



**IN THE MATTER OF THE INJURY OF A MALE
IN AN INCIDENT INVOLVING A MEMBER OF THE RCMP
NEAR NELSON, BRITISH COLUMBIA
ON NOVEMBER 18, 2020**

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

Chief Civilian Director:

Ronald J. MacDonald, Q.C.

IIO File Number:

2020-286

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INTRODUCTION

On the afternoon of November 18, 2020, the Subject Officer ('SO') responded to a call to assist in removing an unwanted male from a residence near Nelson. Upon arrival, SO found the Affected Person ('AP') outside the home and attempted to place him in handcuffs. AP was uncooperative and a struggle ensued. Two officers from the municipal Nelson Police Department ('NPD') then arrived and assisted. AP was subsequently found to be suffering from a facial injury. 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, four other civilian witnesses, two paramedics, one examining physician and two witness police officers;
- police Computer-Aided Dispatch ('CAD') and Police Records Information Management Environment ('PRIME') records;
- recording of a 911 call and police radio transmissions;
- evidence from police cells, including video, prisoner report and cell log;
- photographs of the scene and of SO after the incident; and
- medical evidence, including BC Emergency Health Services records.

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

AP was interviewed by IIO investigators on December 4, 2020, and gave an account of an incident that had occurred on November 18, 2020. He said he had been at the house of a friend, and "had a few drinks". He got into an "altercation", and was asked to leave, but "hung around for a bit to chill out". Asked about the "altercation", AP said that it "wasn't even serious", and that he suffered no injury during it. After a while he decided to walk home, he said, and "as I was walking out, the police rolled up". He said he was immediately assaulted by the responding officer (SO) despite telling him, "I'm not resisting". AP said he was elbowed and punched in the jaw, forehead, back of the head, ribs, shoulder and chest. He said he was struck "at least twenty" times, with his friends from the house watching. AP also complained that the police "re-roughed up" his knee. He said there were at least two officers assaulting him. AP said that afterwards he had bruising on his chest and shoulder consistent with the shape of a boot print. AP provided photographs of the bruises to IIO investigators. A bruise can be seen on his right shoulder and another on his upper right chest, but neither has any specific identifying features.

In AP's recollection, he was taken by police directly from the scene to cells. At the RCMP detachment, he said, officers "ripped him out" of the police vehicle "by the cuffs" and then "roughed me up some more". He said he was denied medical attention for three to four hours as he screamed in pain in the cell. Later, he said, at the hospital, he heard SO giving an account of what had happened, including the allegation that AP had "tried to make a run for it" and had fallen over a fence. Asked by investigators if that was true, AP responded that he could not remember.

Civilian Witnesses

The reason SO arrived just as AP was "walking out" was that police had received a 911 call from the tenant at the house, Civilian Witness 1 ('CW1'). CW1 told the call taker that there had been "a squabble" at the house, that AP had been "hit pretty hard in the head" and that he "was beat up pretty bad" and bleeding from the head. CW1 said that AP was "big" and "aggressive", and that he would not leave. Asked if alcohol was involved, CW1 replied, "Yes, it's fucking all alcohol".

In a police interview recorded shortly after the incident, CW1 said that AP had been in a fight with another individual in the house, and was dragged outside when he continued trying to punch others, even after the fight was over. CW1 said that AP then sat outside with CW1 continuing to "keep an eye on him". He said that when SO arrived, SO wanted to put handcuffs on AP "just to be safe", but AP started arguing and then got into a "tuffle" with SO. CW1 said he assisted SO by sitting on AP's legs while SO was attempting to handcuff him.

Subsequently, CW1 was interviewed by IIO investigators. He said that he and his friends had dragged AP out after he got into a drunken fight in the house. He described AP as having been "dangerously incoherent" (CW1 said that AP had drunk two bottles of whisky). He said that when AP reached the gate at the top of a flight of rock steps, he fell into the gate, broke it and fell face-first down the steps. Asked by investigators whether AP hit the rocks when he fell, CW1 responded, "It's hard not to".

AP then continued to try to re-enter the house, CW1 said, so he finally called the police to have AP removed. CW1 said that when SO arrived he asked AP to take off his backpack so that he could be handcuffed "for his own safety". CW1 said that AP refused, SO insisted, and a struggle started. He said that SO got one cuff on, but the two then rolled around on the ground while SO tried to cuff the other wrist. CW1 said that SO might have hit AP "once or twice". CW1 said that at one point he tried to assist SO by holding AP's feet, but SO had to call for back-up, and sat on AP for "about five minutes" until other officers arrived.

The photograph below shows the balcony from which AP is said to have fallen, and the rock steps:



CW2, who was the individual with whom AP was initially in a fight, also gave a recorded police interview. CW2 described coming outside to find CW1 sitting on AP's legs as SO struggled to control AP. CW2 described AP as "extremely aggravated", resisting arrest and "attacking" SO.

