



**IN THE MATTER OF THE INJURY OF A MALE  
WHILE BEING APPREHENDED BY MEMBERS OF THE  
VANCOUVER POLICE DEPARTMENT IN  
VANCOUVER, BRITISH COLUMBIA  
ON SEPTEMBER 13, 2021**

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

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

IIO File Number: 2021-302

Date of Release: April 26, 2022

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## **INTRODUCTION**

In November, 2021, the Independent Investigations Office ('IIO') received a referral from the Office of the Police Complaint Commissioner ('OPCC'). The Affected Person ('AP') had complained to the OPCC that he had been injured by members of the Vancouver Police Department ('VPD') during an incident that took place on September 13, 2021, in Vancouver. During an initial investigation conducted on behalf of the OPCC, RCMP investigators had gathered some witness statements. The OPCC then became aware that the injuries involved met the statutory threshold for IIO jurisdiction. Accordingly, the referral to IIO was made and the statements were passed to IIO investigators. The narrative that follows is based on that evidence as well as other evidence collected and analyzed during the IIO investigation, which cumulatively includes the following:

- statements of AP, three civilian witnesses and four witness police officers;
- police Computer-Aided Dispatch ('CAD') and Police Records Information Management Environment ('PRIME') records;
- recordings of a 911 call and police radio transmissions;
- civilian cell phone video;
- Closed-Circuit Television ('CCTV') recordings from the VPD jail; 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, the Subject Officer ('SO') did not provide an account to the IIO.

## **NARRATIVE**

### **Affected Person**

AP told IIO investigators that on September 13, 2021, while he was in a grocery store in East Vancouver, he discovered that someone had stolen his cell phone. He became upset, demanded that his phone be returned, and blocked the door to prevent a customer leaving. When he subsequently went outside, he said, he found he had been locked out of the store by a staff member. He acknowledged kicking things on the ground, and said he thought he hit the window "a couple of times".

AP said that as he was standing outside the store, “the cop” walked up to him and told him he was under arrest. AP said the officer told him to put his hand behind his back, and “rushed” him towards the store window before taking him to the ground:

*He didn't throw me down hard 'cause I went down my way, comfortable. I was a little stronger than he thought. Then he buried his knee into my back and I'm saying, "I can't breathe, I can't breathe". I have a hard time now breathing and I was yelling, "I can't breathe", and people are saying, "You can't do that to him, you can't hit him over the head with some handcuffs". I didn't even know I had been hit over the head with handcuffs. I know I had some marks and bruises but I didn't realize they hit me on the head.*

“Everything was coming out of my mouth”, AP continued, “spit, slobber, I thought I was going to die”. He said he shouted,

*“Help”, and managed to break [SO's] knee lock on my back in my last desperation and he says, “Oh yeah”, and he comes up in the air and down, bang, and I hear all my bones break, crack, or whatever.*

AP said that he had a bleeding wound on his leg from his attempt to break free. He said that, when he arrived at police cells, he was trying to get medical attention but police were telling him he was “too hot and to calm down”. He said that “three hours” passed with “no lawyer call, no medical attention, no food or water”. When he was given access to a telephone to call a lawyer, he said, he began banging his head on the phone to “get it over with quickly”.

## **Civilian Witnesses**

Civilian Witness 1 ('CW1') was an employee of the grocery store. He refused to speak with IIO investigators, but had given a written statement to RCMP investigators after the incident.

CW1 stated that at about 10:00 a.m. on the morning in question, a male (AP) had come into the store saying he had lost his cell phone and asking CW1 to call it. CW1 said there was no response from AP's phone, and the phone was not heard ringing in the store, but AP then began accusing a female customer of having stolen the phone. CW1 stated that AP began shouting and threatening the customer, and “trying to break the glass”, so CW1 called 911. “When police arrived”, CW1 stated, AP “was high and tried to hit the cops”.

CW2, the female customer, also declined to provide a statement to the IIO. In her RCMP statement, CW2 described being accused by AP of stealing his phone and of being

prevented by him from leaving the store. She stated that she tried to hide behind the cashier's counter, with AP "pounding the glass panels and the counter and yelling at me 'you stole my phone bitch'". CW2 told the RCMP investigator that when VPD officers were arresting AP outside the store, "he continuously and violently resisted".

