



**IN THE MATTER OF THE INJURY OF A MALE
WHILE BEING APPREHENDED BY MEMBERS OF THE
SAANICH POLICE DEPARTMENT IN
SAANICH, BRITISH COLUMBIA
ON MARCH 13, 2021**

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

Chief Civilian Director: Ronald J. MacDonald, KC

IIO File Number: 2022-105

Date of Release: January 26, 2023

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INTRODUCTION

The incident at issue in this case occurred on March 13, 2021. On that date, the Affected Person ('AP') was apprehended by police officers under the *Mental Health Act* and was involuntarily admitted to hospital as a psychiatric patient. At that time, it was believed that AP was uninjured. In November, 2021, the Office of the Police Complaint Commissioner ('OPCC') received a complaint about force used by officers in the course of AP's apprehension. On March 9, 2022, the OPCC received updated medical information that brought AP's case within the mandate of the Independent Investigations Office ('IIO'), so the 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, one other civilian witness, two professional witnesses and two witness police officers;
- police Computer-Aided Dispatch ('CAD') and Police Records Information Management Environment ('PRIME') records;
- audio recordings of 911 calls and police radio communications;
- OPCC complaint records; 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, the Subject Officer has provided a full account to the IIO. His perspective was an important addition to the investigation.

NARRATIVE

On the afternoon of March 13, 2021, a civilian witness ('CW') called 911 to report that her son, AP, was unstable and raging in their home. CW told the call taker that she was scared for her safety, and said that AP was a danger to others as he was not taking his medication.

Saanich police officers responded, intending to take AP into their custody and transport him to hospital for a psychiatric evaluation, pursuant to the *Mental Health Act*. CW was advised to leave the house, and did so, waiting in a car outside.

Witness Officer 1 ('WO1'), who was leading the police response, told IIO investigators that he had been involved in previous similar calls about AP, and that on those occasions

officers had been able to de-escalate AP successfully. He ordered officers to contain the residence but not enter it, for risk of creating a violent confrontation.

The Subject Officer ('SO') told investigators that upon arrival he could hear AP screaming in the house. He said he went to the back of the house intending to communicate with AP through his bedroom window, which was located at the back on the ground floor. WO2 said that he was trying to speak quietly and calmly to AP, but AP was screaming extremely loudly and running back and forth between the front of the house and the back. No communication with him was possible.

WO2 was assigned to cover SO while he attempted to negotiate with AP. He and SO both described AP suddenly changing his demeanour, apparently becoming quiet. AP came out onto the back lawn, asking the officers in a soft voice if he should go to the hospital. SO said he told AP that it would be a good idea for AP to "go talk to a doctor", and the police had legal authority to apprehend him, but that AP "should be part of that decision".

After a while, WO2 put his hand on AP's arm, intending to guide him to a police vehicle, but AP started to resist. SO said that AP "went absolutely berserk again", and SO decided to take him down onto the ground. In his IIO interview, SO both described and demonstrated the manoeuvre:

[I] held on to [AP's] like right upper arm and put my right hand on the front of his shoulder. I put my right leg behind his right leg and forced my leg back and his leg into mine. I maintained control of him the entire time. It was swift and quick, but I would say I still laid him down on the grass maintaining contact with him the whole time.

I have no idea if it was unexpected or if [WO2] and his legs with [AP's] tied up, I didn't see that portion, but [WO2] fell on the ground at the same time that AP did. He immediately got up and was trying to gain control of [AP's] left hand, he was still on his back.

He was, AP, was flailing and kicking and rolling and I didn't at any point in that moment feel that he was doing anything directed at us. It seemed like he was doing everything in his efforts to get away from us, not to get to us. In his flailing and rolling we were able to just roll him over onto his stomach. At that point when he was taken down to the grass and rolled over we basically just grabbed onto control of his arms. He's now face down on the grass, still screaming. Kicking his legs, trying to get up onto his knees. So, we just held him arms down on the grass.

I directed [WO1] to come to us and get control of [AP's] legs. That's something that we commonly do to try to stop that mobility of the person that we're trying to keep on the ground, so he did. It was effective. AP

then started trying to -- reaching up behind himself trying to scratch -- because of his keyboarding and gaming he's got really, really long fingernails, so he was trying to scratch at our hands, and this is while we were holding him on the ground. There was very little effect to what he was doing, but nonetheless trying to scratch us.

Both WO1 and WO2 described AP struggling wildly, trying to bite and to scratch the officers with his very long fingernails. WO2 said that AP was “very strong, determined and obviously in some sort of manic state. He could not be reasoned with”. The three officers were able to get AP into handcuffs, and were all unaware of any injury to him. WO1 told the IIO:

At no point did he indicate to us that he was injured. At no point did the fight come out of him. Based on my sports experience and military experience, I've seen people with shoulder injuries. And specifically when I heard about this months later that he had this separated shoulder piece, or broken clavicle -- I've seen people with a broken collarbone and how quickly that limits their ability to, to do anything. At no point did I think during this he had any sort of injury.

