



**IN THE MATTER OF AN INVESTIGATION INTO AN ALLEGATION OF INJURIES
SUSTAINED DURING AN ARREST BY BRANDON POLICE SERVICE OFFICERS**

FINAL REPORT OF THE CIVILIAN DIRECTOR
OF THE INDEPENDENT INVESTIGATION UNIT

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Introduction

On February 24, 2023, the Brandon Police Service (BPS) notified the Independent Investigation Unit of Manitoba (IIU) of an incident.

The written notification disclosed the following information:

*“On October 15, 2022, at approximately 5:00 a.m. AP broke into * 5th St in Brandon MB - the residence of his ex-spouse *. the complainant called 911 and when officers arrived they found that AP had fled the scene. A perimeter was established and K9 deployed. AP made several calls to the complainant during this time and left messages threatening to kill her. The K9 tracked AP to a location a short distance away and Police located him hiding. AP resisted arrest and force had to be used to place him into custody. Once in custody he was found to have a knife concealed on his person. AP was taken to BRHC (Brandon Regional Health Center) for medical clearance due to intoxication and his complaints of injuries sustained during the arrest. Officers report that in the presence of a nurse, in a video taped area, that AP threw himself onto the floor of the hospital and smashed his head into the floor and wall. AP was cleared medically and lodged in BPS cells until he was remanded into custody later that day.*

AP made a complaint to LERA and on November 17, 2022, LERA requested disclosure of the file. LERA was supplied all available materials in the possession of BPS and currently is investigating this complaint.

On February 21, 2023, AP contacted BPS from BCC (Brandon Correctional Center) and indicated that he wished to make a complaint to the IIU (on the instruction of the Attorney General) and that he had a written complaint to provide the Chief of Police. The complaint was obtained the next day and reviewed. AP alleges being assaulted by officers while handcuffed. AP indicates he received 37 injuries during his arrest – none appear to be “serious injuries” under the Police Services Act. AP’s allegation of being assaulted by officers while handcuffed triggered a phone notification to IIU Mr. Zane Tessler on February 24, 2023, who in turn requested a Part 7 Notification.”

The civilian director determined that it was in the public interest for an independent investigation to be conducted pursuant to Sec. 75 of the PSA. IIU investigators were assigned to this investigation.

The civilian director designated two subject officer and three witness officers.

IIU investigators obtained the following information from the BPS, among other items:

- Videos – Police Cruisers PC112, PC101, PC102, PC105
- Video – BPS building
- Video – Bethel Church
- Bail brief – AP
- Booking documents – AP
- Breach probation Order and Breach Release Order – AP

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- Computer Automated Dispatch (CAD)
- Supplemental reports – SO1 and SO2
- Remand Warrant and Court Brief – AP
- Death threat messages – from AP to his ex-spouse
- 911 call audio recordings
- Incident report – daily and major incident
- Investigator’s report – SO1
- Use of Force report – SO1
- Occurrence summary
- Receipt for property – box cutter
- Audio – dispatch recording
- Scene photos – residence of AP’s ex-spouse
- Email from Deputy Chief to LERA
- AP’s LERA complaint
- Arrest photo of AP

Facts and Circumstances

Canvass

The matter was reported to IIU several months after the incident occurred; therefore, no canvass was conducted by IIU investigators.

Affected Person

On April 26, 2023, IIU investigators obtained a statement from AP at Brandon Correctional Centre (BCC). AP stated that he was sleeping outside the Bethel Trinity Church on October 15, 2022. He mentioned that there were cameras on the church. He stated that he set up a couple pallets and set them up by the fence under the two cameras. He went to sleep for some time. He claims he chose to sleep in this area because he had an anger management course on Saturday and Sunday at 9:30 a.m. The course was ordered by the courts and he had to take it to get his son out of CFS care. AP admitted that courses were not at the church as they were being held at the John Howard Society, but he chose to sleep there because of the cameras and he felt that was a safe place.