CW3 told the RCMP that he was asked by CW1 for help, and saw CW2 hiding behind the counter and AP screaming at her about his phone. CW3 said he told AP to calm down and go outside. Police arrived, said CW3, and "asked the male to face the window and put his hands behind his back. The male resisted arrest and was taken to the ground". CW3 continued, "The male said he couldn't breathe but he could because he was yelling and fighting". CW3 recorded parts of the incident with his cell phone, and the IIO obtained those recordings.

### **911 call**

CW1's call for police assistance was recorded. On the recording, CW1 can be heard telling the call taker that "a guy" (AP) was "going crazy" because he had lost his phone. AP can be heard shouting and swearing in the background. CW2 came on the call and said that she could not leave the store because AP was "standing in front and telling me I'm the one who stole his phone ... I'm hiding inside". A little later, CW1 told the call taker that he had locked AP out of the store and AP was "knocking the window ... kicking the glass".

### **Cell Phone Video**

CW3's first recording shows AP outside the store, pacing up and down, kicking at rubbish on the ground and banging on the store window, loudly and angrily demanding that someone return his cell phone. In the second recording, AP is now face down on the ground with SO on his left side and Witness Officer 1 ('WO1') on his right. SO appears to be exerting constant downward pressure on the left side of AP's body with his knee. WO1 also has one knee on AP, and is struggling to control his right arm. She is saying, "Give me your hands", and AP responds, "I can't breathe you fucking goof". SO can be heard telling AP, "Relax" and "Give me your hand". AP tells him, "I can't breathe you fucking goof, you hear me?" and "Push it in harder, fucker".

### **Witness Police Officers**

SO and WO1 were the first VPD officers to arrive at the scene. WO1 told IIO investigators that upon arrival she could see one male (AP) in front of the store, pacing and yelling. SO, she said, tried to take control of AP's arm, but he was "actively resisting", pulling away from SO. She said she was not able to say whether or not there was any contact

with the shop window during the struggle by the officers to control AP's arms and apply handcuffs, but said they were close to the window.

WO1 said that she took hold of AP's upper body and turned him down towards the ground, falling on top of him as he went down. As the two officers tried to get AP's arms behind him, she said, he was resisting, clenching his fists and trying to hide them under his body. At one point, she said, AP was able to twist up onto one side, trying to strike her in the chest with his knee. She said she had to "put all my body weight on him to keep that leverage, so he didn't flip me over". WO1 said she did not see what SO was doing during the handcuffing.

WO2 arrived on scene in response to a call for a cover officer because SO and WO1 were in a fight. He said he arrived about five minutes after the call, and found the officers trying to apply handcuffs to AP, who was wriggling and kicking. WO2 said he got AP cuffed, stood him up and walked him over to a police vehicle. He said that AP began to bang his head on the hood of the vehicle, so he was sat down on the sidewalk.

WO3 told IIO investigators that when he arrived he saw SO and WO2 holding AP beside a police vehicle. WO3 said that AP was wriggling around, yelling and swearing. He said he tried to talk to AP, and AP told him that his ribs were broken. WO3 said that, if that was so, AP should calm down, and he would be seen by a nurse once he reached the police station. WO3 described AP as "frothing at the mouth" and spitting, and said he told AP to "knock it off".

WO3 stated that at some point, AP pulled away from WO2 and appeared to be out of control, so he took AP to the ground in a controlled manner and held him down with his hands. WO4, he said, put a spit mask on AP before he was placed into a police wagon.

WO4, the driver of the wagon, told investigators that before escorting AP into the cells area he informed staff that AP had complained about his ribs, and requested assistance for him.

### **Police Radio Transmissions**

Recordings of transmissions on the police dispatch channel show that approximately three minutes elapsed between the notification that SO and WO1 were "pulling up" at the scene and the call that they had AP "in custody". Another approximately three minutes later, there is a call saying that AP had "hit his head on our hood three times", and AP can be heard in the background shouting, "I need an ambulance".

