



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

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

Chief Civilian Director:	Ronald J. MacDonald, KC
IIO File Number:	2020-236
<u>Date of Release:</u>	<u>January 31, 2024</u>

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**The release of this public report was delayed pending the conclusion of concurrent criminal court proceedings. The decision in this matter was initially reported on [March 23, 2021](#).**

## **INTRODUCTION**

On the evening of September 11, 2020, the Subject Officer ('SO') stopped the Affected Person ('AP') in Lake Country, BC, for speeding. An altercation developed between AP and SO, a second RCMP member attended, and AP was arrested. In the course of the incident, AP's hand was injured and consequently 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 AP, three other civilian witnesses and one witness police officer;
- police Computer-Aided Dispatch ('CAD') and Police Records Information Management Environment ('PRIME') records;
- audio recordings of a 911 call and of police radio transmissions;
- Closed-Circuit Television ('CCTV') recordings from the RCMP detachment;
- a video clip from AP's cell phone;
- photographs of AP's injuries; 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, SO provided an undated, unsigned statement through his legal counsel setting out a partial account of the incident, and has denied, also through his counsel, that he "squeezed" AP's hand at any time.

## **NARRATIVE**

### ***Affected Person***

In his IIO interview, AP described an incident on September 11, 2020, in which he was stopped for speeding by an RCMP officer (SO). AP has acknowledged that he was driving at least 120 km/h at the time, in an area with a posted speed limit of 70 km/h. He could tell, he said, that SO was "not in a good mood that day". AP said he told SO that his wallet had been stolen, so he did not have his driver's licence (the IIO investigation has determined that AP's wallet had been stolen prior to this incident, and a police file was in existence at the time). SO, AP said, did not believe him and asked if he had "mental problems". AP said he started recording the interaction using the camera on his phone,

and SO was angered by the fact that the phone was shining its light at him. AP said that he turned off the camera's light and continued recording without it, but SO took his own flashlight and pushed it into AP's eye.

AP said that a second officer was then called to the scene. AP was given a speeding ticket and his car was impounded. He wanted to have a cold brew coffee maker transferred from his car to the police vehicle, but said that the machine was torn from his hands and he was arrested and accused of resisting arrest. He acknowledged resisting being taken to the ground for handcuffing, and said he was then placed face down in the back of a police car, his hands secured behind his back. AP said that he was using his smart watch to text a friend, and SO "flipped out". He said that SO grabbed his cuffed hands, "and he just squeezes my hands so hard, he snaps the bone, and I was screaming in pain, screaming for help". AP demonstrated his arms being pulled straight up above his head as the second officer held his legs. AP said that SO claimed AP had bitten him, but explained that SO's arm was pushing back and forth across his face as he was screaming, and he saw "a line of saliva" on SO's arm, but he did not intentionally bite SO. AP said he was certain that his hand was injured at this point in the incident, and that it was not injured in the course of the earlier handcuffing.

AP said he used his watch to call 911 while he was in transit to the detachment. After fingerprinting, he said, he was given access to the phone and spoke with a Legal Aid lawyer, but the lawyer refused to continue the conversation with him after he expressed surprise at being told he was being charged with assaulting a police officer.

The recording of AP's 911 call while being transported includes his statement that his hand had been broken and that his face had been "smashed on the pavement".

AP provided investigators with a video clip in which SO can be seen standing near the front of AP's car, responding to demands from AP to repeat what he had just said. SO makes a reference to AP's "demeanour", and tells him to stop shining his cell phone's light at SO. AP has not provided any video clip showing the part of the incident in which he says he continued recording without the camera's light, and recorded SO pushing his police flashlight into AP's eye.

### ***Civilian Witness***

Civilian Witness 1 ('CW1'), a tow truck driver, was called to the scene of AP's arrest to tow AP's car to the impound yard. CW1 told IIO investigators that as he arrived, he observed AP behaving in a manner that he interpreted as "trying to obstruct" two police officers. When he stopped and looked again, he said, he saw AP on the ground being

handcuffed. CW1 said that AP was yelling and screaming at the officers and at the truck driver, saying the officers had broken his arm. Subsequently, he said, he saw the officers talking to AP while AP was in the back of the police car, but did not see either officer lean into the vehicle.

### ***Witness Police Officer***

In his IIO interview, Witness Officer 1 ('WO1') said that he went to the scene in response to a call for backup from SO. He said he assisted in handcuffing AP, and said that the two officers had to "wrestle [AP] down to the ground". WO1 said that at no time while he was present did AP indicate he was injured, and said that he observed AP right up to the point when SO transported him from the scene.

As he arrived, WO1 said he saw AP hanging out of his car window with a cell phone while SO was apparently recording the vehicle's identification number ('VIN'). AP, WO1 said, was "screaming and hollering" and "badgering" SO, demanding SO's badge number and name. WO1 said he talked to AP, calming him down, then returned to his police vehicle while SO finished the necessary paperwork for the traffic ticket and vehicle impoundment, which took about twenty minutes.

WO1 said that when SO served AP with the documents, AP became upset again, and demanded that the officers take everything from his car into their police vehicles. WO1 said that AP unloaded two large coffee pots, some clothing and a large end table. The officers refused to take the items, telling AP he could only bring with him more important effects. They started to put the property back into AP's car, but WO1 said that when he started to put the table in, AP "lunged" at him, struggled with WO1 over the table and aimed a "wild kick" at WO1. WO1 said that SO took hold of AP and told him he was now under arrest for obstruction and assaulting a peace officer, to which AP replied "No I'm not!" and pulled away. WO1 said that both officers tried to put AP's arms behind his back, but he struggled and resisted. They took him to the ground and, after some difficulty pulling AP's left arm from under his body, were able to get his arms behind his back and into cuffs, with SO putting the cuff on AP's right wrist. WO1 said that the tow truck arrived as the officers were cuffing AP. AP was yelling at the driver, "Get over here, help me, help me". AP was then placed in the back of SO's vehicle, continued WO1, where he began "kicking and hollering and carrying on". WO1 stated that AP had not complained of any pain up to this point.