He did not know how long he had been sleeping before police arrived. He woke up to the sounds of a dog sniffing around. Then he heard shouting and swearing and people were saying his name in a threatening manner. They were saying, “*show me your f* hands.*” He claims he put his hands out so they could see them. They told him not to move and then took the pallets away. Then they said, “*We have 45,000 volts pointed at your f* head*” and “*we are going to sic the dogs on you.*” He said the officers were threatening him and he was terrified so he was not going to resist arrest. AP said there were three officers and a dog at this time.

AP admitted that the dog found him at the church, but he claims that he had no idea why the dog tracked him to that location. AP later admitted that he was aware that his ex-spouse had called the police on him and that was why the police were in the area; they were looking for him and that was why they knew his name. AP refused to say why his ex-spouse may have called the

police. AP stated that he could not comment on that because it was still before the courts. He did later admit that he was arrested for Break and Enter and Possess Weapon Dangerous to the Public Peace as well as a breach of an order. When questioned about the distance from his ex-spouse's house to the church, he indicated that it was walking distance.

He said they pinned him down and put his hands behind his back. AP later stated that he willingly put his hands behind his back. AP stated that the officer wearing glasses handcuffed him. Then they searched him and they found a box cutter in his jacket pocket. One of the officers asked him if that was what he was going to kill her with. He asked him what he was talking about because he said the knife was from his "tools."

After he was handcuffed, AP stated that the officers became violent with him. He said the "bald guy" with "police" written across his vest held his legs and he was pushing his knee into his calf muscle. Then he started knee him in the legs. Another officer was punching him. He said he moved his hands to try to protect his ribs but the officer kept hitting him and he was punching the tops of hands. The K9 officer kicked him in the head; he did not know where the dog was or if it was on a leash at that moment. AP said all he could feel was knees and kicks and it felt like this went on forever.

AP claims he responded by saying "*why are you doing this, is this necessary, I am not resisting.*" The officers did not answer or acknowledge what he was saying. The officers kept calling him down. They were calling him names and being belligerent and they kept threatening him with the dog. AP says he looked at the officers to see who was assaulting him. He saw an officer with glasses; he identified him as a sergeant. This officer kept punching him in the head, body and kidneys. He grabbed him by the hair and started punching him in the head. AP says he lost consciousness at that point. When he came to, the officers were still on his legs pinning him down and his shoes had come off his feet. He looked up and an officer kicked him in the head. He was beaten again.

AP says he suffered a terrible beating that just kept going. The belligerent comments also continued the entire time. AP described it as a brutal experience that he will never forget. As a result of the continued beating, he lost consciousness a second time. When he came to, two officers were carrying him by his arms and his legs were dragging. He could see his shoes on the ground and he was able to slip one shoe on. On the way to the car the sergeant punched him and called him down. He said the officers were "*using all kinds of insults.*" AP said he recalled that at one point he was crying for help and he could not understand "*why these cops were doing these things, it made no sense.*"

He said the incident went on for about five minutes. He claimed there were two rounds of beatings and he lost consciousness twice. All three officers were involved the entire time. AP says when he lost consciousness the officers thought they killed him. He is sure he stopped breathing because when he "*was coming out of the black out*" he could feel that he was "*struggling to come back.*"

As they were taking him to the police car he looked back and he saw his shoe. He tried to tell the officers about his shoe, but they responded by calling him names and they punched him again on the side. Then they put him in the car. AP stated that his handcuffs being too tight and he was

telling them to loosen his cuffs, but they were just being belligerent and very aggressive. AP added that the officers had no respect for his rights and he was terrified. He says he was being verbally abused but he couldn't recall what the officers were saying because he was *"too traumatized."* Although, he did recall that they were calling him a *"skinner"* but he could not remember what else he was too distressed and in too much pain because the cuffs were so tight.

When they got to the hospital, he says he was, *"shutting down"* emotionally and psychologically because he was traumatized and the handcuffs were still so tight. When they got into the emergency department, he told the *"secretary"* that the cops beat him up. He was originally in the emergency area with other members of the public, but they moved him to a different room.

