



**IN THE MATTER OF THE INJURY OF A MALE
WHILE BEING APPREHENDED BY MEMBERS OF THE RCMP
IN WHISTLER, BRITISH COLUMBIA
ON AUGUST 25, 2021**

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

Chief Civilian Director:	Ronald J. MacDonald, Q.C.
IIO File Number:	2021-240
<u>Date of Release:</u>	<u>January 13, 2022</u>

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INTRODUCTION

On the afternoon of August 25, 2021, the Subject Officer ('SO') and two other RCMP members responded to a 911 call alleging that the Affected Person ('AP') had uttered threats to a female during a domestic incident. In the course of AP's arrest, there was a scuffle and AP was taken to the ground and handcuffed. AP was transported to the RCMP detachment, and was then apprehended under the *Mental Health Act* and taken to hospital. It was subsequently discovered that he was suffering from a fractured wrist. 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 and one other civilian witness;
- statements of SO and two witness police officers;
- police Computer-Aided Dispatch ('CAD') and Police Records Information Management Environment ('PRIME') records;
- audio recordings of a 911 call, other phone calls and police radio transmissions;
- Closed-Circuit Television ('CCTV') recordings from RCMP cells;
- RCMP cell logs; and
- medical evidence.

NARRATIVE

At 4:30 p.m. on August 25, 2021, a Civilian Witness ('CW'), the domestic partner of AP, called 911 asking for police to come to their home. She said AP had threatened her and she had run out of the home. She told the call-taker that AP was now outside, and that he would be "angry" with police when they attended.

Three police officers were dispatched to the call. They found AP standing outside in front of the building and were able to identify him as the male complained of in CW's 911 call. AP appeared calm initially, and one of the officers, Witness Officer 1 ('WO1') left the other two members with AP and went inside the building to talk to the complainant, CW.

The IIO has received somewhat divergent accounts of the events that followed. The accounts of the three officers have been obtained from written police reports as well as IIO interviews of all three officers. AP and CW have both declined to be interviewed by IIO investigators, but AP's legal counsel has instead forwarded written accounts said to be their evidence.

It is apparent from the evidence as a whole that AP became non-compliant when he was told he was being detained because of CW's complaint to police about him. Telling AP he was now under arrest, SO took AP's left arm behind his back and applied a handcuff to his left wrist. The two officers, SO and WO2, then found themselves unable to complete the handcuffing process because they could not control AP's right arm.

In the written statement received from his lawyer, AP describes what happened as a "panic attack", and says that he "began to have a full body tremor" as a result of multiple sclerosis. Responding through his lawyer to a follow-up question from IIO investigators about the "full body tremor", AP describes a condition in which his "entire body turned very static and rigid. I simply cannot move my arms or legs". He states that his hands were "shaking uncontrollably" and adds, "It can be quite violent looking". AP says that WO2 tried to "tackle" him to the ground, and says he was unable to get down on the ground because of his physical disability.

The officers' statements describe AP variously as "pulling away", "twisting" and "spinning". SO characterized AP as an "active resister", while WO2 described his behaviour as "assaultive". It is not alleged that AP struck or tried to strike either officer. Likewise, there is no suggestion that either officer struck AP.

Responding to a radio call for help from WO2, WO1 ran outside to assist. WO1 told the IIO that he saw AP twisting and pulling away from the officers, his left arm still held by SO but his right arm free and "flailing". WO1 said that he was concerned that SO and WO2, who were both physically smaller than AP, might lose control of AP and need to escalate their use of force. He said he ran towards them, intending to tackle AP to the ground, but then decided instead to grab SO and AP together in a "bear hug" and pin them against the side of a police vehicle.

AP's account of this movement states,

[WO1] came running and at full speed smashed my head into one of the police vehicles. He used his entire body to throw me into the police vehicle. I immediately sustained a concussion, was lightheaded, nauseous and had blurred vision. [WO2] threw me onto the ground and was screaming in my face "stop resisting".

