



**IN THE MATTER OF AN INVESTIGATION INTO A SERIOUS INJURY INVOLVING
BRANDON POLICE SERVICE DURING AN INCIDENT ON DECEMBER 18, 2022**

FINAL REPORT OF THE CIVILIAN DIRECTOR
OF THE INDEPENDENT INVESTIGATION UNIT

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IIU File Number:	2022-0061
Date of Release:	November 4, 2023

Introduction

On December 18, 2022, the Brandon Police Service (BPS) notified the Independent Investigation Unit of Manitoba (IIU) of an incident that occurred earlier that day.

The written notification disclosed the following information:

“Police were dispatched to McDonalds for a report of two people who were refusing to leave. Police attended and located two individuals sitting on chairs inside the restaurant. One was AP. He was exhibiting signs of intoxication and was uncooperative with police. AP was questioning why he had to leave and it was explained to him that the restaurant was closed but he argued, saying he was fine where he was. Police offered both a ride to the Safe and Warm shelter. The other subject agreed and was cooperative but AP was argumentative.

Police asked AP to get up repeatedly but he argued and refused. He was given his walker but he still refused to stand up. Based on repeated interactions with police, when AP is intoxicated he is often belligerent and uncooperative.

AP refused to stand, even when police tried to help him up. He would start to get up and then just slump down, completely letting his weight fall, refusing to use his legs, placing all of his weight on the officers.

AP was taken to the floor and placed on his stomach under control. Police discussed his cooperation, in an attempt to refrain from lodging him. AP agreed to cooperate with the officers. He was asked to sit up, which he did when the officers helped him up.

The members then tried to help him up by holding his arms. He started to assist the members and then dropped his weight again.

The subject officer (SO) had hold of AP's right arm while witness officer (WO1) had hold of his left. They were attempting to help AP stand up or at least get him to his walker, which was placed in front of him. SO put AP'S right arm his back. As the officers were helping him up, he again started to assist and then slumped down, placing his weight on his arms. At this point SO heard a crack and felt AP's right arm give out.

AP was laid back down on the ground and EMS was called to assist.

Given the nature of the injury, the Civilian Director of the IIU was advised of the allegation and in turn requested a Part 7 notification.”

As this matter concerned a serious injury as defined under the IIU regulations, the IIU assumed responsibility for this investigation in accordance with Section 66(4) of *The Police Services Act* (PSA). IIU investigators were assigned to this investigation.

The civilian director designated two witness officers (WO1-WO2) and one subject officer.

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Facts and Circumstances

Affected Person

On December 22, 2022, IIU investigators obtained a statement from AP at the Brandon Regional Health Centre. AP advised that he and a civilian witness (CW1), along with two other individuals, were having coffee, and he then woke up in the hospital. That is all he remembers.

CW1 advised him that the police came to the McDonald's and threw him to the ground. The sergeant showed up and told the officers to leave him alone. He does not recall how many officers showed up at the McDonald's or anything about the paramedics from the ambulance. He does not remember what the doctor or nurse said regarding what kind of injuries he has. His right arm is in a sling.

Civilian Witness

CW1

On February 22, 2023, IIU investigators obtained a statement from CW1. She advised that she and AP were inside the McDonald's when two young police officers told them to leave. She got up and left and stood outside by the doorway. The police threw AP off his chair. The police stomped on AP's arm and punched him when he was on the ground. She could hear AP tell the police to wait. She could not hear anything the police said.

She does not know which officer threw AP to the floor. She was by the doorway when the sergeant (WO1) arrived. The sergeant asked the other two officers to take her back to the Safe & Warm Shelter and they both said no. The sergeant ended up taking her to the Safe & Warm Shelter. The next day she saw AP at the hospital. AP asked her what happened. She told AP that the police jumped on his arm and kicked it. AP didn't really know what happened to him.

Professional Witnesses

PW1

On February 22, 2023, IIU investigators obtained a statement from PW1 at the Brandon Fire Hall. PW1 advised that he was on a night shift; his partner for the shift was PW2. The call came in after midnight; he believes the call came in as a traumatic injury.

When they arrived, Brandon Police Service was already on scene. They entered the restaurant and made contact with the AP. AP was very well known to both emergency medical services (EMS) and BPS. He is a regular and usually very intoxicated and was intoxicated that night. He could smell the liquor on him. He had learned from the officers that prior to their arrival, individual refused to leave the restaurant. The officers tried assisting the individual up into his walker. The individual was not helping at all. They went to try a two man lift on the arms and that is when the injury happened to the right arm. The officers just placed the individual back down.

