



**IN THE MATTER OF THE INJURY OF A MALE
WHILE BEING APPREHENDED BY A MEMBER OF THE RCMP
IN SURREY, BRITISH COLUMBIA
ON NOVEMBER 8, 2020**

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

Chief Civilian Director:	Ronald J. MacDonald, Q.C.
IIO File Number:	2020-280
<u>Date of Release:</u>	<u>September 17, 2021</u>

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INTRODUCTION

On November 8, 2020, the Affected Person ('AP') was stopped on the street by the Subject Officer ('SO') after police received a 911 call saying AP had committed a domestic assault. In a physical altercation between SO and AP that occurred before other officers arrived on scene, AP was taken to the ground and suffered an injury to his knee. The injury was not initially considered serious enough to meet the statutory threshold for notification of the Independent Investigations Office ('IIO'), but AP later received a diagnosis that met the threshold. Accordingly, the 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, five other civilian witnesses and eight witness police officers;
- police Computer-Aided Dispatch ('CAD') and Police Records Information Management Environment ('PRIME') records;
- video recordings from a residential security camera, Closed-Circuit Television ('CCTV') at the RCMP detachment, eyewitness cell phones and a police vehicle dash camera;
- GPS logs from police vehicles;
- audio recordings of 911 calls and police radio transmissions; 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 has not provided any evidence to the IIO.

NARRATIVE

Affected Person

Interviewed by IIO investigators on December 14, 2020, AP acknowledged that his memory of the incident was not entirely clear, because at that time he had been emotional and angry. He had recently discontinued a course of medication that he had been taking for an extended period, and was feeling sick and emotional.

He told investigators that on the evening of November 8, 2020, he was asked to leave his home on 104 Avenue in Surrey because he was "upset" and was being "loud" and "disruptive". AP said he quickly threw on some clothes, angry and distracted. He grabbed some tools and left. Then, realizing he was not properly dressed, he said, he angrily threw the tools across the street, and acknowledged that he had been "acting weird". As he was

walking away along the sidewalk, he saw a police vehicle arriving, and knowing “it was for me”, he shouted angrily at the officer “What the fuck are you doing here?” The officer (SO) exited his vehicle and “I’m sure he probably did tell me to get on the ground”, AP continued, “but I refused ... so he kicked me ... and that’s where I felt a split right here [indicating the inside of his left knee], and he’s wrestling with me ... and I guess I’m resisting, in a way ... I’m not going down”. At another point in his interview, AP confirmed his recollection that SO pulled his police vehicle up beside AP as AP was walking on the sidewalk, “jumped out of” the vehicle and almost immediately kicked AP in the knee with a martial arts style sideways kick. He then grabbed AP and tried to throw him forwards, down onto the ground.

AP said that, as he “wrestled” with SO, other officers arrived and started kicking him, despite his repeatedly telling them his leg was broken. At one point in his IIO interview, AP described an officer kicking him on the outside of his left knee while two other officers pulled his arms behind his back. Later, he clarified that the officer ran up and kicked him in the front of his left knee while he was held down, “half kneeling”, with his hands held behind his back. He showed investigators a red abrasion on his left knee cap that he said was the remnant of the injury caused by that kick.

By this point, AP said, his leg was “broken” and he repeatedly told the officers that it was broken, but they ignored him and continued to put all their weight on his head and on the broken leg. There were six officers on top of him, he said. AP said that at one point, the officers noticed that his girlfriend was videoing the incident, and they all got off him and went to arrest her. AP was eventually “dragged” along the ground to a police vehicle, he said, and was taken to the hospital, where a nurse dismissively cleared him as medically fit for custody.

Three days after being released from police custody, AP said, he went back to hospital and was diagnosed as suffering from a torn medial collateral ligament (‘MCL’) and a ruptured anterior cruciate ligament (‘ACL’).

Civilian Eyewitness Accounts and Video Evidence

Civilian Witness 1 (‘CW1’), AP’s girlfriend and the assault complainant in the 911 calls detailed below, told IIO investigators that she had asked AP to leave because he was yelling on the phone and she had to work in the morning. She said she called 911 because she wanted AP to be given a lithium shot. When she heard and saw police arriving, she said, she ran up the street and found AP on the ground screaming. She said that eight police officers were “on” AP, one kneeling on his left leg, one standing on his right leg,

one with his knee on AP's neck, "squishing" his head, and one on each of his arms. She said it looked like "they were beating the fuck out of him". She said she took a video of this scene with her cell phone. When AP came home the following day, she said, he could not walk, and she took photographs of his injuries.

