



**IN THE MATTER OF THE DEATH OF A MALE
AFTER BEING APPREHENDED BY MEMBERS OF THE RCMP
IN THE CITY OF PENTICTON, BRITISH COLUMBIA
ON NOVEMBER 8, 2019**

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

Chief Civilian Director:	Ronald J. MacDonald, Q.C.
IIO File Number:	2019-211
Date of Release:	August 13, 2020

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Introduction

On the morning of November 8, 2019, an RCMP officer responded to a complaint that the Affected Person ('AP') had just shoplifted at a local supermarket. When the officer tried to talk to AP, AP ran away and the officer pursued him on foot. The officer caught up to AP and took hold of AP's right arm, swinging him around so that AP fell onto his right side. Other officers then arrived and assisted in handcuffing AP. AP was initially taken to the RCMP detachment but was then released without charge and taken to hospital where he was certified under the *Mental Health Act*. During his time in hospital, AP developed breathing difficulties, and on November 11, 2019 was found to have three broken ribs on his right side. AP was treated for his injuries, but on November 14, 2019 he developed acute shortness of breath and died suddenly.

Because of the connection with police actions, 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 seven civilian witnesses, two paramedics and three witness police officers;
- police Computer-Aided Dispatch ('CAD') and Police Records Information Management Environment ('PRIME') records;
- audio recordings of police radio and telephonic communications;
- Watchguard dash camera footage from police vehicles;
- Closed-Circuit Television ('CCTV') recordings from Penticton RCMP detachment and from commercial premises;
- civilian cell phone video;
- medical records; and
- autopsy report.

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 Officers did not provide any account to the IIO.

Narrative

At approximately 8:35 a.m. on November 8, 2019, Subject Officer 1 ('SO1') received a complaint from a supermarket manager that someone (AP) had just been seen shoplifting frozen pizzas from the store. SO1 drove in the direction in which AP was said to have left, and saw AP walking along the sidewalk carrying what appeared to be two frozen pizzas. SO1 switched on his emergency lights and pulled alongside AP, calling out to him to stop.

AP, however, started jogging away along the sidewalk. SO1 notified Dispatch by radio and got out of his police vehicle to pursue AP on foot.

The pursuit and subsequent arrest is captured on the video recording made by SO1's dash camera. SO1 chased AP for a short distance along and then across the street, and caught up to him on the opposite sidewalk. He grabbed AP's right arm, and swung AP around to his right. The video shows that AP fell across the curb on his right side, and SO1 held him down by kneeling on his back or buttocks area. SO1 radioed that he would wait for other members to arrive to assist in handcuffing AP.

As SO2 and SO3 arrived, shortly after, AP became animated and resistant, struggling with the three officers for a brief period. Witness Officer 1 ('WO1') arrived as AP was being handcuffed, and described AP as pulling away while officers were trying to hold his arms. WO1 noticed that AP had a relatively minor injury to his face and arranged for SO2 to call paramedics to come to the detachment to examine AP when he arrived there. In his IIO interview, WO1 described AP as evidently elderly and apparently "out of it".

Civilian Witness 1 ('CW1') told IIO investigators that she had seen the incident from nearby, and described AP as not resisting, but "trying ... to just get up and walk away". CW1 said she saw no reason why SO1 had not just picked AP up and walked him to the police vehicle. She expressed concern that several police officers had been involved, though she did not suggest arriving officers had done any more than "go around him". CW1 provided a short cell phone video to the IIO. It shows AP on the ground with the three Subject Officers and WO1 around him but with no apparent force being applied.

CW2, who was with CW1, described AP as not offering much resistance to SO1 initially, but struggling and fighting back against the officers after SO2 and SO3 arrived. When AP was picked up, CW2 noticed that he appeared to have an injury on the left side of his face, which CW2 found upsetting.

CW3 described observations she had made of AP and SO1 at a time when SO2 and SO3 had not yet arrived. CW3 said that AP was "struggling, fighting back and moving, in my opinion, in a fairly aggressive manner". CW3 then saw SO2 and SO3 move in to assist, and she said that AP was still struggling against the officers as they did so.

A fourth eyewitness, CW4, expressed her opinion that AP's arrest seemed relatively unremarkable, with no excessive force applied.

AP was transported to the RCMP detachment, where it was noticed that he appeared to be suffering from a mental disorder. Detachment video shows AP appearing to be able to walk normally, and he does not exhibit any visible distress. He was treated by paramedics for a facial injury before being taken by ambulance to hospital. He was detained at the

hospital under a Mental Health Act certificate. He left the hospital without permission late that morning, but was located and escorted back to the hospital, without incident, by another RCMP member. This further development was observed by a civilian witness and recorded on police dash camera video. No force was used.

AP was noted as remaining active and somewhat agitated during his hospital stay. On November 11, 2019, he became short of breath and was given a chest X-ray. He was found to have three broken ribs on the right side with a hemothorax (blood pooling between the chest wall and the lungs), and was treated with a chest tube. The chest tube was subsequently removed. On November 14, 2019, AP again experienced sudden shortness of breath and died.

The autopsy report lists the cause of death as “pulmonary thromboembolism, due to or as a consequence of deep vein thromboses of both lower extremities” (blockages of blood vessels in the lungs caused by blood clots migrating from the legs). The report also noted the three broken ribs on the right side, one of which had penetrated the lining of the inside of the chest wall, and a healing bruise on the left side of AP’s face.

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 committed an offence by using unjustified or excessive force in AP’s apprehension.

SO1 was acting on reasonable grounds to detain and question AP, based on an a report he had received from a store employee that AP had only minutes before committed the offence of theft. When AP fled, SO1 was justified in pursuing him to arrest him for that offence, and also potentially for the offence of obstructing a peace officer in the execution of his duty.

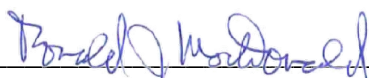
A police officer is entitled to use force in the course of carrying out his lawful duties, as long as the force used is necessary and within reasonable bounds. The evidence here, in particular the video evidence, demonstrates that SO1 did no more than to grab and pull on AP’s arm as AP was running ahead of him, and that action caused AP to twist and fall onto the ground on his right side. It appears that the injury he suffered was caused, not by any excessive force in the way AP was taken to the ground by the officer, but by his unfortunately landing on the concrete curb between the sidewalk and the roadway. There is no indication that SO1 used any more force after that point, other than simply holding AP prone while waiting a matter of seconds for other officers to attend and assist with

handcuffing. It was prudent for SO1 to wait those few seconds, as AP had already demonstrated non-compliance and an inclination to flee from police.

SO2 and SO3 were responding to a call to assist SO1 in the arrest of an individual and were acting lawfully, in execution of their duty, in doing so. As set out above, civilian eyewitnesses' descriptions of AP's actions range from "trying to get up and walk away" to "struggling" and "fighting". There is no evidence that either SO2 or SO3 used any more force than what was necessary to restrain AP in handcuffs so he could be safely taken to a police vehicle and to the police detachment. On the evidence, AP was treated properly by all officers while in their custody, and medical attention was provided as soon as practicable.

It should be noted that although AP may have suffered a serious injury in the course of his arrest, this fact was not apparent to anyone at the time, including the medical personnel who dealt with AP, both at the RCMP detachment and at the hospital. It was only discovered by X-rays when AP experienced shortness of breath some days later. Further, the autopsy report attributes the cause of death to a pre-existing medical condition (blood clots in the legs), rather than to any injury occurring during AP's apprehension.

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 13, 2020

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