



**IN THE MATTER OF THE INJURY OF A MALE  
WHILE BEING APPREHENDED BY MEMBERS OF THE RCMP  
IN THE DISTRICT OF TOFINO, BRITISH COLUMBIA  
ON JULY 11, 2020**

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

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

IIO File Number: 2020-163

Date of Release: February 18, 2021

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## **INTRODUCTION**

In the late afternoon of July 11, 2020, police received multiple calls from a First Nation community, complaining that the Affected Person ('AP') was fighting or attempting to fight with people. Subject Officers 1 and 2 ('SO1' and 'SO2') attended and spoke with residents, and then informed AP he was under arrest. AP attempted to flee, and was chased by the officers. SO1 used a leg sweep to bring AP to the ground, where he was handcuffed and arrested without any further significant use of force. After the arrest, AP was found to be suffering from an injury to his ankle, and because of the apparent connection between the injury and the actions of police, 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 from AP, eight other civilian witnesses and an attending paramedic;
- police Computer-Aided Dispatch ('CAD') and Police Records Information Management Environment ('PRIME') records;
- recordings of 911 calls;
- video recordings from civilian cell phones;
- photographs;
- records from BC Emergency Health Services; 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 did not provide evidence to the IIO. SO2 declined interview, but consented to a review of his notes and PRIME report.

## **NARRATIVE**

At about 8:45 p.m. on July 11, 2020, police received several 911 calls from residents at a First Nation community at Tofino. One caller stated that AP was intoxicated and was "trying to beat up everyone out here". On the recording of that call, AP can be heard in the background, shouting in a threatening manner. AP was identified by name to the police dispatcher.

Civilian cell phone video provided to the IIO shows AP in an open gravel area, repeatedly and aggressively threatening, pushing and swinging his fist at several other males. A bystander can be heard wondering when "the cops are coming".

SO2's PRIME report indicates that AP was known to police for "a concerning history of violence and resisting arrest". It states that when police arrived they found AP "standing

in a fighting posture” with a crowd gathered near him. Bystanders told the officers that AP had run at another man, swinging his fists at him, and had then tried to assault others.

A civilian witness said that upon arrival SO1 approached to within six or seven metres from AP and talked to him calmly about what was going on. Another witness characterized SO1 as speaking “nicely” to AP, but said that AP was not listening. AP was described by witnesses as very intoxicated, staggering and swearing at everyone.

SO2’s report states that SO2 spoke with a male complainant who said that AP had punched him in the mouth. SO2 noted that the complainant appeared to have fresh blood in the area of his mouth. SO2 went to SO1 and informed him that AP was arrestable for assault. The report notes SO2’s impression that SO1 was already preparing to arrest AP and was trying to get AP to relax sufficiently to place him in handcuffs. SO2 writes, however, that when he told AP he was under arrest he heard AP say he would not let the police arrest him, and saw AP “tense up”.

AP is a large man, larger than either SO1 or SO2, and SO2 states that he was concerned a physical fight “would be extremely violent and likely result in bodily harm”. He drew his Conducted Energy Weapon (‘CEW’, also known as a ‘Taser’) and noticed that SO1 had also drawn his. AP shouted in response that the officers were going to shoot him, and SO2 says he tried to explain to AP that the weapons were Tasers, not firearms, but that they would be used against him if he resisted. At that point, AP turned and ran.

What happened next was captured on video by another civilian cell phone. AP can be seen to run into view, with SO1 running directly behind him and SO2 closing in from behind and to AP’s right. SO1 kicks the outside of AP’s right leg from behind with his right foot, in a manouever sometimes referred to as a s a ‘leg sweep’. When that occurs, AP pivots to his right and falls, with SO1 falling beside him. Immediately, both officers are on their knees on each side of AP, controlling his arms. As they struggle to lift him into a sitting position and bring his arms behind him for handcuffing, a civilian witness can be heard to say, in a worried tone, “There’s only two of them?”

The video shows that despite AP’s visible resistance, the two subject officers were successful in handcuffing AP without any further significant use of force. No blows were struck by either officer. SO2’s report records his observation that AP “did not appear to have been trying to injure [SO2] but that he was actively resisting being handcuffed and trying to escape”.

The mechanism of injury to AP’s ankle is not entirely clear from the evidence:

- AP does not appear injured in video taken before his arrest, although he can be seen to be stumbling and unsteady on his feet, apparently from intoxication.

- As mentioned above, video of the arrest shows a strike by SO1 against the outside of AP's right leg that appears very likely to have caused AP's right ankle to twist as he fell.
- A paramedic told IIO investigators that one of the police officers stated that the injury was caused when AP was tackled by the officers.
- An eyewitness, though, has stated that AP was wearing sandals, and that one of them appeared to be twisted sideways off his foot as he ran. "I'm pretty sure that's what happened", the witness said, "he tripped and landed awkwardly".
- Another eyewitness has stated that AP initially injured his ankle when he fell during the altercations with other males, before police arrived.
- Hospital records indicate that the ankle injury occurred before any interaction between AP and police, but was aggravated "in an attempt to flee".
- AP's medical records also indicate that AP has told hospital staff on one occasion that the injury was caused when he stepped in a hole.

SO2 brought his police vehicle to where AP was sitting on the ground, and the two officers tried several times to lift him into the back seat, but he was uncooperative and they eventually gave up and decided to call for an ambulance so that AP could be placed on a stretcher for transport to hospital. While waiting for the ambulance, according to SO2's report, AP complained for the first time that the officers had broken his ankle.

After being admitted to hospital, AP was found to have a broken ankle, which was repaired by surgery, and he was advised not to put weight on the ankle for six weeks.

## **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 an officer may have committed an assault against AP through the use of unauthorized, unnecessary or excessive force.

There is no issue that the officers were acting in execution of their duty when they attended in response to 911 calls from residents that AP was assaulting other individuals. When, upon arrival, they were provided specific details by witnesses, they were acting within their lawful authority to place AP under arrest, and to use necessary and reasonable force to do so. Similarly, when he ran from them, they were justified in using

an appropriate level of force to apprehend him and get him under control. Faced with the challenge of tackling a large and aggressive fleeing male, it was not unreasonable to use the technique employed by SO1 to stop him and bring him to the ground so that he could be restrained. In fact, it likely was preferable to an attempt to tackle AP from behind or to use the CEW as he ran.

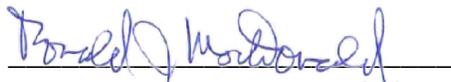
It seems likely, though not certain, that the injury to AP's ankle occurred in the course of that manoeuvre. However, the use of force involved was well within the range of reasonable options available to the officers; it is not made unreasonable simply because an unfortunate injury resulted.

It should be borne in mind that each officer had, in fact, drawn his CEW. Deployment of that force option would also have been justifiable in the circumstances, even though AP would likely have fallen and possibly been injured to some degree if a CEW had been used effectively against him as he ran.

The aggressive behaviour and actions of AP that caused residents to call for assistance from the police are demonstrated clearly by video evidence, corroborated by eyewitnesses. On the evidence, in responding to those calls for help the officers acted appropriately in trying to de-escalate the situation, unfortunately without success.

The response of the officers to AP's subsequent act in trying to flee is also shown clearly on video. Other than SO1's necessary and justifiable application of force in preventing AP's flight by causing him to fall, it is evident that both officers used minimal force in the arrest. Once he was in their custody, they ensured he was transported to hospital to receive proper medical 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

February 18, 2021

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