



**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 MARCH 14, 2017**

**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:

2017-021

Date of Release:

April 18, 2018

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Facts

On March 14, 2017 at 2:27 a.m., in Surrey, British Columbia, Officers 2 and 3, the subjects of this investigation, arrested the Affected Person (AP) for mischief and causing a disturbance. During the arrest AP suffered a fracture of his right knee.

The Independent Investigations Office (IIO) was notified by the RCMP at 4:57 a.m. that morning. The IIO commenced its investigation as AP's injuries fell within the definition of serious harm as defined by the *Police Act* and were related to the actions of officers.

Evidence collected during the investigation included the following:

- 1) Statements of five civilians including AP, three witnesses who heard noise caused by AP, and a surgeon;
- 2) Written report of Officer 1;
- 3) Statement of Officer 2;
- 4) Recordings of police radio transmissions;
- 5) Computer Assisted Dispatch (CAD) records;
- 6) BC Emergency Health Services (BCEHS) records; and
- 7) Medical records.

Pursuant to section 17.4 of the Memorandum of Understanding between the IIO and BC Police Agencies, officers who are the subject of an investigation are not compelled to submit their notes, reports and data. In this case, Officer 3 declined to provide a statement or his notes, reports, and data to the IIO.

On March 13, 2017 at 3:57 p.m., a complaint was received by Surrey RCMP. The complainant (Civilian Witness 1 (CW1)) related that AP had committed a minor assault upon him. Officer 1 attended and cautioned AP about making physical contact with the complainant. Officer 1 reported that AP was "*understanding*."

Surrey RCMP received three more complaints later that evening and into the early hours of the next morning (March 14) with respect to AP setting off the smoke detector in his suite, as well as loudly knocking on CW 1's doors.

Officers 2 and 3 arrived to CW 1's residence at 2:27 a.m. and spoke with him. While the officers were with CW 1 the sound of loud banging noises and yelling could be heard.

Officers 2 and 3 entered the side gate and walked along the narrow walkway that runs the length of the west side of the building. Both officers were equipped with use of force options including a semi-automatic pistol, a Taser, a baton, OC spray, metal flashlights as well as handcuffs.

At the end of the narrow walkway and around the corner they arrived at AP's door. The noise stopped when they knocked on AP's door.

AP answered the door and spoke with Officers 2 and 3. AP denied making the noise that Officer 2, CW1, CW2 and CW3 all said they heard. AP told the IIO:

So they came over again [referring to Officer 1's attendance - Officers 2 and 3 had not attended earlier] and they talked to me, and I talked to them. I wouldn't go outside with them or anything like that. But they told me, 'Okay, this is it, don't do it again,' and they were leaving.

Officer 2 told the IIO that AP "was just venting" and they were "...trying to reason with him, and he starts flying off the handle saying he doesn't like our tone..." Officer 2 told the IIO:

...because I knew that there had already been another attendance, I said, '...if we have to come back a third time, we're going to have to arrest you. This can't continue.' And he, 'Oh, for what?' And, 'You can't do that...You can't arrest me, you can't do anything.'...

I'm like, 'No, no, seriously, like you know, you will be arrested, this can't continue.'...

So, I eventually look at him like, you know, 'Okay, I, I need to know you understand this. What is going to happen if we have to come back here tonight?' And he looks at me and he says, 'You won't.' So perfect. That's all I want to hear. So [Officer 3] and I walk out, 'Have a good night, see you later.'



As Officers 2 and 3 were retracing their steps along the narrow walkway, AP began to follow. AP initially told IIO investigators that he told the officers he would follow them to lock the gate; however, he said later in the same interview that, "I didn't tell them I was going out behind them."

AP also told the IIO that it was "...pitch black back there." He said Officer 2 went out of the gate but Officer 3 "was hiding right behind it. Because you can't see -- it's so dark back there, you don't see nothing."

AP told the IIO that Officer 2 then told Officer 3, "OK, we got him now, he's out of the house, grab him."

Officer 2 denies that statement.

AP told the IIO that the officers:

...turned around, one of them grabbed me, threw me right into the side of the house, face first. I fell down and he jumped on my leg. And I couldn't even breathe, I was in so much pain. And he stood there with his big boot on my back, me face down in lightly dressed clothes, because I'm right outside my clothes. I didn't even have shoes on.

So, I don't think he realized, because it's so dark back there, that -- how much damage that caused.