While he was in the second area, he was laying face down in pain. He says he pleaded with the officers to loosen the handcuffs. He was screaming. They enjoyed watching him suffer; they laughed at him. There was a staff sergeant, another officer with *"police"* written across his vest and a third member standing in the doorway that he believes was the K9 officer. AP said he told the officers they better write down everything they did to him in their little black books. The officer in the doorway said they would and then they would compare notes later. AP said he told the sergeant that *"he was a disgrace to those stripes and someone should rip them off."*

He kept begging the officers to take the cuffs off because he was in so much pain and his head was pounding and his body was sore. At that point he started praying but the officers enjoyed watching him suffer and they kept laughing. Then the officer in the vest grabbed him from behind and he slammed him down and told him to *"shut the f* up."* AP responded by continuing to pray.

A nurse who was concerned looked in. AP yelled at her, saying *"You don't even care what these f* guys are doing to me. You don't care, the doctor doesn't care."* After he raised his voice to the nurse, they took him out of the hospital. He claims he was shouting because he was so distraught and the cuffs were still so tight and they wouldn't loosen them.

AP advised that the medical staff never checked him out properly. They never did X-rays or scans. He had bumps on his head but no one felt his head and no one looked at the marks from the cuffs. AP stated that the cops were keeping him in a *"heightened state, so the doctors wouldn't see him."* He also stated that he was behaving like that because of the trauma he was suffering.

AP claims the police only took him to the hospital because they thought they killed him, not to have him medically cleared, and the medical staff cleared him without seeing him. AP claims that he was so injured he should not have been cleared. He should have had CAT scans and MRIs and all the treatment that was necessary from the trauma he suffered at the *"three monsters' hands."*

AP said he did not remember how long he was in the hospital because he was crying and screaming in pain the whole time.

The sergeant took him from the hospital and walked him to the police car, he was still shouting. He told the sergeant, *"How does it feel to have crooked cops working under you?" You guys beat*

me up.” The officer said it feels good and denied that they beat him and then he called him a “*skinner.*” AP told him they have no respect for the Charter.

AP was taken to the police station by the bald officer. When they got there he claims he could barely move or walk and the cuffs had cut off his circulation. At the counter he had to put his head down because he was in so much pain. They took the cuffs off for the first time and his arms just dropped. He could barely put his hands on the table. He believes there were three officers present but he had his eyes closed because he was “*entirely shut down*” so he did not know for sure. An officer came up to him and said, “*Hey*” like he was going to start beating him again. Then they started asking him questions, like his name and who his lawyer was. AP said he just wanted to go into his cell and he “*wanted to be safe.*”

A cop kept calling him a skinner and told him he was going straight to “*PC*” [protective custody] when they get to the Brandon jail. The officer also said he had lots of friends in there, like he was threatening him. AP stated that he is currently being housed in protective custody.

They took him to the cell and he said he was so much pain and his head was pounding. Then the officers started banging and kicking his door. Different cops were coming to the door and calling him down. They kept calling him a skinner. He was not sure how long that went on but it seemed like forever.

He wanted to vomit because of his head injuries. He wanted help and he wanted to see a doctor. They finally brought in a phone and his lawyer was on the other end. He said he told his lawyer what they did to him. His lawyer said to not say anything. He told him that he hadn’t done anything; they were just beating him up and calling him down for no reason. As he was on the phone with his lawyer, the cops were at the door calling him a skinner, calling him down. He told me not to say anything, don’t respond to them. I told them I never did anything, and there is no reason they should be doing this to me.

At the end of the call, he gave the phone back and he tried to sleep but he couldn’t because of the pain in his head. The officers came back and they were kicking the door. Then the door opened and they gave him the phone again. The justice of the peace (JP) was on the line and they were doing a bail hearing. He was told that duty counsel was representing him; he told them he had a lawyer and this shouldn’t be happening. He gave the phone back when the call concluded.

The officers brought the phone in a third time. This time duty counsel was on the phone and he apologized to him and said that he did not know what the police were doing. He asked him who his lawyer was and he made a call to him on another phone so AP could hear the conversation. AP claims that duty counsel told his lawyer that he did not know why the cops were doing this. AP said that his lawyer “*Andrew*” also called him and said that he had spoke with duty counsel, who apologized to him and said he didn’t know why the cops were doing this.