PW2

On April 14, 2023, IIU investigators obtained a statement from PW2 at the Brandon Fire Hall. In PW2 advised that his partner was PW1. They were called by Brandon Police Service. When they arrived on scene, the patient was sitting on the ground. He believes there were three police officers on scene. The patient (AP) also had a female with him; however, they did not have any conversation with her. The mood was fine; the patient was sitting on the ground. They took AP's vitals, and PW2 noted that AP smelled of alcohol. One of the police officers asked them to look at the patient's arm. The police had tried to lift the patient off the ground. The patient kept his feet forward and did not help at all and refused to get off the floor.

They asked the patient if they could help him up. The patient did respond and indicated that he would co-operate. The patient was not angry at the police and the police seemed concerned about him. They helped the patient to his feet where he walked a short distance to the stretcher. They transported the patient to the hospital and they noticed that the patient's arm was clearly broken. The patient never complained about being in any pain. The only time he did complain was when they tried to lift him up. They used his belt buckle to lift him to his feet. The patient never made any comments in regards to how his arm was broken. PW2 stated that the patient was dead weight, and that he purposely did not help in standing up. He mentioned that he had dealt with the patient multiple times, and that it is usually "ETOH" (ethyl alcohol). PW2 stated AP is not the most co-operative person to deal with, and that he is not co-operative with the police.

Witness Officers

WO1

On January 10, 2023, IIU investigators obtained a statement from WO1, who was the general patrol supervisor. WO1 indicated that he and SO received a call to attend McDonald's regarding two people that were intoxicated and would not leave. He attended to the McDonald's and located the individuals inside the restaurant. They were the only two individuals inside the restaurant, as the restaurant was closed. WO1 stated that he did not have a conversation with any McDonald's employee. The individuals were told that they had to leave the restaurant. CW1 was co-operative, left the restaurant and went into the vestibule. WO1 stated that AP was highly intoxicated and was not responding well. The SO then arrived, and they continued speaking with AP about having to leave the restaurant. They told him that they would take him to the Safe & Warm Shelter. After a short period of time, he and SO tried to assist in lifting AP up and help him to his feet as he was pretty intoxicated. While lifting him up, AP's legs buckled and he allowed all his weight to drop and ended up falling to the ground. While AP was on the ground, they tried lifting him up a second time. They continued to talk to AP telling him that they wanted to take him to the Safe & Warm Shelter for the night and asked him to help them out.

They tried to lift AP up again. WO1 put his arm underneath AP's armpit. SO took hold of the other arm. As they tried to lift him to his feet, he believes SO said, "*I think his arm just broke.*" They then laid AP down and called an ambulance. They told AP that an ambulance was on its way. WO1 stated that there was no signs of any pain, nor signs of any anguish; AP just laid

there. WO2 arrived, then the ambulance arrived and it took all of them to lift AP onto the stretcher.

WO1 stated that their intent was to get AP to his feet and take him to the Safe & Warm Shelter for the night.

WO2

On January 10, 2023, IIU investigators obtained a statement from WO2. He stated that units were dispatched for intoxicated persons at the McDonald's refusing to leave the restaurant. He was one of the officers assigned to that call. He heard the dispatch, while he was en route, asking for Brandon ambulance to attend as the subject had a broken arm.

Upon his arrival, SO and WO1 were on scene. He entered the restaurant and AP was seated on the ground. WO2 has dealt with AP many times in the past. AP put his hand up to fist bump like he always does. CW1 was outside at the entrance doors on the east side of the building.

EMS personnel arrived. WO2 held AP's walker in order that AP could be seated properly. AP was removed from the restaurant and placed in the ambulance.

According to WO2, AP's level of intoxication was high, and he did not mention anything about his arm. He did not state that he was in pain. AP didn't respond to pain even when EMS were checking his arm. The only information he had regarding AP was that the officers were attempting to lift up AP when the injury occurred.

WO2 has seen AP with a walker and without a walker in the past. He has also seen AP with a cane.

He took CW1 to the Safe & Warm Shelter. CW1 did not provide him with any details about AP being injured.