At the hospital and during initial evaluation, AP did not complain of any injury, but medical records indicate that AP was “lunging at security” and punching and kicking the door of the seclusion room in which he was being held. It is alleged that he was asking, “When will you stop raping me, when will you stop trying to kill me?” The records state that at one point, AP had to be “restrained” after being “assisted to prone position” by security staff. On the day after his apprehension, AP’s only complaint of any injury was that his right wrist was sore. This was attributed to the use of handcuffs. He received an extensive examination, and no injury to his clavicle was noted.

On March 18, 2021, AP first mentioned a sore shoulder. Upon examination, he was found to have a visible deformity and extensive bruising. An X-ray confirmed a broken clavicle. After surgery on March 26, the surgeon wrote a note estimating that the injury was two weeks old.

Interviewed by an officer from the Saanich police Professional Standards Department following the OPCC complaint, AP accused the apprehending officers of breaking his clavicle. He also said, though, that he had been “George Floyd”, and that the officers had beaten him “completely black and blue”. Further, he said, hospital staff had “brutalized” him, “like just throwing me around on the beds and shit”. He had no explanation for why medical staff had not noticed any injuries upon his admission.

IIO investigators asked the surgeon who had repaired AP’s clavicle how it could happen that a patient could be admitted to hospital with a broken clavicle and be examined by the

staff without anyone noticing the injury. He responded that he believed AP had been in the throes of a marijuana-induced psychosis, so that it was possible the injury could have occurred without any signs, bruising, pain or deformity. He also added that the injury could have occurred at the hospital, some time after the arrest.

LEGAL ISSUES AND CONCLUSION

The Independent Investigations Office of British Columbia has been given the task of investigating any incident that occurs in the province, in which an Affected Person has died or suffered serious physical harm and there appears to be a connection to the actions (or sometimes inaction) of police. The aim is to provide assurance to the public that when the investigation is complete, they can trust the IIO's conclusions, because the investigation was conducted by an independent, unbiased, civilian-led agency.

In the majority of cases, those conclusions are presented in a public report such as this one, which completes the IIO's mandate by explaining to the public what happened in the incident and how the Affected Person came to suffer harm. Such reports are generally intended to enhance public confidence in the police and in the justice system as a whole through a transparent and impartial evaluation of the incident and the police role in it.

In a smaller number of cases, the evidence gathered may give the Chief Civilian Director reasonable grounds to believe that an officer has committed an offence in connection with the incident. In such a case, the *Police Act* gives the CCD authority to refer the file to Crown counsel for consideration of charges.

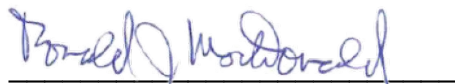
In a case such as this one, involving the use of force by officers, one of the threads of the IIO investigation will be the gathering of evidence about potential justifications for that use of force. The CCD will then apply legal tests such as necessity, proportionality and reasonableness to reach conclusions as to whether officers' actions were lawful, or whether an officer may have committed the offence of assault.

SO and the witness officers were acting in lawful execution of their duty in responding to CW's fearful call, and in apprehending AP for transport for psychiatric evaluation. They were authorized to use necessary and reasonable force to achieve that. AP has alleged, as noted above, that the force used was far beyond the reasonable range, but AP's account suffers from plausibility issues (it is worth considering, in that regard, that he made essentially similar allegations against hospital staff). While the only other witnesses to the apprehension are police officers, those officers' accounts are consistent and plausible, and in particular they are supported by the fact that AP gave no indication, either at the scene or upon arrival at the hospital, that police had injured him.

The manner in which SO is described as having taken AP to the ground is an acceptable way to gain control over a resistant person in these circumstances, and would generally be considered in the best interests of everyone's safety, including the detainee. Whether or not AP was injured at that point, SO's action does not amount to excessive or unreasonable force.

As it happens, this case also features significant doubt as to whether any officer actually caused the injury. Not only did AP not complain about the injury when taken to hospital, medical staff did not detect it at that time. Thus, a more likely conclusion from the evidence is that the injury occurred at some point after AP's arrival at the hospital, either as a result of his out-of-control behaviour or in the course of restraint by staff, perhaps while he was being "assisted to prone position". Certainly, the suggestion that a "marijuana-induced psychosis" could have effects beyond the dulling of pain and even prevent a broken clavicle being detected by physical examination seems implausible.

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, KC
Chief Civilian Director

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