Following all the phone calls, AP said he tried to sleep. The cops kept coming to his cell, saying his name at the cell door. They let out another prisoner who came to his door and looked at him to see who the officers were talking about.

Finally a new shift came in and the new officers seemed calm. He told them what happened to him. An officer took him to another room but he had a hard time walking and sitting because he was in so much pain. They fingerprinted and photographed him and put him back in his cell.

When they were getting ready to transport him, they took him out and they had a bag of his stuff. AP asked about his shoes, but they said the shoes were not there. There was an older sergeant standing there and AP told him that the guys last night beat him up. He said what's going on here. The sergeant didn't say anything in response, but AP felt that he looked concerned.

At the station he was not harmed physically; he just suffered verbal abuse.

He was transported to the jail by the officer that fingerprinted him. He was not mean or aggressive; he was professional. They put him in the cruiser and he said he felt sick because of his brain injuries; he wanted to vomit. The cop told him not to puke in the car and that when they got to Brandon Correctional Centre to try not to look sick or they would make him go to the hospital and he'd have to sit at the hospital for six hours.

At the jail he said he needed to see a doctor. He saw a nurse and he told her the cops beat him up and he told her about the injuries he had all over his body. She took AP's blood pressure; AP told her where he was injured.

He was lodged into a cell, where he claims he climbed into his bed and he stayed there for 19 days because he couldn't get out of bed. He says it was hard to even get the doctor to look at his injuries. He was in custody for about five days before he saw the doctor. The medical staff were not doing what they were supposed to do; there were bruises all over this body. AP was showing his injuries to the surveillance cameras.

No X-rays were taken, even though AP stated his head was pounding and he had internal injuries. They gave him Tylenol and Gravol. He stated that he saw the doctor a second time after he called the ombudsmen and the chief medical examiner. He stated that it was after the Law Enforcement Review Agency (LERA) got involved that they started to realize that something was wrong. He stated that he did not get the proper medical treatment because the treatment in BCC is very poor. He said he was never placed in the medical unit; they left him in his cell bedridden for 19 days. He claims he couldn't open his eyes and he couldn't read because it hurt his eyes.

No one ever took photos of his injuries even after he asked them to, but he believes the doctor wrote them down after she looked at them. She told him *"just because there are no bruises right now doesn't mean they are not there."* He claims he did have black eyes at that time and the doctor would have been able to see those. The doctor did some physical tests with him to see how bad his vertigo was; he claims he was not able to do the tests very well.

The day after he saw the doctor the bruises showed up all over and he tried to get back into see her but he wasn't able to.

He started writing down what his injuries were because he didn't think the medical staff were doing what they should do. AP advised that he had bruises all over his body; he counted 18 in one small area. He had lacerations on his hands from the cuffs. He had injuries to his ribs and

internal bleeding because there was blood in his stool. He claims he couldn't stand; he was dizzy and falling over because he had vertigo and "white flashes." He even tried to show the surveillance cameras his bruises. He stated that he added the list of his injuries to his LERA complaint.

Witness Officers

WO1

On August 3, 2023, IIU investigators obtained a statement from WO1. WO1 advised that he has been with BPS for 13 years and he has been part of the K9 unit for the last six years. On October 15, 2022, WO1 became involved in a domestic incident between AP and his ex-spouse (complainant). WO1 advised that there is a lengthy history of domestic-related calls. The complainant called requesting assistance as AP had kicked in the door of her residence and he had threatened her with a knife. Officers attended, but AP had fled the area. The attending officers requested that WO1 attend so he could do a track.

WO1 attended to the residence and he observed damage to the front door jam. There were splinters of wood on the floor consistent with the door being kicked in. The complainant also told officers that she saw a knife and AP had threatened to stab her.

The complainant advised that AP had gone south down the back alley. At that time, WO1 deployed his dog, Storm, and he immediately picked up the track. They went down the lane and crossed Richmond Avenue, which was only a block and a half away. The track continued through the parking lot of the church, down the east side of the church and behind a shed. At this point Storm began to "wind" someone and moments later he observed a male lying under some pallets that were leaning against the wall of the shed. The lighting was poor so he was difficult to see but WO1 said he knew by the dog's behaviour that the suspect was hidden in there and when he shined his light he could see him. The male matched the suspect's description and they were only a few blocks from the complainant's residence so he believed the male was AP.

