



**IN THE MATTER OF THE INJURY OF A MALE
WHILE BEING APPREHENDED BY MEMBERS OF THE RCMP
IN COURTENAY, BRITISH COLUMBIA
ON OCTOBER 24, 2021**

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

Chief Civilian Director:

Ronald J. MacDonald, Q.C.

IIO File Number:

2021-300

Date of Release:

March 3, 2022

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INTRODUCTION

On the evening of October 24, 2021, the Affected Person ('AP') suffered an injury during a traffic stop and impaired driving investigation conducted by three Subject Officers ('SO1', 'SO2' and 'SO3'). AP was held until sober and then released from police custody. He subsequently complained to the RCMP about his injury, and 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 a civilian jail guard;
- police Computer-Aided Dispatch ('CAD') and Police Records Information Management Environment ('PRIME') records;
- RCMP prisoner documentation;
- Watchguard dash camera video/audio recordings from three police vehicles;
- Closed-Circuit Television ('CCTV') recordings from the RCMP detachment; and
- medical evidence.

The IIO does not compel officers who are the subject of an investigation to submit their notes, reports and data. In this case, SO1 provided access to his written PRIME report; SO2 and SO3 declined to provide any account to the IIO.

NARRATIVE

Affected Person

AP told IIO investigators that late on the evening of October 24, 2021, he was driving home when a police vehicle behind him illuminated its emergency lights. AP said he pulled over as soon as it was safe to stop. He said he was asked to get out of his car, which he did. He described the officer who pulled him over as "aggressive", and added that when two other officers arrived he asked to deal with them instead, as they seemed more calm. The officers, AP said, told him he seemed intoxicated "because of the way I talk, and I don't walk too good".

"The next thing I knew", AP continued, the officers had put a handcuff on one of his wrists, and had grabbed the other arm. One officer, he said, came behind him and "started kicking the back of my knee". He said he was put down onto the ground, hard, and felt his shoulder "pop". Picked up and put into the back of a police vehicle, he said, he was

“not fast enough to get my feet in”, and an officer grabbed him from behind and “yarded” him in.

At the detachment, AP continued, an officer roughly “spun me around”, and put his head against a cement wall. He said he told the officer his arm was hurt, but the officer shook the arm and stated it was not dislocated. AP acknowledged that he was asked by a guard if he needed medical attention, and that he responded that he would wait until he was released. He said he subsequently went to a hospital, where he was found to have a broken bone in his shoulder.

Arresting Officer

SO1 set out his account of the incident in a written PRIME report. In that report, he describes pulling over a vehicle driven by AP, who said his driver’s licence was “in his other vehicle”, but was able to identify himself to the officer’s satisfaction. SO1 discovered that AP was under a court order that he must only drive a vehicle equipped with an “interlock” device (to prevent it being driven by a driver with alcohol in his system). There was no interlock device in the vehicle AP had been found driving.

SO1 writes that he asked routine questions about alcohol consumption, etc., and made a demand that AP give a breath sample into a roadside screening device. SO1 states that AP told him he would fail the test if he took it. AP then lit a cigarette despite being told not to, SO1 states. SO1 describes formally detaining AP, and then arresting him for obstruction after observing him “violently pushing against the door [of the police vehicle]”.

SO1’s narrative continues with an account of several unsuccessful attempts to get AP to provide a breath sample, and AP’s arrest for “Refusal”. SO1 then states, “[AP] resisted arrest and was taken into custody after a brief struggle”. SO1 does not record the actions of SO2 or SO3, who had attended as back-up and had participated in AP’s arrest.