CW1 provided IIO investigators with a brief video clip from her cell phone that appears to show AP on the ground with several officers standing around him. In the video, an officer can be heard saying that CW1 is obstructing the police and she responds that AP is her partner. CW1 also gave investigators copies of photographs she had taken of AP shortly after the incident. There are photographs of an abrasion on his cheek and a bruise on his elbow, but no photograph of any injury to his knee.

CW2 told the IIO he was inside his home on 104 Avenue when he heard shouting outside. He told investigators that he went out onto his porch and saw a police officer (SO) and a male (AP) standing out in the middle of the road. SO was telling AP to come to the side of the road as it was dangerous. CW2 said that AP was shouting "You can't arrest me", and that AP jumped in front of a passing vehicle saying "Help me, help me". CW2 said that SO then ran at AP, pushed him to the side of the road and down onto the ground. CW2 said that SO then held AP down with one hand while he used the other to talk on his radio. CW2 did not see any other use of force by SO, or by any of the other officers who arrived within a short space of time.

CW2 provided investigators with a video clip from a motion-activated security camera at the front of his home. The camera was activated for a short period when CW2 went out onto his porch in response to the shouts he had heard from AP and SO, and recorded AP yelling "I didn't do nothing ... Let's go ask my girlfriend right now ... Let's go" and demanding to know why he was being arrested. Two figures that appear to be AP and SO come into view, facing each other in the middle of the street, AP backing away from SO with his arms held out to his sides. As the video ends (apparently because there is no further motion close to the camera), sirens can be heard approaching.

CW2 also observed part of the incident from inside his home and recorded part of it with his cell phone. He told investigators that at that point AP was lying on the ground in a position consistent with being in handcuffs. There were police officers around him, but the only physical contact CW2 saw between the officers and AP was when they picked him up to put him in a police car. CW2's video records essentially the same part of the incident that was recorded on the dash camera of the police vehicle driven by Witness Officer 2 ('WO2'), described below.

CW3 also witnessed part of the incident, from a window in his home. He said he saw a police vehicle stopped in the middle of the street, and a male pacing around close to it, shouting things like “What are you going to do?” and “I didn’t do anything”. CW3 said the male (AP) walked out of view, and the next time CW3 looked, AP was on the ground with several officers around him.

None of the video obtained by the IIO shows any actions by police consistent with the allegations made by AP or CW1.

Police Evidence

At 9:50 p.m. on the evening in question, police received a ‘hang-up’ 911 call from a cell phone (CW1’s phone), and determined that the phone was located in the vicinity of 104 Avenue and 127 Street in Surrey. An operator tried to call back to the number, but there was no response. SO was dispatched to the area a few minutes later. As he was *en route*, he was advised by Dispatch that a second 911 call had been received from the same telephone, and a female voice in the background had been heard to say “Calm down”. Then, CW1 called 911 a third time, sounding upset and alleging that AP had assaulted her by punching her “a few times” in the head. CW1 told the call taker that AP had left the residence on foot, eastbound along 104 Avenue, and stated that AP was suffering from “mental health issues”. Officers were updated about these calls as they responded to the area.

At 9:59:44 p.m., SO arrived on scene. Over the following minutes, a series of radio transmissions were recorded:

- 9:59:52 – SO says “I need another member here” and a male can be heard yelling in the background.
- 9:59:57 – SO states that he is going to try to take AP into custody, and a male in the background yells “What are you going to do?”
- 10:00:08 – SO says “Yeah, he’s coming at me here”.
- 10:00:57 – SO says “Everyone can slow down, he’s starting to calm down here”, though the male is still yelling in the background.
- 10:01:17 – SO says “Hey guys, he’s starting to resist me here now”. The male is still yelling in the background.

- 10:01:46 – Witness Officer 1 ('WO1'), arriving on scene, says "...on the ground right now, just putting cuffs on him".

WO1 told IIO investigators that as he arrived he saw SO and AP "interacting" at the side of the street. As WO1 exited his police vehicle, he said, he saw SO and AP fall to the ground, both yelling. WO1 said that they were locked together in "an embrace", and he used both his hands to pull AP's right arm behind him, assisting SO in applying handcuffs to AP. WO1 said that as he then got up off AP, he saw CW1 running across the road screaming. He said he subsequently placed CW1 under arrest for obstruction.