Officer 2 denied jumping on AP's leg or standing with his boot on AP's back.

Officer 2 told the IIO that, as he approached the gate, he heard footsteps from behind. He said AP was walking towards the officers *"with a purpose,"* and when Officer 2 asked what he was doing AP advised *"I'm locking you out."*

Officer 2 explained to the IIO that:

...what that meant to me is that his intention is to lock that gate behind us, so that we can't come back a third time, and we can't arrest him, because he is going to go back and he is going to continue causing a scene in the house. So, I said, 'All right...you're under arrest for cause disturbance and mischief.' So [AP] starts, 'You can't arrest me, you can't arrest me.' I'm like, 'You'll actually find that I can.'

Officer 2 said he took hold of AP's arm and AP turned away and then took hold of Officer 2. Officer 2 said Officer 3 assisted but they could not get control of AP. Officer 2 said he used *"a couple"* of elbow strikes to AP's shoulder and eventually all three went to the ground.

Officer 2 said AP resisted being handcuffed and told the officers to get off of him and that they could not arrest him. In due course they were able to handcuff AP. Officer 2 said he and Officer 3 used their flashlights to check one another for injuries and when the light was shone on AP, Officer 2 could see AP's right knee was injured. He said AP continued his barrage of remarks including, *"You can't do this to me"* and *"I'll have your badge."*

An ambulance was called and AP was taken to hospital. BCEHS personnel indicate that AP told them about his level of pain when he was tackled by police. There is no record that AP suggested to them that the police had jumped on his leg. AP was violent and uncooperative with them, such that they could not safely take his blood pressure or poke his finger to obtain a drop of blood to measure his blood glucose.

BCEHS personnel's assessment of the demeanor of AP is consistent with that described by Officer 2.

The orthopaedic surgeon who performed surgery on AP was specifically asked:

Whether this type of injury could be expected if the patient's leg had been 'stomped' on in a forceful manner.

He opined that:

This injury is typically sustained as a result of a fall or motor vehicle collision....While it is theoretically possible that a very forceful blow to the medial aspect of the knee could produce this injury pattern, it is not in my experience a common mechanism of this injury.

That opinion is more consistent with Officer 2's evidence that he did not "jump" on AP's knee than with AP's statement that he did.

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 the incident that led to the injury to AP.

More specifically, the issue considered here is whether Officers 2 or 3 may have used excessive force during the apprehension of AP. Had they done so, they may have committed assault causing bodily harm.

In this case, police were called about a minor assault to CW1. AP was not arrested but was cautioned by Officer 1 about physical contact with CW1. Police were called three further times about noise complaints against AP. When Officers 2 and 3 spoke with CW1 they could hear the noise being made by AP. It was 2:27 a.m. on a Tuesday morning.

The *Criminal Code* provides for the arrest without warrant by a peace officer of someone committing an offence. The evidence is clear that AP was causing a disturbance earlier, and was committing mischief when Officers 2 and 3 were approaching his door. The officers had the authority to arrest AP; however, they attempted to resolve the issue with a warning and AP's agreement the officers would not have to come back. The authority to arrest AP was not extinguished by that agreement.

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.

When AP implied that he was not going to abide by the caution and warning given him by the officers, Officer 2 acted appropriately in arresting him as it was reasonable for

him to conclude that AP would continue committing the offence. When the officer told AP he was under arrest, AP engaged in a physical struggle with the officers. At that point AP was committing the further offences of resisting arrest and assault of a peace officer.

Although AP suggested the police, in effect, ambushed him and jumped on his leg, the medical evidence is inconsistent with that description of how the injury occurred. Further, BCEHS personnel noted that AP's violent behaviour prevented them from treating him. They also reported that AP was "*tackled by police*," but there was no indication of a complaint from AP that he had been "*jumped on*" when he described the pain he was suffering.

There is no evidence that an officer used excessive or unreasonable force that could support a criminal charge against either officer.

Officer 2, although constitutionally and legally entitled to remain silent provided a statement to IIO investigators. That statement provided important information that assisted with a full consideration of all the facts.

Therefore, the evidence does not support AP's contention police jumped on his leg. Rather, it supports the conclusion the actions of the officers were a lawful part of their arrest of AP and a consequence of his resistance to the Officer's efforts. The injury appeared to be caused as an unintentional result of the struggle when the Officers and AP went down.

Accordingly, as the Chief Civilian Director of the IIO, I do not consider 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.



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