Watchguard Recordings

The recordings from SO1’s police vehicle show events from the beginning of the incident until AP moves towards the rear of the vehicle, at which point there is only an audio recording. AP is told by SO1 to put out a cigarette he is smoking, but then, shortly afterwards, relights it. He is told to take a seat in the back of the police vehicle, and the audio track records repeated directions from SO1: “I need you to get your feet in”. SO1’s tone, initially calm, gradually becomes more firm and insistent. AP can be heard repeatedly complaining and apparently resisting. The audio also records AP’s remark to the effect that he would fail the test if he took it. He is instructed several times, “move your foot”, and is warned that he will be arrested for obstruction if he gets out of the vehicle. He can then be heard being told by SO1 that he is under arrest for obstruction. There

follow a series of instructions on how to blow into the screening device, and AP is asked, "Are you going to blow, yes or no?" Finally, SO1 can be heard telling AP, "Stay in the car".

SO2's Watchguard recordings provide the best evidence about what happened next. At this point, SO2 and SO3 have arrived in separate vehicles to assist. SO2 stops behind SO1's police vehicle, so his dash camera captures AP's arrest (SO3's dash camera provides only very limited coverage of the incident). At the point where SO1 is demanding, "Are you going to blow, yes or no?" all three officers are close to the passenger side of SO1's vehicle, and AP is still in the back seat.

Despite being told to stay in the car, though, AP then gets out, and is told he is under arrest for refusing to blow. He can be seen to resist officers' attempts to place his arms behind his back, and is taken to the ground. This action by the three officers does not appear to be unduly forceful, with AP placing his hands forward onto the ground before becoming prone. While on the ground being handcuffed, AP can be heard to say, "Put my shoulder back in".

The video shows that AP was then resistant to being placed back into the police vehicle. An officer is heard to say, "We don't want to drag you in here ... Get in the car. Swing your feet please. If you do not get in the car, my other partner is going to drag you in. So you need to do it on your own". AP is pulled and lifted in, and yells in apparent pain.

One of the officers is heard to say, "I thought he was going to listen at one point". Another says, "What was the obstruction?" SO1 responds:

He was smoking when I stopped him, so I said, "Hey, stop smoking", read him the mandatory, asked him if he had any last drinks since seven o'clock. Gets out of the car, starts kind of waffling ... lights up a cigarette again. I'm like, "Okay, you know what, now you're detained, you're gonna have a seat in the back of the car". And as he's in the car, or he's like half in, half out, and I'm like, "You need to move your feet". And he starts pushing the door, and I'm like, "Okay, you're under arrest for obstruction".

Detachment CCTV

CCTV recordings from the RCMP detachment (video only, no audio) show the process by which AP was brought into the building, booked in and lodged in a cell until his release. The video does not support AP's allegation that he was handled roughly by any officer. At one point, an officer is seen to direct him to a position facing a wall, but no use of force is apparent, and though AP can be seen to place his forehead against the wall, he does so of his own volition, with no officer in physical contact with him at the time.

LEGAL ISSUES AND CONCLUSION

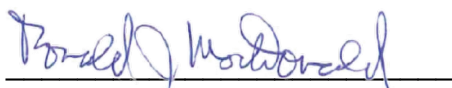
The purpose of any IIO investigation is to determine whether there are reasonable grounds to believe that an officer, through an action or inaction, may have committed any offence in relation to an incident resulting in serious harm or death. More specifically, the issue to be considered in this case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

This is a case that demonstrates the value of video and audio recordings of a police-involved incident. Inconsistencies between the accounts of AP and SO1 regarding the manner of AP's treatment by officers can be resolved by reference to objective evidence provided by the recordings.

Those recordings show that the involved officers' actions throughout were appropriate and that the force used—when AP's intransigence made the use of force necessary—was limited and reasonable. In particular, the video provides no evidence that any officer kicked AP in the back of the knee while he was being arrested, or that AP was taken to the ground "hard". Similarly, there is no evidence of any rough handling of AP while in custody at the RCMP detachment.

It is apparent that AP was experiencing discomfort and pain from his injured shoulder while in custody, but he was offered medical assistance and declined. There is nothing in the evidence to suggest any failure by police to provide adequate care.

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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