A third involved civilian witness, CW3, told IIO investigators that after a "brawl" involving AP in the house, he had "grabbed a leg and dragged him the fuck out of here and I threw him over the balcony". CW3 described AP as having been "wasted, wasted, out of control". CW3 said that when SO arrived, he gave AP "lots of time" to cooperate, "to take a chill pill", but that did not happen. CW3 said that when SO then tried to place handcuffs on AP, AP "kept fighting back", trying to climb back over the gate at the top of the steps. CW3 said he then saw another police vehicle arrive, and officers were quickly able to take control of AP and put him in the back of the car.

Police Evidence

Recordings of police radio transmissions show that SO initially stated, "I have located the male", and about three and a half minutes later, asking for back-up officers to attend with lights and sirens, said, "Just in a fight right now". Less than two minutes after that, Witness Officer 1 ('WO1'), an NPD officer, radios, "We got him in custody". A little later, WO1 (speaking of the ambulance) says, "Yeah, leave them staged. This guy's face is pretty bloody. We'll bring him down there". In the background, AP can be heard saying, "I'm okay ma..."

Further recordings show that SO transported AP from the scene to Kootenay Lake Hospital in Nelson. About ten minutes later, he is heard calling to say he is now continuing with AP to RCMP cells.

WO1 told the IIO that when he heard AP's name mentioned on the radio, he asked SO if he wanted some help, and SO accepted. WO1 said he knew AP, and considered him "a handful" when intoxicated. AP, he said, could be combative and unpredictable. WO1 said that he and a second NPD officer, WO2, started to head in the direction of the property from which the 911 call had come. The location was outside NPD jurisdiction, in a forested rural area, and was difficult for the officers to find. WO1 was first to reach SO, whom he found trying to control AP on the ground. He said that as he ran towards them, he called a warning to AP that he was going to get "tased"—that WO1 would deploy his Conducted Energy Weapon ('CEW' or 'Taser') against AP if he did not cooperate—and that a group of males on the overlooking balcony were yelling, "Tase him, tase him!"

WO1 said that SO had one handcuff on AP, but was having difficulty getting the other arm out. WO1 pried the arm out and placed AP in an arm bar hold that allowed SO to apply the cuffs. Asked if any other force was used, WO1 responded, "That's all it took". He said the two officers picked AP up and walked him to SO's police vehicle, where he was patted down without anything significant being found. WO1 described AP loudly and energetically resisting being placed into the back seat, and said he went around to the other side and pulled AP into the vehicle by the back of his jacket.

WO1 said that he followed in his own vehicle as SO stopped briefly to speak with an ambulance crew that was waiting at the bottom of the hill, and then drove AP on to the hospital. WO1 explained that AP was behaving too violently to be transported in an ambulance. WO1 said that, at the hospital, staff would not take AP in because of his belligerent behaviour, and that SO continued on to the RCMP detachment with WO2 following behind as back-up to help SO deal with AP.

Asked about his understanding of what prompted the 911 call, WO1 said that it would be a very unusual situation that would cause the individuals at the house to call police, based on what he knew of their history. He said he understood that AP had been "out of control" and "these guys beat him up before we even got called".

WO2 told investigators that when he arrived on scene, AP was already in the back of SO's police vehicle. He said he noticed that SO's clothes were dirty and he had abrasions on his hands. He followed SO's vehicle to the hospital, where he said a doctor came out into the parking lot for a few minutes and assessed AP, concluding that he was fit for incarceration. WO2 said he followed SO to the detachment and assisted in removing AP from the vehicle and placing him in a cell. He said he held AP down on the cell floor using

an arm bar so that SO could safely remove the handcuffs from AP, who was struggling. He said the two officers then left AP in the cell.

Video recordings from the RCMP detachment show SO's police vehicle pulling into the bay and SO and WO2 removing AP from the back seat. There is no sign of any undue force being applied. As noted above, AP told the IIO that the officers "ripped" him out of the back seat by the handcuffs, and then "roughed him up some more". AP's entire stay at the detachment is recorded on video, and the video does not support AP's allegations in any respect.

The cell log for the evening in question, filled out by a civilian jail guard, notes that AP was brought into cells at 6:35 p.m. At 8:35 p.m., it is recorded that AP asked for a bag of ice. At 9:20 p.m., the log states, "Prisoner wants to go to hospital. Talked to [SO]". That entry is initialled by both the guard and SO. At 9:42 p.m. there is a note that SO had escorted paramedics into the cell. Eight minutes later, AP is recorded as having been transported to hospital, escorted by SO. The jail guard was interviewed by the IIO, and confirmed the accuracy of all these notations. He stated that he checked regularly on AP, every fifteen minutes, during the time AP was in the cell. He said the log entry at 9:20 p.m. was made after AP had been complaining he needed to see a doctor for about 15 or 20 minutes, and had become insistent.