Subject Officer

On March 6, 2023, through his counsel, SO provided IIU investigators with a copy of his Use of Force Report regarding his interactions with the AP. It reads as follows:

"Members were dispatched to McDonalds for report of 2 people who were refusing to leave. Members attended and located the 2 sitting on chairs inside the restraurant. AP, one of the SOC's, was exhibiting signs of intoxication and was uncooperative with members. AP was questioning why he had to leave and it was explained to him that the restaurant was closed but he argued saying he was fine where he was. The members offered both a ride to the Safe and Warm. The other subject agreed and was cooperative but AP was argumentative.

The members asked AP to get up repeatedly but he argued and refused. He was given his walker but he still refused to stand up. This has been this member's interactions with AP when he is intoxicated, he is nearly always belligerent and uncooperative.

AP refused to stand, even when the members tried to help him up. He would start to get up and then just slump down, completely letting his weight fall, refusing to use his legs, placing all of his weight on the members.

AP was taken to the floor and placed on his stomach under control where he was asked if he was going to cooperate as the members didn't want to take him to jail. AP said he would. He was asked to sit up, which he did when the members pushed him up.

The members then tried to help him up by holding his arms. He's start to assist the members and then drop his weight again.

SO had hold of AP's right arm, WO1 had hold of his left. The members were again attempting to help AP stand up or at least get him to his walker which was placed in front of him. SO put his right arm behind his back in hopes that a little bit of pain would convince AP to stand up under his own power or with the assistance of police.

As the members were helping him up he again started to assist and then slumped down, placing his weight on his arms. At this point SO heard a crack and felt AP's right arm give out.

AP was laid back down on the ground and EMS was called to assist."

Summary of Other Evidence

BPS Radio Dispatch

On December 18, 2022 at 12:41 a.m., SO (PC107) is dispatched to McDonald's regarding two individuals refusing to leave. After arriving on scene, SO conducts Canadian Police Information Centre (CPIC) checks on the AP and CW1. At 12:48 a.m. dispatch advises SO of the results of the checks.

At 12:51 a.m. SO states, "We need an ambulance here, trying to help AP stand up and I think I broke his arm."

Video Surveillance (1) – McDonald's Restaurant

The camera view captures the seating area of the McDonald's restaurant. The video starts at 12:53 a.m. The restaurant is empty except for two individuals seated at different tables. The AP is seen seated at a table in the upper right portion of the video. His walker is in front of the table he is seated at. He is seated upright and appears to be looking towards the door. The second person (CW1) is seated with her head down and resting on her hands.

At 12:56 a.m., BPS members SO and WO1 enter the restaurant. Both are in full uniform. SO stops at the table of the AP. WO1 walks over to the table where CW1 is seated at and claps his hands together causing her to sit upright.

At 1 a.m., both officers move AP's walker and take hold of the AP. The walker gets pushed forward and both officers are holding up AP, and AP goes down onto his knees. Both officers take hold of AP and attempt to lift him up from his knees. SO's hold of AP's right arm causes the arm to be hyper-extending.

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The officers are unable to lift the AP to his feet and lay him onto the floor. SO attempts to place the AP's right arm behind his back and places his right shin across the AP's head and upper back. WO1 has control of the AP's left arm. The McDonald's employee is seen behind the counter and has their back to the camera and is not paying attention.

At 1 a.m. and 50 seconds, both officers take hold of the AP and sit him upright.

At 1:01 a.m. and 31 seconds, SO takes hold of AP's right arm which is bent backwards. WO1 takes hold of AP's left arm.

At 1:01 a.m. and 35 seconds, both officers lift AP. The AP's right hand can be seen to suddenly jerk and the officers immediately lay AP back down. SO is then seen to speak into his radio microphone.

Video Surveillance (2) – McDonald's Restaurant

The outdoor video captures the east parking lot facing south. The start time of the video is at 1:09 a.m. Three fully marked BPS vehicles and an ambulance are seen parked in the parking lot. At 1:10 a.m., EMS personnel enter into McDonald's.

At 1:15 a.m., AP is being pushed on his walker by EMS out of the McDonald's and a BPS member exits the McDonald's. At 1:16 a.m., EMS move AP from the sidewalk, and all BPS members exit the McDonald's.

At 1:16 a.m., two BPS members walk between the police vehicles and the ambulance. Another BPS member walks toward a third BPS vehicle followed by the female from the inside of the McDonald's. EMS is seen at the rear of the ambulance preparing a stretcher. The female gets into the rear of a BPS vehicle.

