



**IN THE MATTER OF THE INJURY OF A MALE  
WHILE BEING APPREHENDED BY MEMBERS OF THE  
NEW WESTMINSTER POLICE DEPARTMENT IN  
NEW WESTMINSTER, BRITISH COLUMBIA  
ON MARCH 9, 2021**

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

Chief Civilian Director:

Ronald J. MacDonald, Q.C.

IIO File Number:

2021-053

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## INTRODUCTION

On the evening of March 9, 2021, the three Subject Officers in this case responded to a report by a 911 caller that there was an apparent domestic disturbance in the next door apartment. The Affected Person ('AP') was arrested at the scene and suffered a serious injury to his spinal cord in the course of the arrest. 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, two other civilian witnesses, four paramedics, two other medical 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 police radio transmissions;
- police training records;
- police policies;
- scene photographs; and
- medical evidence, including an expert medical opinion.

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') provided a written statement. SO2 and SO3 declined to provide any evidence to the IIO.

## NARRATIVE

AP told IIO investigators that on the evening of March 9, 2021, at an apartment in New Westminster, he was having "a fight" with his girlfriend, Civilian Witness 1 ('CW1'). He said there was a knock at the apartment door, and he knew it must be the police. He said he opened the door, turned around and complied with being handcuffed. He was then taken out into a short branch hallway outside the apartment door. There were two officers, one male and one female, holding him by the arms. After acknowledging that he was being verbally confrontational, AP continued:

*...and then I kind of gave them a little bit of a struggle, like I wouldn't let them hold me exactly still where they wanted me, right? ... At one point, I pushed the police officer with my body, and that's when he, as far as I remember, that's when he swept my legs, and – which is a word I heard another police officer use to describe what he did – and with my hands*

*handcuffed behind my back, and my face and head just came barreling towards the ground. As soon as my head hit the ground, it was like a light switch turning my body off. Everything just went numb, and scary at that point. I couldn't feel a thing. Couldn't move anything either.*

AP told investigators that before the “fight”, he had consumed two 16 oz “stronger” beers. He said that he was not intoxicated at the time of the incident, or even “tipsy”. Asked why witnesses might have thought he was heavily intoxicated, AP responded that it would only have been because he was “talking back to the cops”.

The attending officers were responding to a 911 call from CW2, who told the call-taker that she could hear an apparent domestic disturbance, with a woman screaming for help. In SO1’s written statement, she describes arriving with SO2. SO1 writes that she could hear yelling from inside the suite, and saw SO2 bang on the door and announce that it was the police. She states that when AP opened the door, she saw blood on his hands and shirt, and saw CW1 inside the suite with “blood smeared all over her face”. SO1 describes AP as behaving “in a manner consistent with being intoxicated”. SO3 is not mentioned in SO1’s statement, but arrived shortly afterwards, and went into the apartment to talk with CW1.

CW1 told IIO investigators that the blood on her face was AP’s, but acknowledged that the police officers would not have known that. CW1 said that AP was immediately handcuffed by SO2 without any difficulty. While the officers were in the process of double locking the cuffs, though, writes SO1, “[AP] became irate, began yelling at officers, and struggled against [SO1] and [SO2’s] grip on his arms. CW2, who could overhear the incident and who also had a partially obstructed view of it, told the IIO that AP “was quite belligerent, and pretty obviously drunk or on something because he was slurring”. CW2 said that AP was yelling at the officers, who were telling him to calm down.

SO1’s statement continues:

*while [AP] was handcuffed, he attempted to wrench his elbow out of [SO1’s] grip (pulling away) and yelled about wanting to fight with officers ... [AP] continuously tried to face [SO2] in a challenging manner and was trying to pull his arm from [SO1] in order to move closer to [SO2] in an assaultive manner. During this time [AP] was yelling at officers belligerently and communicating that officers would not be able to control him.*

SO1 states that, in order to gain more control of AP, she moved him so that the front of his body was against the hallway wall, a few feet from the apartment door. She says that AP became increasingly aggressive and resistant, and was warned that if he did not stop fighting he would be taken to the ground. From inside the apartment, CW1 said, she got a brief view of what was happening in the hallway, for about five to ten seconds. She said

that AP did not appear to be resisting, and was standing with his back to the wall, not moving. CW2, though, stated that she heard AP challenging the officers with questions such as “What are you going to do to me?” and “What are you going to do about it, short stuff?” (apparently addressing SO1).

From inside the apartment, the door now closed, CW1 heard AP’s voice become louder and more agitated, and then heard SO2 say, “He’s resisting”, followed by the sound of a fall to the floor, and sounds of pain from AP. In her written statement, SO1 describes AP’s response to her warning: “Upon hearing this [AP] yelled, ‘just try it, 4ft nothing mutt’ and lunged toward [SO2]”. SO1 states that AP was then taken to the ground and stopped struggling. She says that she immediately released his arm and moved him into the recovery position.