Medical Evidence

There was no mention in Kootenay Lake Hospital records of SO's initial visit with AP after AP's arrest. IIO investigators were able to identify the doctor reported by WO2 to have assessed AP in the hospital parking lot. The doctor told investigators that he went out to the parking lot at the request of SO, and viewed AP through the window of the police vehicle. He said that this was not his normal practice, but SO had advised him that AP was intoxicated and violent. He said that AP appeared alert, so he agreed to SO's suggestion that it would be better for the patient to go to cells for a few hours to sober up before re-assessment. The doctor stated that it is problematic for the hospital to admit violent and intoxicated persons, because it becomes necessary to sedate them before treating their injuries, which is "not ideal".

Hospital records include the following note, which appears to record AP's version of events:

History of presenting complaint: Patient reports he started drinking today at 1032 hours. He drank x3 beers and then whiskey. At a friend's house partying. When it got dark, he decided to catch a taxi back to town. An altercation broke out with his friends, he was assaulted and punched a number of times. No further details. He was very intoxicated at the time. Reported coughing up blood in cells.

There is also this note, which appears to record statements by SO:

Accompanying police officer, [SO] reported to medical [at hospital], on arrival at scene, [AP] tried to fight the officer. [AP] was hit with some distracting blows to the body and head and then held to the ground until back up arrived. Patient was arrested and taken to police cells. While in cells, it became apparent he had jaw pain and swelling and was brought to the Emergency Department for assessment.

AP was diagnosed as suffering from a broken jaw bone, which was repaired surgically.

SO was photographed post-incident. His uniform was scuffed and muddy, consistent with his having scuffed on the ground with AP. He had some scrapes on the back of his right hand (not on the knuckles), also consistent with having struggled on the ground with AP. He had no visible injury consistent with having struck blows as he was reported to have acknowledged doing.

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 an officer may have committed an assault against AP, whether or not the assault caused the bodily harm suffered by AP.

The evidence establishes that all attending officers were acting in execution of their lawful duty in responding to the 911 call from CW1. They were told that AP had been violent and was resisting demands that he leave CW1's home. In those circumstances, SO was acting lawfully in detaining or arresting AP and attempting to place him into handcuffs for transport away from the property in a police vehicle. Accounts of what else SO may have done to AP, however, vary quite significantly.

By AP's account, he was essentially beaten up for no reason by SO and perhaps one or more other officers while his friends watched. AP also asserts that any injury he suffered must have been caused by the police, since he had walked away uninjured from the "altercation" in the house. As set out above, AP also recalls being driven directly to cells from the scene, being "ripped" from SO's vehicle by his cuffed wrists, and being further "roughed up" at the RCMP detachment. Finally, AP says he was screaming in pain for hours in the cell, ignored by his jailors.

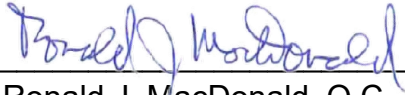
In assessing the credibility and reliability of those allegations, they must be compared and contrasted with other available evidence, such as the following:

- a copious body of evidence indicating that AP was extremely intoxicated at the time of the incident;
- CW1's statement that AP had been "beat up pretty bad" during a fight in the home;
- CW1's statement that AP had also fallen face-first onto a flight of rock steps before SO arrived;
- evidence from both CW1 and CW2 that AP was actively resisting and "attacking" SO, and that CW1 felt it necessary to assist SO by holding AP's legs down as he struggled against SO;
- CW3's statement that SO gave AP plenty of time to cooperate before trying to handcuff him;
- WO1's statement that onlookers from the house were urging him to "tase" AP;
- evidence that SO did not take AP directly to cells, as AP recalled, but stopped at the hospital (albeit briefly) for an assessment for a doctor;
- video from the detachment showing that AP was not "ripped" from SO's vehicle, but was simply helped out of the back seat, and that there was no further "roughing up" of AP by officers at any time;
- evidence from video, the cell log and the civilian jail guard that AP was not "screaming in pain" for hours in the cell, but was in fact sent for medical examination within a relatively short time after he asked to see a doctor; and
- evidence from hospital records that AP's self-report had mentioned his being assaulted and punched by his friends, but had said nothing about being beaten by police.

That body of evidence, from several independent sources, is inconsistent with AP's account in a number of respects, and taken as a whole demonstrates that AP's version of how he came to suffer the injury cannot be regarded as reliable.

It is certainly true that there is sufficient evidence to conclude that SO likely struck AP while struggling on the ground in an attempt to place him in handcuffs. The evidence as a whole, though, does not establish that any use of force against AP by SO was unnecessary or excessive in the circumstances. It is very significant in this regard that the civilian eyewitnesses, who were apparently friends of AP, have not told the IIO of any unjustifiable force applied to AP by police, and that one of them actually assisted SO in trying to maintain control over AP as he resisted arrest.

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

November 23, 2021

Date of Release