



**IN THE MATTER OF THE INJURY OF A MALE
WHILE BEING APPREHENDED BY MEMBERS OF THE
VICTORIA POLICE DEPARTMENT IN
THE CITY OF VICTORIA, BRITISH COLUMBIA
ON FEBRUARY 16, 2020**

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

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

IIO File Number: 2020-036

Date of Release: August 7, 2020

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Introduction

On the evening of February 16, 2020, Victoria Police Department ('VicPD') officers were called to investigate an alleged assault that had taken place in downtown Victoria. The suspects had fled on foot, and were identified by a witness as being located near the wharf of the inner harbour.

VicPD officers attended the area and observed two males matching the descriptions of the suspects. The Affected Person ('AP') and the other suspect were arrested for assault. During the arrest, AP tried to run past an officer, but the officer grabbed AP and a struggle between the officer and AP ensued. The AP was brought under control on the ground and was not able to bear weight on his foot when he stood up. AP was taken to the hospital and received treatment for a broken ankle. 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 and one civilian witness;
- statements of four witness police officers;
- CCTV video evidence;
- police Computer-Aided Dispatch ('CAD');
- Police Records Information Management Environment ('PRIME') records;
- 911 recordings;
- police radio to radio transmissions; and
- medical records.

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') did not permit access to his records.

Narrative

On the evening of February 16, 2020, Victoria Police Department ('VicPD') officers were called to investigate an alleged assault that had taken place in downtown Victoria. The suspects had fled on foot, and were identified by a witness who had called 911 to indicate that the suspects were located near the wharf of the inner harbour.

Subject Officer ('SO') and Witness Officer 1 ('WO1') arrived near the harbour and were met by Civilian Witness 1 ('CW1') who identified himself as the individual who made the 911 call. The officers observed a group of teenagers on the wooden pier

in front of a restaurant. Two of the males matched the description of the suspects from the earlier assault.

SO proceeded down to the wooden pier with WO1 behind him, and the group of teenagers started to flee. SO identified himself as a police officer and stated that the two males were under arrest for assault. As he did so, AP tried to flee past him. AP described that the police told him to freeze and he was “walking away”.

WO1 was dealing with the other suspect and looked over to see AP struggling with SO. WO1 described the AP as punching and kicking at SO, and WO1 rushed in to help SO. SO finally gained control of AP by picking him up and slamming him into the wooden pier. SO and WO1 worked together to place handcuffs on AP. Civilian Witness 2 (‘CW2’) also stepped in and helped the officers control AP’s head. Attempts were made by IIO investigators to identify CW2, but they were unsuccessful.

AP described himself as “wiggling around” during the arrest and said that a police officer could have either tripped and stepped on his ankle during the struggle, or stomped on his ankle deliberately. AP described himself as “resisting a little bit” during the arrest.

CW1 did not see the interaction between AP and police until the AP was in handcuffs. CW1 saw one officer with a knee on AP’s back and noticed an abrasion on AP’s face. WO1 did not see anything during the interaction between SO and AP which led him to believe that SO injured the AP.

Once under control, WO1 helped AP to stand. AP immediately complained of pain in his left foot and was unable to put weight on it. WO1 assisted AP in weight bearing as he was taken to the police van for transport to cells.

AP was resistant throughout his interactions with officers. Witness Officer 2 (‘WO2’) described AP as kicking him in the shins as he was being led to the van for transport. Witness Officer 3 (WO3) also said he was kicked by AP in the torso. AP was transported to cells and was kicking inside the van during transport to the VicPD detachment.

Once at the detachment, AP was assisted to cells by police. AP alleged that the arresting police officer pulled off his boot roughly from his injured ankle, however the CCTV shows that AP removed his boot himself. As AP was still complaining of pain, Emergency Health Services was called and AP was transported to hospital where he was diagnosed with a broken 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

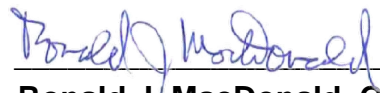
offence in relation to an incident resulting in serious harm or death. More specifically, the issue to be considered in this case is whether any officer may have used excessive force or otherwise acted improperly in connection with the apprehension of AP and with the injuries he suffered.

On their initial attendance, SO and WO1 were acting lawfully in execution of their duty when they were investigating an alleged assault and arrested the AP. The AP matched the description the officers had of the alleged suspects, and they had grounds to arrest AP based upon the information that they knew.

From AP's own account and that of WO1, it is clear that AP was trying to flee police and that there was a physical struggle. SO was acting within his lawful authority and did not use excessive force in trying to arrest and control AP. AP was trying to evade capture, and WO1 witnessed AP punching and kicking at SO as he was doing so.

In those circumstances, particularly considering that AP was now arrestable for assaulting a peace officer, SO was justified in taking AP to the ground to gain control of AP. WO1 came in to assist, and combined with efforts from CW2, AP was finally brought under control. Although AP alleged that an officer could have stomped on his ankle, his memory of the evening is incorrect in other aspects, and there is no evidence from any other witnesses that this took place while he was being arrested. There is a lot of evidence that indicates that AP was violently resisting police in this encounter and following it. It is not clear exactly when AP's injury to his ankle occurred, but there is no evidence that the injury the AP suffered was a result of the unlawful application of force during the arrest.

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

August 7, 2020

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