WO1 said that once AP was locked in the back of SO's police vehicle, he went back to his own vehicle, but then saw "a bit of a struggle going on". He described SO standing at

the open driver's side rear door, and AP sitting sideways across the rear seat, cuffed behind his back, with his feet out along the seat, through the door toward SO. SO told WO1 that he had tried to search AP, who he said was using a cell phone, and AP had tried to bite him. WO1 recalled helping to pull AP back into the vehicle, where he continued to shout and kick in the rear seat until SO drove him away. Asked if AP said anything about having an injured hand, WO1 replied that he did not.

### ***Subject Officer***

In a written statement provided through his legal counsel, SO describes AP's reaction to being stopped for excessive speeding and told that his car would be impounded as angry, belligerent and obstructive. He states that at one point AP held up his phone videoing his own face "while pushing his face onto [SO's] flashlight and yelling 'you assaulted me'". SO writes that AP also claimed to be streaming the incident live to "his hundred thousand [internet] followers".

In the written statement, SO ends his account of the incident at the point where WO1 arrives, and states that "[a]t no time prior to the arrival of [WO1] did [SO] have any physical contact with [AP] except when [AP] pushed his face onto [SO's] flashlight". As mentioned above, SO's legal counsel subsequently advised the IIO by email that his client denied squeezing AP's hand, but acknowledged restraining him at one point in the rear seat of SO's police vehicle by "controlling his shoulders and rolling him" for the purposes of searching him and seizing his cell phone.

AP was later diagnosed with a spiral fracture in one of the metatarsals of his left hand, which required surgery involving a sideplate with screw fixation.

## **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 either of the involved officers may have committed an assault through the application of unauthorized or excessive force during AP's arrest.

There is no issue regarding the lawfulness of AP's initial detention by SO. AP was alleged to have been driving at approximately twice the posted speed limit, and acknowledged driving at least 50 km/h over that limit. The *Motor Vehicle Act* makes that a ticket offence punishable by a fine, and also provides for impoundment of the offender's motor vehicle.

AP has alleged that SO assaulted him during the early stages of their interaction by pushing the officer's flashlight into AP's eye. He says that he recorded that assault using his cell phone camera after turning off the camera's light. The only video provided to the IIO, however, ends with SO shining his flashlight at AP from several feet away as the officer tells AP to turn off his video light. As mentioned above, SO has written that AP then appeared to video himself while pushing his face against the officer's flashlight. It is not possible to resolve these contradictory accounts, since AP has not produced the video he says he took of the alleged assault.

AP and WO1 agree that once AP appreciated that he was going to be parted from his car, he tried unsuccessfully to have the officers transport his personal property rather than leave it in the car and taken to the impound lot. AP says that in the course of this disagreement he was arrested, in effect, for no apparent reason. WO1, on the other hand, says that AP physically struggled with WO1 over a piece of furniture that AP wanted the police to transport for him, and that AP then kicked out in anger at WO1, causing SO to arrest him for obstruction and assaulting a peace officer. SO does not give any account of his decision to place AP under arrest, but it appears more likely than not that WO1's evidence is reliable on this point, since something more tangible than a mere disagreement must have occurred to escalate the situation from a traffic detention to a criminal arrest. AP acting out physically is consistent with the obstructive demeanour observed by CW1.

Indeed, AP has acknowledged that he resisted to some extent when the officers tried to handcuff him. In the circumstances, there is evidence to support the need for the officers to use physical force to contain AP, including taking him to the ground to help gain control.

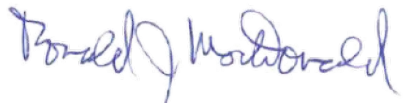
It does not appear that any excessive force was used in that manoeuvre. As noted above, AP claimed in his phone call from SO's police vehicle that his face had been "smashed on the pavement", but there is no evidence of any significant injury to his face.

AP and the two officers have each provided a version of what occurred when SO tried to seize AP's phone after AP was placed in the rear of the police vehicle. AP is adamant that this is where SO squeezed his hand so badly that it was broken. The difficulty with this allegation, though, is that it features AP's handcuffed arms being pulled up from behind his back, straight up over his head, which is clearly not physically possible. It is also inconsistent with WO1's recollection of finding AP sitting facing SO along the back seat of the vehicle with his feet at or hanging out of the driver's side rear door. For his part, as mentioned earlier, SO only acknowledges taking hold of AP's shoulders to roll him over face down on the seat to be searched.

Compounding the inconsistencies in the evidence is the fact that the injury to AP's hand is a spiral fracture, more likely the result of a twisting force than a crushing one. Also significant is the evidence of CW1, who recalled that while AP was on the ground being handcuffed he was shouting that the officers had broken his arm. The evidence as a whole leads to a conclusion that the injury was most likely caused by the struggle to get AP's arms under control and into restraints. It might have been the indirect result of the efforts of either of the two officers, but in any event does not appear to have been caused by any unjustified or excessive use of force, in the circumstances.

The bottom line is that AP's evidence suffers from reliability issues, and contradicts other known evidence. While the evidence from SO is incomplete, when considering the totality of the matter there is insufficient evidence to say that the force used was unreasonable.

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.



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Ronald J. MacDonald, KC  
Chief Civilian Director

January 31, 2024

Date of Release