



**IN THE MATTER OF THE INJURY OF A MALE  
WHILE BEING APPREHENDED BY MEMBERS OF THE RCMP  
IN THE CITY OF SURREY, BRITISH COLUMBIA  
ON JANUARY 18, 2020**

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

Chief Civilian Director:

Ronald J. MacDonald, Q.C.

IIO File Number:

2020-015

Date of Release:

October 22, 2020

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## **INTRODUCTION**

Just before 1:00 a.m. on January 18, 2020, Surrey RCMP received a report that staff at a McDonald's restaurant were having difficulties with a male (AP), who was said to be standing outside the drive-through window swearing at staff. Police officers responded, and AP was arrested for public intoxication. AP resisted the police during the arrest, and did the same when in RCMP cells. In both locations there was physical restraint and blows were deployed by officers. AP suffered injuries to his ribs on his right side and was taken to hospital. 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, one civilian eyewitness, one civilian jail guard and three witness police officers;
- police Computer-Aided Dispatch ('CAD') and Police Records Information Management Environment ('PRIME') records;
- recordings of the 911 line and police radio transmissions;
- Closed-Circuit Television ('CCTV') recordings from the restaurant and from RCMP cells; 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 IIO concluded that either of two involved officers might have caused AP's injury, so were potential subject officers ('SO1' and 'SO2'). Neither was interviewed, and neither provided any evidence to the IIO.

## **NARRATIVE**

### **Affected Person**

AP told IIO investigators that he got home in the early morning hours of January 18, 2020, after being at a friend's house having "a couple of drinks". He was hungry, he said, and walked to a nearby 24-hour fast-food restaurant. He said he knocked on the door, but a sign said the restaurant was closed. Noticing that the drive-through window was open, he tried to walk through and order food there. Staff would not serve him there, but he refused to leave. After he had stood there for "five or ten minutes", he said, with cars waiting in line behind him, the police arrived.

AP said he remembered them "yelling at" him, and "being surrounded slowly". He said he "could tell" the officers wanted to arrest him, and told them he just wanted to go home. "That's when I got grabbed from behind", he said, adding that he was not doing anything wrong at the time. AP said that about four officers pulled him down, one of the officers

pulled his finger to bring his arm behind his back, and another officer knelt on his back. “That’s when I felt the crack in my ribs”, he said. He was then placed into a police vehicle and driven to the RCMP detachment.

In cells, AP said, “I think I got hit another twice in the ribs”, saying he was “in agony” in the cells afterwards. He recalled being taken to hospital where he was X-rayed and was told he had fractured ribs. An officer then drove him home.

### **Civilian Witness**

Civilian Witness 1 (‘CW1’), an employee of the restaurant, recalled AP standing at the drive-through window demanding service despite being told that restaurant rules prohibited that because of safety concerns. CW1 said that AP told restaurant employees that he was not going to leave, and that they should “call the cops”. AP, she said, was “abusive”, swearing at staff, and appeared “drunk”. She said she closed the window and pretended to make a phone call, hoping AP would leave, but he did not. After about ten minutes, she did actually call the police and officers arrived about five minutes later.

CW1 said that officers talked with AP outside the restaurant for “about 45 minutes”, and mentioned that a female, who CW1 thought might have been AP’s mother, also came and talked with the police, “and then they just left” (investigators subsequently determined that AP’s mother had indeed attended at the arrest scene). CW1 said she did not see any physical altercation between AP and the police.

### **Civilian Jail Guard**

Civilian Witness 2 (‘CW2’), a cells guard at the RCMP detachment, said she recalled that AP was not booked in “the normal calm way”. She said AP was taken straight into a cell and “put on the ground”. As AP was searched, she said, her role was to take items as they were removed from him, put them in a bin and take them away to be logged. Asked about AP’s demeanour, CW2 said he was “combative”.

### **Witness Officers**

Witness Officer 1 (‘WO1’) recalled responding to the call from the restaurant in the company of SO1, and speaking with CW1 about the complaint. When he went to talk with AP, he said, he noticed that AP showed signs of intoxication such as slurred speech. WO1 said he tried to reason with AP, telling him that he had to leave, and that his demands to be served at the drive-through window were against restaurant policy, but AP continued to argue and demand service. WO1 said that the interaction reached a stage where AP’s behaviour became aggressive, and WO1 thought “the fight is on”.

WO1 said SO1 told AP that he was under arrest for being intoxicated in public, and placed a handcuff on AP's right wrist, while WO1 took AP's left arm. WO1 said that AP started to struggle, and the two officers took him down onto the ground, face down. There was a struggle to force AP's arms behind his back to apply the handcuffs, and WO1 acknowledged striking AP with his fist, twice in the lower left back, in an attempt to gain compliance but without any apparent effect. WO1 said he then laid on top of AP, holding AP's left arm across his back to permit SO1 to fasten the second handcuff to AP's left wrist. WO1 said he did not see SO1 strike AP at any point.

Video and communications traffic evidence show that after AP was placed into the back seat of SO1's police vehicle, two other officers arrived. They had not been involved in AP's arrest, despite AP's assertion, mentioned above, that he had been taken to the ground by four officers. AP was transported to the RCMP detachment.