CW2 described the events in these words:

*I think it’s when they went to actually put him under arrest that he got physical ... I heard them say, ‘calm down, calm down, you’re under arrest’. And he, he got physical, he got violent and they ended up tripping him, I think to knock him down so they could get him under control. And that’s when he hit his head on the wall...*

After commenting that the officers acted calmly, CW2 noted:

*He got violent, and belligerent, and they had to trip him you know to get him in a safe position. It was an accident, him hitting his head. It’s a tight space and it was an accident.*

Recordings of the police radio dispatch channel show that SO2, sounding out of breath, called for an ambulance to attend and said, “We had to take the male down, he’s c&b [conscious and breathing], talking to us ... he hit his head on the way down”.

Witness Officer 1 (‘WO1’) told the IIO that when he arrived outside the apartment, he saw AP lying in the recovery position, complaining of a sore shoulder and saying he could not feel his legs. WO1 said that SO1 was kneeling at AP’s side, her hand on his shoulder, comforting him. SO2 was standing nearby, writing notes. AP said he was uncomfortable and asked to be sat up. WO1 said he sat AP up, but after 30 to 45 seconds AP said he did not feel well, so WO1 placed him back in the recovery position. CW2 reported hearing and seeing the same exchange.

The IIO consulted with a medical expert to determine whether moving AP after he struck his head may have aggravated his injuries. The Doctor’s opinion was that it did not:

*“Moving a patient with an injury like this will have no effect on the degree of neurologic impairment because there is no fracture or gross instability of the*

*cervical spine. The documentation clearly supports the fact that his neurological disability was apparent immediately after the take down not when he was repositioned against the wall as evidenced by the fact that he could not maintain his posture against the wall.”*

The attending paramedics were interviewed by IIO investigators, who learned that the paramedics were told by police that there had been an altercation, a leg sweep was conducted and AP had struck his head against the floor, and also possibly against the wall. They were told by AP that he had drunk four beers that evening.

AP was transported to hospital, where he was treated for a spinal cord injury. A toxicological examination of his blood indicated no drug consumption, but a blood alcohol concentration of 0.1364 gm/dl (the *Criminal Code* establishes a legal limit for driving in Canada at 0.08 gm/dl).

While at the hospital, SO1 told a medical witness subsequently interviewed by the IIO that AP had resisted arrest and that police had executed a “leg sweep”. AP had hit the left side of his head and shoulder against the wall and had fallen to the floor. AP was described as having fallen “really slowly”, with the other officer (SO2) going down before AP in what was described as an “assisted fall”.

An expert medical opinion obtained by IIO investigators indicates that the primary mechanism of injury was “hyperextension” causing damage to the spinal cord without associated fracture of the spine. The expert report continues, “The most significant contributing factor is [a pre-existing medical condition] which made him much more vulnerable to a cord syndrome after sustaining trauma to the neck ... It is highly unlikely that a young person with a normal spine anatomy would have developed a spinal cord syndrome with the mechanism and force described”.

Regarding the police actions that led to his injury, AP told the IIO,

*I personally can't believe that another human would mean to cause this kind of damage to another human just for struggling with them a bit, so I can't imagine that this was malicious in any way. Who could do that, right? You're being a dick, I'm going to paralyze you, like I said, they don't fit so I don't imagine this was a, but yeah, he did take me down and I was cuffed behind my back, so I mean you also gotta think of the consequences of doing something like that, right? I mean you can't do that if someone has no means to protect themselves from a fall they're going to hurt themselves. It just so happened I had a pretty serious 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 the actions of SO2 during AP's arrest were an excessive use of force amounting to an assault.

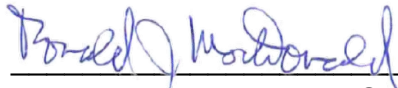
It is indisputable that AP became resistant and uncooperative quite soon after being handcuffed. The evidence demonstrates that "being a dick", to use AP's own words, involved pulling away physically and challenging the officers verbally. Even on his own account, he then made an aggressive move towards SO2 that caused him to be taken down onto the floor to allow the officers to gain control. There is nothing to suggest that the manoeuvre employed by SO2 was anything more than a reasonable and justifiable 'leg sweep' or 'assisted fall', from which no serious injury would normally be expected to result.

There is no reason to believe that SO2's actions were "malicious in any way", which is consistent with AP's own comments. Similarly, there is no reason to believe, if AP's head struck the wall in the course of his fall, that this was intended. Examination of the scene by IIO investigators shows that the incident happened in quite a narrow, confined space, where any contact with the wall was almost certainly accidental.

The medical evidence establishes that AP was suffering from a condition that caused what should have been a fairly 'routine' apprehension of a resistant subject to result in a very serious injury. There is no way SO2 could have known about that medical condition, or the risk of injury it posed. Although serious injury from a police use of force can sometimes indicate that the force was excessive, in this case that logical inference does not apply. On the evidence as a whole, SO2's actions were justified and reasonable, and did not amount to an assault.

There is no evidence that any other force was applied to AP by any officer, and it is clear that the care provided to AP following his injury was appropriate and considerate.

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, Q.C.  
Chief Civilian Director

June 16, 2022

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