



**IN THE MATTER OF THE SERIOUS INJURY OF A MALE
WHILE BEING ARRESTED BY MEMBERS OF THE
SURREY RCMP IN
THE CITY OF SURREY, BRITISH COLUMBIA
ON FEBRUARY 2, 2016**

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

Chief Civilian Director:

Ronald J. MacDonald, Q.C.

General Counsel:

Clinton J. Sadlemyer, Q.C.

IIO File Number:

2016-022

Date of Release:

May 4, 2018

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Facts

In the early morning hours of February 2, 2016, Officers 1 and 3 requested backup to assist in the arrest of the Affected Person (AP). Officers 4 and 5, the subjects of this investigation, responded to the call and arrived to a business premise in an industrial complex. AP was taken into custody and to the detachment. An ambulance was called for AP and he was taken to the hospital. X-rays were taken shortly after his arrival and indicated AP had a broken knee.

The Independent Investigations Office (IIO) was notified by the Surrey RCMP later that day. The IIO commenced its investigation as AP's injury fell within the definition of serious harm as defined by the *Police Act* and was apparently related to the actions of officers.

Evidence collected during the investigation included the following:

- 1) Statements of three civilians: AP, a person present during the arrest of AP, and a physician;
- 2) Statements of Officers 1, 2, 3 and 6;
- 3) Report of Officer 4;
- 4) Recordings of AP's 911 calls;
- 5) Recordings of police radio transmissions;
- 6) Computer Assisted Dispatch (CAD);
- 7) British Columbia Emergency Health Services (BCEHS) records; and
- 8) Medical records of AP.

Pursuant to section 17.4 of the Memorandum of Understanding between the IIO and BC Police Agencies, and consistent with the Canadian Charter of Rights, officers who are the subject of an investigation are not compelled to submit their notes, reports and data. In this case, Officer 5 declined to provide a statement, notes, reports or data to the IIO.

At 12:21 a.m., on February 2, 2016, a 12 minute 911 call was received from AP. AP could not be understood by the 911 operator. Officers 1 and 2 attended and AP's complaint was dealt with and resolved. Neither officer recollected AP appearing injured; however, both Officers 1 and 2 recalled AP was highly intoxicated. Officer 1 left from that call at approximately 1:20 a.m., which was sometime after Officer 2.

At 3:06 a.m. AP again called 911 and again the operator was unable to understand what AP was saying. Both calls were recorded. English is not AP's first language. During the call AP whispered, mumbled and was non-responsive to the operator in both his mother tongue and in English.

Dispatch advised Officers 1 and 3 that AP was on the line with 911 and was saying "hello, hello." Officers were told that AP was whispering, slurring his words, and he sounded possibly very intoxicated. Dispatch related to the officers that AP kept saying, "listen to me," something about a, "misunderstanding," and, "drinking," and that AP

repeatedly mumbled something about "a pickup outside." Dispatch further related that AP was slurring his words, mumbling, and not making sense.

At 3:18 a.m., Officers 1 and 3 arrived at the business premise. AP was instructed by the 911 operator to go to the front door to speak with arriving members.

AP was interviewed in his mother tongue by IIO investigators, one of whom shares the same first language as AP. AP told the IIO he had consumed two or three drinks that evening. He said he called the police twice because, "*there were a lot of drugs outside,*" and there were people hanging around outside doing drugs who had previously stolen things from the business. He also indicated that he believed it was approximately 15 minutes between the time Officer 1 left following AP's first interaction with the police and the time when Officers 1 and 3 arrived after his second 911 call. It was actually almost two hours.

AP said that after the second call when Officers 1 and 3 arrived (AP believed Officer 3 had attended earlier with Officer 1), he opened the bay door when he was directed to do so. Officers 1 and 3 entered the shop and, "*they took out handcuffs and told me I was under arrest.*" AP said that he was arrested because the Officers could not understand him.

CW 1 was outside the business premise in his vehicle. He told the IIO that AP was, "*so drunk that night,*" that when the police arrived, AP argued with Officers 1 and 3 and pushed one of them to the ground while that officer was trying to handcuff him. Both Officers 1 and 3 deny either of them fell during the interaction.

Officer 3 told the IIO that when they (Officers 1 and 3) arrived AP opened the bay door. The officers went in and Officer 3:

could see that [AP] was very drunk. Like, I...was just thinking 'oh, he's so drunk he can't even walk'...But...Maybe...he was walking that way because it [AP's knee] was broken...[but at the time of the arrest] I thought it was a normal drunk walk...

