



**IN THE MATTER OF THE INJURY OF A MALE
WHILE BEING ARRESTED BY MEMBERS OF THE
RCMP IN
THE CITY OF DUNCAN, BRITISH COLUMBIA
ON NOVEMBER 20, 2021**

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

Chief Civilian Director: Jessica Berglund

IIO File Number: 2023-005

Date of Release: October 21, 2024

THIS PAGE INTENTIONALLY LEFT BLANK

Introduction

In the late evening of November 20, 2021, police officers were investigating a motor vehicle collision and received information that a male had been walking in the area near the crash with an open beer. Officers arrived and dealt with the Affected Person ('AP'), who matched the male's description. The officers detained the AP to conduct their investigation, which resulted in them determining the AP was not involved in the collision but was intoxicated in a public place. The AP was arrested and transported to cells within the Duncan RCMP Detachment, where an interaction took place resulting in the AP suffering a concussion and a torn shoulder that required surgery.

The Independent Investigations Office (IIO) was notified of this incident by the RCMP in January of 2023. This followed a complaint made by the AP to the RCMP late in 2022, and the receipt of medical information that established serious harm may have occurred, triggering the IIO notification.

The narrative that follows is based on evidence collected and analyzed during the investigation, including the following:

- The AP's statement;
- statement of one civilian witness;
- statement of one first responder;
- statement of one witness police officer;
- police Computer-Aided Dispatch ('CAD');
- Police Records Information Management Environment ('PRIME') records;
- BC Emergency Health Services records;
- police radio to radio transmissions;
- medical records; and
- CCTV video from cells.

Narrative

On November 20, 2021 at 10:34 p.m., Subject Officer 1 ('SO1') and Witness Officer 1 ('WO1') responded to a call involving a single motor vehicle collision on West Shawnigan Lake Road in Shawnigan Lake.

Civilian Witness 1 ('CW1') had called the RCMP to inform them that a vehicle had crashed into a rock along the side of the road. CW1 also reported that they saw a male wearing a grey shirt holding a beer and walking away from the scene of the accident. CW1 believed the male was intoxicated.

SO1 and WO1 attended the scene of the collision and confirmed that the vehicle was unoccupied and that there was no one nearby. They made patrols to look for the male in the grey shirt but did not locate him.

A short time later, the AP walked along the roadway wearing a grey sweater and carrying a backpack. Believing that the AP may be related to the motor vehicle accident, SO1 and WO1 began to speak to him and asked for the AP's identification.

WO1 described the AP as being "ornery" and "belligerent" and that he refused to answer questions or provide his identification. WO1 believed the AP was intoxicated.

The AP admitted that he had a couple of drinks and questioned why the police required his identification. The AP told IIO investigators later that he believed he was coherent and could look after himself. The AP did not want to speak to the police, and he felt intimidated by them.

Civilian Witness 2 ('CW2') then arrived at the scene. CW2 was the registered owner and driver of the motor vehicle that had been in the collision. CW2 explained that he had hit black ice and crashed. CW2 explained that the AP was not involved.

Although the AP was not involved in the collision, the officers believed that the AP was too intoxicated to allow him to continue walking down the middle of a dark road late at night. The AP said that he stumbled a bit when he put down a heavy backpack, and that the officers overreacted to this. WO1 said that he offered the AP a ride because he did not want to take him to cells, but that was refused. At 11:13 p.m., the officers arrested the AP for public intoxication and causing a disturbance, and the AP was transported by SO1 to the Lake Cowichan/Duncan RCMP cells. The AP said he was brought to the ground by SO1 during the arrest process.

Subject Officer 2 ('SO2') assisted in the booking in process when the AP arrived at cells at 11:56 p.m. The CCTV video recording captured the events as they unfolded. SO1 and SO2 were present, along with a civilian jail guard (Civilian Witness 3 or 'CW3') while the AP was booked in. CW3 was interviewed by IIO investigators but did not recall the incident due to the passage of time between the notification and the incident itself.

CW3 described that prisoners are generally asked to remove clothing down to one layer, for their own safety and so they cannot hide anything. CW3 said that if individuals have hair ties, glasses or piercings, they must also remove them. RCMP policy indicates that all prisoners must be searched and "*any object that could be used as an aid in an escape or to injure themselves or another person*" must be removed.