At 1:17 a.m., AP is placed on stretcher by BPS and EMS. At 1:18 a.m., AP is loaded into the rear of ambulance. BPS members depart the scene. At 1:29 a.m., the ambulance departs the scene.

Video Enhancement

IIU investigators sent the video surveillance for enhancement, in order to obtain a close-up view of the BPS members' movement and hands on the AP, both in real time and in slow motion.

Personal Health Information - AP

AP provided consent to release his medical information. A summary of the information received from the Brandon Regional Health Centre indicates that the AP had a *right midshaft humerus fracture*.

Use of Force Expert Opinion

IIU investigators obtained an expert opinion regarding the use of force pertaining to the actions of SO during his physical interactions with the AP. The expert was provided with the full IIU report including all videos, statements and reports of investigators.

To further assist in assessing the matter at hand, the expert utilized the National Use of Force Framework (NUFF). NUFF was developed in November 2008 by use of force instructors in Canada and is endorsed by the Canadian Association of Chiefs of Police. NUFF assists officers and the public to understand why and in what manner an officer may respond with force. BPS uses the NUFF model to assist them in training.

The expert indicated that the video itself cannot determine whether the AP's arm broke as a result of the SO pushing the wrist up past immobilization, or if it was the actions of AP dropping his weight that caused the fracture. The video can support or detract from SO's statement. In this case, the expert stated that the video does support SO's account and does not detract from it.

The expert further added, *"It is my opinion that police officers in Canada placed in a similar situation may have attempted the shoulder joint lock after failed attempts to get AP to his feet or in wheelchair that SO attempted."*

Applying a joint lock for some pain stimulus after verbal attempts and muscular power failed would be sound, well founded, reasonable, necessary, consistent with training and proportionate with similarly trained law enforcement officers in a Canadian policing context."

Applicable Law

Sections 25 (1), (3), (4) and Section 26 of the Criminal Code of Canada are applicable to this analysis:

25 (1) Everyone who is required or authorized by law to do anything in the administration or enforcement of the law

(a) as a private person

(b) as a peace officer or public officer

(c) in aid of a peace officer or public officer

(d) by virtue of his office, is,

if he acts on reasonable grounds, justified in doing what he is required or authorized to do and in using as much force as is necessary for that purpose.

(3) Subject to subsections (4) and (5), a person is not justified for the purposes of subsection (1) in using force that is intended or is likely to cause death or grievous bodily harm unless the person believes on reasonable grounds that it is necessary for the self preservation of the person or the preservation of any one under that person's protection from death or grievous bodily harm.

(4) A peace officer, and every person lawfully assisting the peace officer, is justified in using force that is intended or is likely to cause death or grievous bodily harm to a person to be arrested, if

(a) the peace officer is proceeding lawfully to arrest, with or without warrant, the person to be arrested

(b) the offence for which the person is to be arrested is one for which that person may be arrested without warrant

(c) the person to be arrested takes flight to avoid arrest

(d) the peace officer or other person using the force believes on reasonable grounds that the force is necessary for the purpose of protecting the peace officer, the person lawfully assisting the peace officer or any other person from imminent or future death or grievous bodily harm

(e) the flight cannot be prevented by reasonable means in a less violent manner

26. Everyone who is authorized by law to use force is criminally responsible for any excess thereof, according to the nature and quality of the act that constitutes the excess.

Conclusion

It is the IIU's mandate to consider whether the serious injury suffered by AP may have resulted from the actions of the SO.

The AP was in an intoxicated state, and he would not leave a closed McDonald's restaurant. The officers first attempted to remove the AP by giving him verbal directions. The SO and WO1 then attempted to lift the AP in order to assist him to his walker and remove him from the restaurant, on three occasions. The video demonstrates that the officers paused in between the second and last attempt to lift AP. On the third occasion, the SO again attempted to lift the AP and applied some force; however, the AP was dead weight. This created a situation where the force applied was on a body part that was either not moving or was moving in a different direction and unfortunately, the AP suffered an injury to his arm as a result of the SO's attempt to lift him. The video demonstrates that as soon as the SO hears the injury to the AP, he immediately stops and calls for medical assistance. Further, the expert's opinion is that the force applied was proportionate and consistent with training.

Following due consideration of all the circumstances of this matter and a careful, thorough review of all evidence and material facts obtained in this investigation, I am satisfied that the amount of force used by the subject officer was reasonable in the circumstances. Therefore, no charges are recommended against the SO, and the IIU investigation is now completed and closed.