Officer 3's belief was that, due to AP's extreme intoxication, AP would be safer in cells than at the business premises. Officer 3 also believed that AP was breaching the peace with his use of the 911 emergency line. Officer 3 arrested AP by telling him he was under arrest for breach of the peace and then applied handcuffs. However, after the first cuff was on, and before the second one was applied, AP, "*started to push...it wasn't a fight.*" Officer 1 called for backup.

Officer 3 said they stood and waited for the backup to arrive for a few minutes until Officers 4 and 5 arrived. Officer 3 said that during the wait AP stood leaning against a vehicle and wasn't fighting.

AP told the IIO that shortly after he was arrested two or three more officers arrived:

...and they did not listen to me and started to beat me and hit me here. I said I can't stand and I was dragged to car.

AP said he was struck before he was handcuffed. He said Officer 4 or Officer 5 hit him twice on the right side of his knee and a few seconds later on the left side of the right knee with *"a stick that goes along his hands."*

AP said that after he was handcuffed, he was thrown on the hood of a car. He said he was then thrown into the back of a police car and the door was closed and he was taken to the police station.

Officer 3 said that Officers 4 and 5 arrived and asked what the problem was as Officers 1 and 3 *"...looked calm. We were just standing there."* Officer 3 said Officers 4 and 5 walked AP to the hood of the vehicle and leaned him over it:

They weren't rough. They were, like, I – they were really good about it, and they just secured the second handcuff...they weren't in a hurry...[Officer 5]...had been off because he broke his thumb. So, I know he -- like, they, there weren't being rough at all. They put their gloves on....they weren't, like, 'get down'...they weren't being rough with him at all.

Officer 3 said AP did not resist and Officers 4 and 5 did not use any force. Officer 3 did not see Officers 4 or 5 adjust AP's legs. Officer 3 said the second cuff was attached and AP started saying, *"...oh my leg'. And I do remember him, like hopping kind of."* Officer 1 noted that after he was handcuffed, AP *"claimed knee problem."*

Officer 4 consented to the IIO accessing and using his duty report. Officer 4 reported that on arrival at the business premise, he and Officer 5:

...grabbed [AP] by his arms and the scruff of his clothing and pulled him in a direct forward facing motion towards the hood of a car...[AP] was placed chest first against the hood of the car, told he was under arrest...his arms were pulled behind his back where he was successfully handcuffed.

AP was then led to [Officer 1's] Police vehicle. [AP] began to complain about his ankle.

Officer 4 reported that he lifted AP's pant cuffs and saw no evidence of injury to AP's ankle. Officer 4 reported AP was put into Officer 1's car *"without incident."*

Officer 3 assisted AP to a sitting position in the rear of Officer 1's vehicle. Officer 6 came through the opposite side and pulled AP by the armpits into the vehicle. Officer 3 said no real force was required to get AP into the vehicle. Officer 3 did not see anyone with use of force equipment out or AP fall down at any time.

Officer 6 told the IIO that AP was already in handcuffs when he arrived:

I think he was limping or...his gait was unsteady but again because he was intoxicated [sic], it was hard to say whether that was due to an injury or ah because of his level of intoxication.

Once AP was inside the car another officer closed the door, then Officer 6 got out on his side and closed the other door. Officer 6 said he did not see any use of force against AP, nor did he see AP fall.

Officer 1 drove AP to the police station.

AP said that at the police station he was dragged out of the car to a jail cell and was thrown on the floor. He said he knocked at the cell door and BCEHS were called.

CCTV video was obtained from the detachment that shows AP's entire time in the police station. The video was reviewed and there is no evidence AP was thrown down or fell to the floor.

The initial video shows Officer 1's vehicle in a secure bay. Officer 1 opened the door at second 4 into the video and, at second 7, another officer spoke to AP. At second 56, Officer 1 assisted the other officer to remove AP from the back of the police car. AP is clearly shown hopping on his left leg as the two officers assist him to the doorway to the booking room in the cellblock area.

AP was taken into the booking room and AP can be seen from multiple camera angles. He was not thrown nor did he fall to the floor at any time. Finally, at second 12 of the video segment of AP's jail cell, two officers are shown assisting AP into the cell. At second 16 of that video the two officers clearly lowered AP carefully to a seated position in the cell.

At 35 seconds, two officers entered the cell and used a metal detecting wand to check AP for any metal. At one minute six seconds, a jail guard entered the cell and provided AP with two Styrofoam cups of water.

