He confirms that AP wants her mother to be called, and can then be seen operating his cell phone.
- 9:21 to 9:22 p.m.: SO2 can be heard telling AP’s mother, “We have your daughter here”, explaining what has happened, and then telling AP, “She’s on her way”.
- 9:22 to 9:23 p.m.: there is further conversation between AP and the officers, which is not intelligible.
- 9:23 p.m.: SO2 takes AP by the left arm and she begins to protest loudly, “I haven’t done anything!” One of the officers says, “No, no, you’ve made your fucking decision”. SO1 picks up AP’s bag and takes her right arm as they lead her away from the doors. AP is screaming, “Let go of me” in a frightened voice. She is resisting vigorously, planting her feet and clearly making it difficult for the two officers to move her along the sidewalk. SO1 goes behind her initially and pushes her forward as SO2 pulls her by her left arm. They disappear out of the camera’s view.
- 9:24 p.m.: AP can be heard screaming wordlessly, apparently in pain.
- 9:26 p.m.: WO1 is seen wheeling a restraint chair out through the lobby doors.
- 9:28 p.m.: AP is brought into the lobby and into an elevator by the two Subject Officers and two Witness Officers. She is sobbing and shouting angrily, demanding that the officers “check my arm bone please!”. One of the witness officers responds, “We are not medical professionals”. AP is taken in the wheelchair to the booking area to wait for paramedics.
- 9:50 p.m.: two paramedics attend and care for AP.

AP told investigators that she had little memory of what happened after she was injured, saying she was in a great deal of pain, making “everything a blur”. Video from the detachment booking area shows her sitting in a wheelchair, talking with several officers including the Subject Officers. SO2 tells her, “You are under arrest for fraud, and being intoxicated in a public place”.

AP can be heard complaining about her injury and SO2 tells her that while they were escorting her, “You dropped your weight”. AP replied, “Of course I dropped my weight”.

After about fifteen minutes, paramedics attended and dealt with AP. AP was taken to hospital, where she was diagnosed with a spiral fracture of her left humerus, a type of

injury that she was told was commonly caused by a twisting action. She told investigators that she was 5'2" tall and weighed 113.6 pounds.

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 used unauthorized or excessive force in their interaction with AP.

When the Subject Officers initially encountered AP, they were acting on an allegation that she had committed a fraudulent act that falls within the definitions of two different offences in the *Criminal Code*. The *Code* section setting out the rules for arrest without warrant (s. 495(1)) treats those two offences differently. There is a specific offence of obtaining transportation by fraud (s. 393(3)) for which, in most circumstances, police may not arrest without warrant; and a general offence of fraud under \$5,000.00 (s. 380(1)), for which they may. While there is no account from the Subject Officers, the video evidence records SO2 as saying AP was under arrest for fraud. In that case they had the lawful authority to arrest her given her action of obtaining a taxi ride knowing she had no money to pay the fare can constitute fraud.

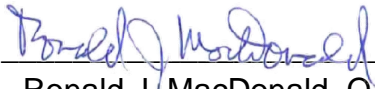
It is not possible to determine what words were exchanged between AP and the officers during the following few minutes, after the handcuffing and after SO2's phone call to AP's mother. There appears to have been further resistance on AP's part to payment of the taxi fare, evidenced by SO2's remark, "you've made your decision". AP was already under arrest, and the officers evidently decided to continue holding her in custody until the matter was resolved instead of continuing to stand in front of the Detachment. They were lawfully entitled to make that decision.

Because the incident had begun outside the front doors of the detachment, the move to cells involved, as CW1 said, physically moving AP "a bit of a distance" and, again as described by CW1, AP was "struggling against them the whole time". In her IIO interview, AP described and demonstrated only mild resistance, but the part of the interaction captured by video shows her struggling forcefully, planting her feet and twisting in the officers' grip. It should also be borne in mind that the reliability of AP's recollection of the incident is called into question by the fact that she described the events leading up to the arrest as having occurred inside the building (it is clear she was actually recalling the period after her injury). The officers' use of force in these circumstances was both authorized, necessary and proportionate. Had AP accompanied them without resistance the evidence suggests no injury would have occurred.

In explaining the injury to colleagues immediately afterwards, the officers gave a consistent account of AP having “dropped her weight” as they moved her along the sidewalk holding her arms, and AP appears to have acknowledged that in her recorded interactions inside the detachment, while waiting for medical assistance.

Based on all the evidence, the officers were acting lawfully in arresting AP and in taking her into custody inside the detachment. Her injury was not the result of excessive force on their part, but of AP’s own physical resistance.

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

June 10, 2020

Date of Release