The video shows the AP was uncuffed and compliant in removing excess layers of clothing, as instructed by the officers. At 12:03 a.m., SO2 can be seen on the video moving towards the AP and touching his hair. The AP had long hair that was tied up. The AP explained that an officer had asked whether he had a hair tie in, and he told him, "no". The AP then can be seen on the video swatting SO2's hand away. The AP said, "*it just escalated from there*".

SO1 then grabbed the AP's shoulder, and the AP then grabbed SO1's shirt. A struggle ensued between the AP and the officers. The video shows that SO1 and SO2 attempted

to gain control of the AP by using physical force, bringing him to the ground by his hair. The officers then dragged the AP into the cell by his arm and hair. Once in the cell, SO1 also struck the side of the AP's body with his knee. SO1 then untied the AP's long hair while in the cell. The video shows a chunk of the AP's hair came out during the struggle with officers.

Four hours later, the AP requested to go to the hospital due to a dull ache in his head. CW3 called paramedics and told them that the AP had been punched in the head a few hours previous. The AP was released to the paramedics and brought to the hospital at 4:13 a.m. According to the medical records, the AP suffered a concussion and several tears to his right shoulder that later required surgery.

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 ('CCD') 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.

A police officer must be acting in the lawful execution of their duties when they arrest or detain someone. In this case, the AP was wearing a grey sweater that matched the description of someone who was identified as walking away from a car collision in a grey shirt with a beer. It was reasonable for the officers to commence an investigation into whether the collision was a result of an impaired driver, and to stop the AP to try to identify whether he was involved in the collision.

Once that investigation had ended, the officers concluded that the AP was intoxicated in a public place, and it was dangerous to leave him there. Although the AP disagrees that he was intoxicated, the AP did admit to drinking that night and that he stumbled a little bit when he put down his backpack. The area was dark and unlit, and WO1 said that he

believed the AP was intoxicated. For the purposes of this decision, SO1 does not have to be correct in his assessment, there just has to be a credible basis for SO1 to hold that belief. In this case, there is a basis to meet that legal threshold, and SO1 was acting in the lawful execution of his duties when he arrested the AP.

The AP was seriously injured in this incident, and the medical records indicate his injuries are attributable to the force that the officers used when dealing with him. In a case such as this one, the IIO investigation gathers evidence about potential justifications for that use of force. The CCD then applies legal tests such as necessity, proportionality and reasonableness to reach conclusions as to whether officers' actions were lawful or not.

The AP admits to being upset and argumentative that evening. It was reasonable for SO1 to use force to arrest the AP and put him into handcuffs. Once the AP arrived at cells, his handcuffs were removed as part of the booking in process. The cell video showed that the AP swatted SO2's hand away when they were conducting a search and grabbed SO1's shirt.

At that point, the officers had reason to try to control the AP quickly. The AP was not in cells, and he was no longer handcuffed and under control. He was starting to become physically aggressive with the officers. It was reasonable for the officers to use force to get him searched and into the cell quickly. They did not have any previous dealings with the AP and were not sure whether his resistance was going to escalate.

That being said, the officers' actions that day cause concern. They used the AP's hair to drag him into the cell. There did not appear to be de-escalation strategies attempted by the officers in their dealings with the AP. It also does not appear that there was adequate communication throughout the incident, as the AP did not understand why he was being detained in the first instance or the search procedure that followed his arrest. Better communication may have assisted the officers to deal with the AP's heightened reaction to being detained, and then arrested.

Under the law, the officers' actions do not have to be perfect when using force. Instead, the level of force applied must be reasonable, necessary and proportionate to the situation the officers find themselves in. Although not perfect, the officers' actions were reasonable and necessary to get the AP under control quickly. Although the overall situation does not meet a criminal standard to refer this matter to Crown counsel, the matter will be referred to the RCMP for their consideration as to whether the officers' conduct constitutes a violation of their code of conduct.

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.



Jessica Berglund
Chief Civilian Director

October 21, 2024

Date of Signature