BCEHS arrived to the cell at 27 minutes into the cell video (approximately 36 minutes after AP was taken into the booking room), and AP is later shown being taken away on a gurney.

CW 1 said AP later told CW1 that "*because I [AP] push [the officer], that's why they fighting with me.*" CW1 also said that he did not see any officer hit AP.

Medical records report AP arrived at the hospital at 5:02 a.m.; he was triaged at 5:08 a.m. AP told the attending physician that he called the RCMP to deal with a person using drugs outside and was assaulted by the RCMP. AP told the physician he had not consumed alcohol or used any drugs.

At 5:40 a.m., AP was taken for x-rays. He was returned from being x-rayed at 5:55 a.m.

AP's blood was drawn at 5:57 a.m. AP had a blood alcohol concentration of 52.8 mmol/L (243 mg/100ml), which is more than three times the national criminal limit (80 mg/100ml) for driving and almost five times the legal limit (50 mg/100ml) for driving in BC.

Medical records also indicated the presence of cocaine in AP's urine.

AP reported to his surgeon that he had not previously had any problems with his right knee; however, x-rays and CT scan revealed the presence of sclerosis along the fracture site that the surgeon noted was "*possibly indicative of a fracture older than 2 days ago.*"

Another physician told an IIO investigator the injury to AP appeared to be consistent with AP falling off something. When the physician was questioned further about the mechanism of injury, the doctor said that while it was possible, AP's injury was not consistent with a direct blow.

Relevant Legal Issues and Conclusion

The purpose of any IIO investigation is to determine whether an officer, through an action or inaction, may have committed an offence in relation to an injury to AP.

More specifically, the issue to be considered in this case is whether Officers 4 or 5 may have used excessive force during the apprehension of AP and thereby caused his injury. Had they done so, they may have committed assault causing bodily harm.

In this case, AP called 911 on two occasions. Each 911 call lasted approximately 12 minutes and during which 911 operators could not understand AP.

On the second occasion, Officers 1 and 3 arrived and found AP in an extremely intoxicated condition. Officer 3 determined that not only was AP incapable of caring for himself due to his intoxication, he was also breaching the peace by his incomprehensible and lengthy 911 calls, and arrested him.

A police officer who is acting as required or authorized by law is, if he acts on reasonable grounds, justified in doing what he is required or authorized to do and in using as much force as is necessary for that purpose. If a police officer uses unreasonable or excessive force, those actions may constitute a criminal offence.

In this case there is irrefutable evidence (the blood analysis) of AP's extreme intoxication. His lengthy 911 calls were recorded. His arrest was reasonable and justified. Neither civilian nor police witnesses observed any blows to AP's knee as described by AP. Video evidence is clear that AP was not thrown to the floor in a cell.

The only evidence that AP was injured during his interaction with police is AP's assertion; given AP's level intoxication and the inconsistencies between AP's allegations and the video and medical evidence, AP's allegations do not provide grounds to consider any charges against an officer.

In particular, medical records confirm AP was able to communicate with medical personnel including the admitting physician to whom AP related that he had not consumed alcohol or taken drugs; however, he had cocaine in his body and a blood alcohol content almost five times the legal limit to drive in BC. AP told the IIO he had two or three drinks that night and that he believed that it was 10 to 15 minutes (actually approximately two hours) from when Officer 1 departed and the end of his second 911 call, when Officer 1 arrived the second time.

Officer 3 said that, in hindsight, AP's difficulty walking prior to arresting him could have been because his knee was already injured. The x-ray and CT scan show the presence of sclerosis along the fracture site, which is part of the healing process, but was sufficiently developed that the surgeon noted this was "*possibly indicative of a fracture older than 2 days.*"

Finally, AP's injury is not consistent with a direct blow (or blows) as he alleged. The injury is consistent with a fall; however, the only fall AP alleged was that he was thrown to the floor when he was put into the jail cell. Video contradicts that allegation.

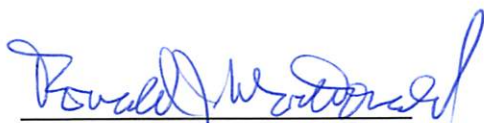
In the end, the available evidence is insufficient to find a police officer applied excessive force or even caused AP's injury. Rather, the evidence supports a finding the Officers were justified in their actions.

Accordingly, as the Chief Civilian Director of the IIO, I do not consider that any officer may have committed an offence under any enactment and therefore the matter will not be referred to Crown counsel for consideration of charges.



Clinton J. Sadlemyer, Q.C.
General Counsel

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