In her account, CW says,

[WO2] ran swiftly towards [AP] and the two officers, and he threw [AP] against the police SUV. [AP's] head hit the window, and I heard a thud... The three officers slammed his body up against the cruiser.

SO lifted AP by the waistband of his shorts and AP was taken down onto the ground between SO and WO2, SO holding his cuffed left arm. The officers' description of this manoeuvre is corroborated by CW, who complains in her written statement that AP's

shorts were torn by the action of using them to lift him off his feet. According to AP, SO then “stood on my left wrist and tightened the handcuff until I heard and felt a snap”. AP states that WO2 “then jumped onto my back with his knee”, causing pain and further injury. Responding via his lawyer to written questions from the IIO, AP states that SO was standing near AP’s head, as AP lay on the ground “just after [WO2] dropped all his weight onto my back ... with his knee”. AP continues,

My left wrist was handcuffed, and it was above my head. [SO] was stepping on my handcuffed left wrist as he continued to scream at me “stop resisting”. He was tightening the handcuff with the pressure of his boot while he was standing over me. He was standing and I was laying on the ground.

[WO2] was on my back holding my right arm back. I was begging him to stop and get off my back. Eventually the pressure that [SO] was putting on the handcuffed left wrist was enough and I heard a snap. I felt my wrist break.

In her account, CW says that an officer “dropped his weight with his knee into [AP’s] back”. She indicates that she thought this officer was SO. She makes no mention of having seen SO stand over AP crushing AP’s left wrist with his boot. She describes the officers, “all [the] while trying to force his arms behind his back”, and writes that AP was crying out that the officers were hurting his back. “At one point”, she adds, “he yelled in pain and I heard something about his wrist”.

AP was picked up and placed into the back of a police vehicle. Both SO and WO2 said they noted him shaking, and opened the door to check on him. WO2 interviewed CW, and told the IIO that she seemed relatively calm but worried for her safety. He said she did not express any concern at that time about the manner of AP’s arrest, though he said she had yelled at the police during the arrest to be careful with AP due to his medical issues.

It does not appear that any of the three arresting officers were alerted at any point to the possibility that AP’s wrist had been injured. AP was booked in at the RCMP detachment, and the Prisoner Report has no note of any complaint of injury from the arrest. After removing the handcuffs, SO noted red marks around AP’s left wrist, and cell video shows AP rubbing the wrist at one point, possibly suggesting soreness, but not in the presence of any officer.

While at the detachment, AP told SO and WO2 that he needed to go to hospital because he had concerns about his mental health, and wanted to kill himself. Accordingly, he was apprehended under the *Mental Health Act* and taken to hospital, where he was admitted.

An injury to AP’s left wrist was subsequently discovered. The attending physician wrote:

There is suspicion of a very subtle, undisplaced fracture through the mid scaphoid. Additionally, bony irregularity is seen along the dorsal aspect of the distal radius/ulna although this could represent the displaced old ulnar styloid fracture. Negative ulnar variance is noted and there is degenerative change at the distal radioulnar joint. Soft tissue swelling about the wrist is present. Follow-up x-rays are recommended in 10-14 days time.

AP was also recorded as having abrasions on his left knee and left big toe, and a “superficial abrasion and minor contusion” on his back. There is no note in the medical records of any injury to AP’s head from its having been “smashed” against a police vehicle by WO1.

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 used unnecessary or excessive force in the course of AP’s arrest.

The three attending officers were acting lawfully in execution of their duty when they first detained and then arrested AP. They were responding to a call from CW in which she alleged he had threatened to punch her and had raised his fist as if to do so—an action that, in law, would amount to an assault. There were ample grounds for arrest.