Dash camera video from the police vehicle of WO2 shows CW1 running across the road towards the spot where AP lies on the ground with several officers around him. AP is repeatedly screaming "They broke my leg!" As the apparently distraught CW1 is guided away, two officers can be seen to be bending over AP, with others standing around. The demeanour of the officers appears to be calm and professional. An officer asks AP if he can stand up, and AP responds "No, man". Two officers help AP to his feet by lifting him under his arms, and help him to a police vehicle. AP is stepping with his right leg, but appears to be favouring his left. He can be heard to shout "They kicked my leg and they broke it", and an officer says "His legs looks like they're fine". The video does not show any use of force by any officer against AP.

WO3 told IIO investigators that SO made a spontaneous statement at the scene, to the effect that AP "kept coming towards" SO, who "had to take him to the ground". WO3, who is qualified as an Advanced Care Paramedic, offered to examine AP's leg. AP reluctantly agreed, said WO3, but when WO3 rolled up AP's pant leg and conducted an examination, he found no obvious injury.

CCTV video from the RCMP detachment shows AP walking unaided during his time in custody, but he is clearly favouring his left leg.

Medical Evidence

The Ambulatory Care Medical Record related to AP's initial hospital evaluation on the night of November 8, 2020 is difficult to read, but appears to indicate a self-report by AP of having "twisted" the knee. There is no mention of a kick, or of any other police involvement in the injury. AP's demeanour is recorded as "aggressive / verbally abusive / threatening". The record from his second visit on November 12 indicates the cause of the injury as "kicked to knee". An Orthopaedic Consultation Report dated November 13, 2020, says AP was "kicked by police on the front aspect of his knee".

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 any officer may have committed an assault on AP, thereby causing him bodily harm, by using force against him that was unjustified or excessive.

SO and other involved officers were responding to a complaint that AP had committed a violent assault on his domestic partner. They had also been told that he had just left the residence and was walking east on 104 Avenue. The 911 call taker had just started to ask CW1 for a physical description of AP when CW1 saw SO arriving and broke off the conversation. There is no evidence that at the time there was any other person of potential interest in the immediate area, so it was not unreasonable for SO to stop beside AP to question him.

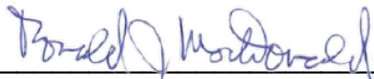
It is clear, from both eyewitness and video evidence, and also from AP's own account, that AP's response to the officer was immediately confrontational. While AP has described SO coming directly at him and delivering a disabling kick, the independent evidence set out above demonstrates that this is not accurate. That evidence leads to a conclusion that for approximately a minute and a half SO was engaged in attempts, while AP was pacing around, yelling, in the middle of the street, to communicate to AP that he was under arrest for an alleged assault on CW1, and to effect that arrest without undue violence. It appears that SO finally took AP to the ground either in the course of pushing him off the street and out of the path of traffic, or in response to AP "coming at" SO. That application of force cannot be said to have been unjustified or excessive in the circumstances.

While there is no doubt that AP suffered an injury to his knee in the course of the arrest, it is not possible to accept his allegation of having been kicked in that knee twice by two different police officers. AP does appear to have suffered a blow to the front of his knee, and such a blow would be consistent with going down onto his knees on the hard ground, or from a twisting motion as this happened. AP's account of being assaulted repeatedly by a succession of officers, and of then being knelt or stood on by several officers, is completely inconsistent with the evidence of uninvolved eyewitnesses and video recordings. The same can be said of CW1's allegations that she saw eight police officers "beating the fuck out of" AP, allegations that are contradicted by video recordings of the incident, including CW1's own video.

It should be noted that CW1 said she photographed AP's injuries on the day he came home from police custody, November 9, 2020. She did not, apparently, photograph any visible injury to AP's left knee, an injury that he asserted was so severe that it was still visible when he showed the remnants of it to IIO investigators on December 14, some five weeks later.

In summary, all involved officers, including SO, were acting in execution of their duty in arresting AP for the assault against CW1 that she had alleged, and in using necessary and proportionate force to do so. There is no plausible evidence that any officer used any force beyond that required to overcome AP's aggressive non-compliance and to take him into custody.

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.



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

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