



**IN THE MATTER OF THE INJURY OF A MALE
WHILE BEING APPREHENDED BY MEMBERS OF THE
VICTORIA POLICE DEPARTMENT IN
THE CITY OF VICTORIA, BRITISH COLUMBIA
ON AUGUST 9, 2020**

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

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

IIO File Number: 2020-200

Date of Release: April 14, 2021

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Introduction

On the evening of August 9, 2020, Victoria Police Department ('VicPD') officers were called to investigate an assault in progress at a residence in Victoria. VicPD officers attended the residence and located the owner (Civilian Witness 1 'CW1') in the parking lot. The owner asked the police for assistance to remove the other party involved, Affected Person ('AP'), as he did not live at the residence and was not welcome there. Officers entered the residence, and a struggle ensued between officers and AP, which resulted in a Conducted Energy Weapon ('CEW') being deployed and AP sustaining a deep laceration to his arm.

Because the injury had occurred in connection with the actions of police officers, 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 five civilian witness;
- statement of AP;
- statements of three witness police officers;
- police Computer-Aided Dispatch ('CAD');
- CEW download reports;
- scene examination and photographs;
- Police Records Information Management Environment ('PRIME') records;
- 911 recordings;
- police radio to radio transmissions; and
- medical records.

The IIO does not compel officers who are the subject of an investigation to submit their notes, reports and data. In this case, Subject Officer 1 ('SO1') did not provide evidence directly to the IIO.

Narrative

On the evening of August 9, 2020, Victoria Police Department ('VicPD') officers were called to investigate an alleged domestic assault in progress. Subject Officer 1 ('SO1') attended and located the resident (Civilian Witness 1 'CW1') in the parking lot of the building. SO1 learned that there had not been a physical assault, but there had been heated arguments between CW1 and AP. CW1 asked the police for assistance to remove AP as he did not live there and CW1 did not want him to be there any longer.

SO1 went inside the residence and asked AP to leave. AP refused, suggesting he would have to be forcibly removed. SO1 called for back-up over the radio.

Three other officers were dispatched to the residence. Witness Officer 1 ('WO1') said that when he arrived, SO1 was at the door of the residence, and AP was on the couch refusing to leave. SO1 had his CEW out, and it was pointed in the 'low ready position' toward the ground. According to WO1, SO1 asked whether there was anything that officers could do to gain AP's compliance to leave, and AP responded by telling the officers to "fuck off".

WO1 described in detail what happened next. WO1 said that AP was sitting on the couch, when he stood up and "lurched" towards the officers. WO1 described AP as posturing as if he wanted to fight the police.

Witness Officer 2 ('WO2') described these moments similarly to WO1. WO2 said that AP was sitting hunched over the sofa with his fists clenched, when AP abruptly stood up and moved towards the officers.

SO1 deployed his CEW, and AP stumbled and fell towards the right. As AP fell, AP's arm accidentally broke a door that was made of glass. According to the officers, none of them had any physical contact with AP before his arm hit the door, apart from the use of the CEW.

AP described the interaction with officers differently. He said that he was asleep on the couch when he unexpectedly saw an officer in the room with him. AP said that he was tasered when he stood up to get his possessions and leave. AP then said he was tasered again and pushed into the door by SO.

No civilian witness was present for the interaction between AP and police. A neighbour, Civilian Witness 2 ('CW2') overheard commotion in the residence and heard AP say "*I don't care, I put a cop in hospital before in Alberta*". CW2 had also witnessed AP shouting at CW1 on the balcony shortly before officers arrived.

AP sustained a serious laceration to his right arm and was bleeding heavily as a result of the impact with the glass from the door. Officers applied first aid, then escorted AP down to receive treatment from paramedics. AP was taken to hospital and required surgery to repair the injury.

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 SO may have used excessive force or otherwise acted improperly in connection with the arrest of AP.

Officers were acting lawfully in execution of their duties when they attended to the residence to investigate an alleged assault in progress. Once they arrived and learned that there was an unwanted person within the residence, they were also acting in accordance with their duties to assist with AP's removal.

With respect to the discrepancy between the accounts of AP and the officers, AP suggested that he was asleep when officers arrived and that he then was innocently standing to leave. It is difficult to place reliability on this evidence, given CW2 saw AP yelling at CW1 shortly before the police arrived, and also heard a commotion including AP's comment about previously putting an officer in the hospital.

Even with the discrepancy in the evidence, all of their accounts are consistent in the fact that AP stood up suddenly. Given AP's lack of compliance up to that point, and CW2's report of his aggressive demeanour, it is reasonable for officers to have assumed that he was not going to comply with further instructions. Although AP's intentions in standing up could have been to leave, there is no evidence that he communicated that to any of the officers. Instead, officers were faced with a man who had suddenly stood up, and moved towards them quickly and without notice. It is reasonable for an officer to use a CEW if the officer reasonably believed their safety was at risk. The evidence from all officers indicated that this was the case.

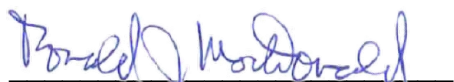
Additionally, a neighbour (CW2) had overheard the commotion, and heard AP say "*I don't care, I put a cop in hospital before in Alberta*". Such a statement could certainly suggest there was some reasonable risk and threat to the officers present.

In those circumstances, SO1 was justified in deploying a CEW for safety reasons and to gain control of AP. Unfortunately, AP's uncontrolled movements resulted in him stumbling towards a glass door that broke on impact. It is not reasonable to assume that SO could have predicted this stumbling when he deployed the CEW.

There is no evidence that the injury the AP suffered was a result of the unlawful application of force during the arrest. Although there are differing accounts of what occurred, the totality of the evidence supports a conclusion that SO1's actions were reasonable and necessary, and that AP's injuries were a result of an unfortunate set of circumstances.

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.

A handwritten signature in blue ink, reading "Ronald J. MacDonald", written over a horizontal line.

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

April 14, 2021

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