WO2, an officer on cells duty, said that the decision was made to take AP "straight to cells", a process used for detainees who are "combative-resistive". She said that for such a detainee, the process would be to place a mattress pad on the cell floor, and the person would be directed down onto the mat to be searched and to have outer clothing removed. The process, she said, permitted "the least possible risk to the individual and to ourselves".

WO2 recalled AP coming into the cell in handcuffs, in the company of three other officers. She said AP refused to lie down, saying "you'll have to make me". An officer, she said, grabbed onto AP and took him down onto the mat. "[AP] kept thrashing around, kicking", she said, and kept trying to get up. At one point, she said, she saw AP biting an officer's knee, and she delivered three distraction punches to AP's leg, after which he tried to bite another officer.

WO3 said he had assisted AP from SO1's vehicle into the detachment, and said that AP was physically resisting at the time. In the cell, WO3 described grabbing AP by the back of his neck and bringing him down onto the mat in a move he called a "nose to toes". AP, he said, was thrashing around, and struggled even more when the officers removed the handcuffs. WO3 said he placed his right knee on AP's shoulder blade, and applied a wrist lock. AP then bit at WO3's inner thigh, he said, and officers applied distractionary blows to his legs and torso. WO3 stated that SO2 said he had applied a knee strike to AP's right side as well as punches.

After the officers left the cell, WO2 said, AP complained of pain. She said a nurse checked him, and decided that he should go to be checked in hospital.

## **Video**

Detachment CCTV recordings show AP being escorted into a cell by SO1, SO2 and two other officers. There is no audio. AP is seen pulling away, and WO3 reaches behind AP's neck and pulls him down onto the mat in the middle of the cell floor. AP is held down as officers remove items of clothing and throw them toward the cell door, where CW2 collects them. WO2 is at AP's left leg, SO2 at AP's right leg, and SO1 and WO3 are pinning AP's upper body down, SO1 on AP's left side and WO3 on his right.

When the handcuffs are removed, AP begins to twist and struggle under the officers, and WO3 can be seen applying a wrist lock to AP's right arm. As the officers attempt to remove AP's hoodie, his struggling increases, and SO2 can be seen to punch AP's right side. Shortly after this, WO2 punches at AP's left leg, and WO3 punches down in the direction of AP's lower back. These blows seem to have limited effect on the level of AP's resistance. AP's writhing causes him to move off the mat onto the concrete cell floor, and the video appears to show the heads of both SO1 and WO3 being brought into contact with the cell wall as they struggle to restrain AP.

Eventually, the officers disengage one by one, with SO1 taking up a position in the cell door holding a Conducted Energy Weapon ('CEW' or 'Taser') to cover the last two officers as they release AP and leave the cell.

## **Medical Evidence**

Medical records show that AP was examined on January 18, 2020, and was found to have non-displaced fractures of his right side eighth and ninth ribs. The records describe AP as very intoxicated and abusive to hospital staff. He is recorded as having refused further treatment, and there is no mention of any complaint about an injured hand. He was driven home by WO3 and did not receive any subsequent attention for the fractured ribs, which healed by themselves.

On January 19, 2020, AP re-attended at a hospital, where his left hand was X-rayed. The following day, he went to a hand clinic and was found to have a slightly displaced fracture of the D3 metacarpal. Medical documentation indicates that clinic staff "reduced the displacement".

## **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 unauthorized,

unnecessary or excessive force in their dealings with AP. If the officers were acting as required or authorized by law, on reasonable grounds, they were justified in using as much force as was necessary. Use of unauthorized or excessive force, on the other hand, could result in criminal liability.

WO1 and SO1 were acting in execution of their duty when they responded to the initial complaint from the restaurant that AP was blocking the drive-through lane, and were justified in arresting AP (after a lengthy conversation with him in attempts to defuse the situation) for public intoxication. The arrest itself was not particularly forceful: AP was being uncooperative but not violent, and the degree of force applied by the two officers does not appear to have been excessive. It is possible that AP's ribs were fractured at this point, as he asserts, but that seems unlikely given the degree of physical resistance he exhibited subsequently in the police cell.

In the cell, standard police procedure required the officers to remove outer clothing and personal effects, and they took reasonable precautions to avoid injury to AP while doing so, by using a pad to protect him from the concrete cell floor. The video evidence in particular makes it clear that AP was struggling very forcefully during this procedure, especially after the handcuffs were removed, and even four police officers had considerable difficulty controlling him sufficiently to complete their necessary tasks.

Police evidence is that AP attempted to bite during the struggle. That is not visible on the video, because of the placement of the officers around AP, but there are points in the interaction where officers noticeably react to some action on AP's part by delivering pain compliance blows. Those blows do not appear to be indiscriminate, and are not aimed at AP's head but at his legs and/or torso. They are limited in nature, and appear to be proportional to the degree of resistance exhibited by AP. It cannot be said that this use of force, by any of the involved officers, was unreasonable in the circumstances.

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

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