In AP’s own account, he acknowledges that he was unwilling to cooperate with the police, maintaining he had done nothing wrong. He asserts, though, that he did not deliberately resist arrest, explaining the flailing, twisting and spinning described by the three officers as no more than the manifestation of his multiple sclerosis, a “full body tremor”. It is not necessary to evaluate the reliability of that explanation, or to reach a conclusion as to whether AP’s movements were voluntary or involuntary. That is because, by AP’s own account his movements were probably “quite violent looking”. From the perspective of the arresting officers, the only reasonable response was to get AP under control, into handcuffs and into the back of a police car.

It is, however, necessary to apply some judgement regarding the credibility and reliability of the allegations AP and CW level against the officers, specifically around their alleged use of unnecessary or excessive force.

As noted above, the couple both describe AP’s head being “smashed” or “slammed” against a vehicle (resulting in a concussion, according to AP), and both say that an officer “jumped onto” or “dropped his weight” onto AP’s back “with his knee”. AP also alleges

that SO stood on AP's left wrist, apparently crushing the handcuff onto it to the point where bones were broken.

Regarding the first allegation: there is nothing in AP's medical records suggesting he had suffered—or claimed to have suffered—any head injury in the course of the arrest. It seems more likely that AP was simply restrained and pinned against the vehicle as described by WO1 before being taken to the ground.

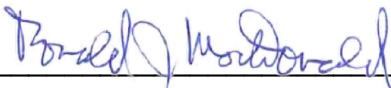
Regarding the second allegation: as mentioned above, AP accused WO1 of having driven a knee into his back, whereas CW seemed to think it was SO who had done that. Without going into specifics, it is worth mentioning that WO1 and SO are strikingly distinct in physical appearance, so that it would be highly unlikely a witness would mistakenly identify one as the other. Having said that, though, the fact that AP was recorded as having a "minor contusion" on his back is consistent with a blow or pressure having been applied there during the arrest. It is not unusual for an arresting officer to place a knee on the back of a struggling detainee to restrain and handcuff him, and it may well be that one of the officers in this case did so. If so, the act evidently was not forceful enough to cause significant injury, and would not be unreasonable in these circumstances.

Finally, regarding AP's statement that his left wrist was broken when SO stood on it for some period of time while it was cuffed: the allegation is simply difficult to reconcile logically with the fact that, at the time, SO would have been holding AP's left arm beside him or behind his back, having just taken him down onto the ground to complete cuffing. As detailed above, in his initial statement AP says that SO broke his wrist before WO2 "jumped" on his back, whereas in his follow-up response AP says that SO stood on his wrist "just after" SO landed his weight onto AP, and continued standing there while WO2 was holding AP's right arm behind him. Finally, it is significant that CW, who was standing watching the arrest, clearly concerned about AP's welfare, does not allege any such act on SO's part.

When witnesses to an event give conflicting accounts to investigators, it is almost never possible to determine with certainty which are true and which are not. In this case, three police witnesses—one of whom (SO) was under no obligation to explain his actions but did so voluntarily—have given the IIO accounts that appear to be consistent with each other and with the surrounding circumstances. The police evidence does not carry any of the hallmarks of being exaggerated or self-serving, and appears to be reliable. The same cannot be said of the evidence of AP or CW. Affected Persons and Civilian Witnesses are not required to participate in an IIO investigation. In this case, both AP and CW provided written statements via AP's legal counsel but did not meet with IIO investigators to answer questions in person. As such, issues apparent on the face of their written statements cannot be explored and possibly reconciled. Indeed, while a written statement is still evidence, it is difficult to give it as much weight as a full in-person statement.

In summary, the evidence as a whole leads to the conclusion that AP's arrest was lawful, and was carried out with no more force than was necessary, given AP's physical resistance. AP's relatively minor wrist injury appears to be the only significant one that can be attributed to this incident, and given that some bone degeneration was reported by the attending physician, the injury would not necessarily have required great force. It is entirely possible that it occurred accidentally during the process of getting handcuffs onto AP as he struggled against police, particularly when he was taken to the ground. In this regard, it is significant that the injury was not even brought to the attention of any of the involved officers.

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

January 13, 2022

Date of Release