## **VPD Jail Records**

AP was recorded as arriving in cells at 11:00 a.m. A box on the arrest report is ticked for “EHS Refused”. There is an entry stating that AP “became irate in the phone booth”, and that he “began thrashing in the booth and struck his head into the wall and the phone”.

## **Jail Video**

CCTV video from the VPD jail shows AP being escorted in from the wagon by three officers, without any overt use of force, at 11:03 a.m.. He can be seen to be limping. There is blood on his lower right leg. At one point he lifts up his shirt, apparently indicating his ribs on the left side, and an officer takes photographs.

By 11:10, AP is in a phone booth for a lawyer call. He initially sits down on the floor of the booth, but at 11:13 he can be seen hitting the window from the inside with the telephone. He is taken out of the booth and down onto the floor by jail staff without any excessive force or further injury. At 11:15, AP is escorted to a cell, apparently resisting. At 12:09 he is visited by a person who appears to be a jail nurse. AP appears agitated throughout his stay in cells, and shows signs of discomfort or pain. At 9:10 p.m., the video shows him being released, walking unassisted but still agitated and angry.

## **Medical Evidence**

AP was examined in hospital on the day of the incident, September 13, 2021, and no rib fracture was noted, although it was recorded that he had scrapes on his right knee and bumps on his head. Over the following days, though, he attended several times at a number of hospitals requesting pain killers, and was diagnosed with six undisplaced rib fractures. He was noted in hospital records, variously, as “belligerent and uncooperative”, “argumentative” and “verbally abusive”.

## **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 against AP by the use of unnecessary or excessive force in the course of his arrest.

SO and WO1 were responding to a fairly serious complaint that AP had threatened CW2 and had prevented her from leaving the grocery store. When they arrived, they

encountered an individual pacing, shouting and banging aggressively on the store window. The 911 call reflected the fact that the people inside the store were in fear of AP. All this was communicated to the officers as they responded. They clearly had reasonable grounds to place AP under arrest, and to use whatever force was necessary in the circumstances.

In this case, the circumstances were that AP was angry, aggressive and resistant. That is demonstrated both by witness testimony and video evidence. AP, in his own statement, acknowledged it. To overcome his initial resistance, it was necessary and reasonable to take him to the ground, and there is no allegation that excessive force was used in that manoeuvre, or that any injury resulted from it.

CW3's second cell phone video clip only records a short part of the struggle that then ensued on the sidewalk, and does not show either AP's alleged move to strike WO1 with his knee, or any move by SO consistent with AP's allegation about the action that caused his ribs to break. It seems quite likely that the injury occurred at a point where, as WO1 described, AP was rolling up onto his side and increased force was required to subdue him. It is also likely that this is when AP's knee was injured. The injuries, in other words, are consistent with the witness evidence as a whole, and appear to have occurred during a part of the incident not recorded on video by CW3.

Considering AP's evident aggression and active resistance, there is no reason to conclude that any unnecessary or excessive force was used against him in the course of his arrest.

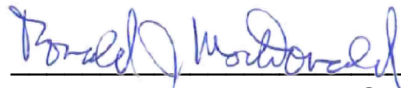
Apart from rib injuries that were diagnosed subsequent to the incident, and the scraped knee, AP was also recorded as having superficial head injuries. In that regard, there is the evidence of WO2 that AP deliberately banged his head against the hood of a police vehicle, and there is AP's own evidence that he banged his head against the telephone at the jail. Those reports are consistent with each other, with jail records, with AP's behaviour overall, and specifically with his video-recorded behaviour in the jail telephone booth. There is no reason to suspect that any officer actually hit AP "over the head with handcuffs", or with anything else. In fact, AP said he did not recall that happening.

While he did allege that jail staff denied him medical treatment, food and water or a call to a lawyer for hours after his detention, those allegations are contradicted by video evidence, set out above, that shows he was placed in a phone booth immediately after booking in, and visited by a nurse not long after being placed in a cell. Based on the video evidence, further, AP appears to have been acting out to an extent that would make it difficult for jail staff to provide any substantive medical examination.



Finally, there is no evidence that there was any inappropriate use of force against AP while in custody at the jail.

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

April 26, 2022  
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