WO1 voiced that he believed that he had the suspect. AP was not compliant and because the dog was "amped up" he couldn't go near him; he was only able to give verbal commands. He told him to crawl out from the pallets but he didn't. Then he yelled to him at least three times, "show me your hands or you are going to get bit." WO1 said he was concerned because he believed AP had a knife. AP did finally put his hands out the side of a pallet but he did not make any effort to crawl out. WO1 advised there was no physical contact between him and AP or his dog and AP. He stayed back because he believed AP had a knife and he didn't want his dog to get stabbed.

He voiced to the other officers that he had the suspect. SO1 and SO2 were the first to arrive to assist. He believes they were there in about 30 seconds to a minute. They pulled the pallets away and went "hands on" with AP. WO1 said when that happens his dog will "geek out" and start "spinning," so he has to pull him away from the situation. That reduces the chance of the dog getting loose and biting someone. He moved the dog toward the side of the building. Due to the lighting and his position he did not really see all of AP's arrest. He did not recall hearing AP yell during his arrest, but he knew he was not co-operating because of the way the officers were yelling and the time it took to get him secured.

He could hear the officers yelling, “Stop resisting, show me your hands.” It took the officers at least a minute to get him in handcuffs; they then took him to a car. From what he could recall, AP walked to the car; he was not carried. He only had to walk about 30 feet to get to the car. After AP was placed in the car, WO1 did not have any further contact with him.

WO1 added that AP was lucky that he didn’t get bit and hauled out from behind the pallets by the dog. He was given multiple chances to crawl out and he never did. Given the officer safety aspect, with the knife and the domestic, WO1 believes that he had the grounds to justify using the dog to pull him out and that may have been safer for the officers in the long run. But he made the decision to just hold the male until backup arrived.

WO1 advised that he believed that AP was armed with a knife because he had been provided with that information, though he could not recall exactly how that information came to him. He believed it may have been provided by dispatch or by another officer.

WO1 added that he has never had contact with AP prior to this incident.

WO2

On October 3, 2023, IIU investigators obtained a statement from WO2. WO2 advised that he has been a constable with the Brandon Police Service for six years. On October 15, 2022, WO2 was dispatched to the complainant’s residence because a suspect, whom he later learned was AP, was trying to break-in. There was also information that AP was threatening to stab the complainant, causing WO2 to believe there was likely a knife involved. Prior to his arrival at the residence information was provided that AP had left down the alley.

WO3 attended to the house; therefore, WO2 stayed in the area. WO3 spoke with the complainant and determined that AP had broken into the house. This information was provided to the units in the area.

WO1 was the K9 unit on duty and he started a track from the complainant’s house. WO2 decided to stay in the general area. WO1 voiced that he had a guy hiding behind the Bethal church, which is only four or five blocks north of the scene. WO2 went to that location; he estimated it took less than a minute for him to arrive on scene.

Upon arrival, WO2 saw that there were already a couple cruisers in the lot. He got out and noticed WO1, who was standing back because he had the dog. Then he saw SO1 and SO2, who were positioned on either side of AP. AP was lying face down by some wood pallets and he was cuffed behind the back. AP was fidgeting and moving around, but he could not recall what AP or the officers were saying at that time.

Then, SO1 said “*let’s get him to a car.*” They got AP up but he wasn’t moving; he was acting like dead weight. They picked him up and he started shaking around and they “*kind of dragged him.*” They took him over to PC112 and he keep squirming and he started to kick, so they let him go down to the ground and “*let him have his fit.*” Then they did a quick search of him. WO2 thought SO1 located some kind of a weapon on AP. Then they sat him up and put him in the back of cruiser 112. Once he was in the back of the car he seemed calmer, WO2 stated that AP

was being transported to the hospital because he was obviously intoxicated and that is their policy. After AP was secured in the vehicle he had no further involvement with him.

WO2 added that while he was at the scene he did not see any of the officers strike or harm AP and he did not see any injuries on him. As well, AP did not make contact with any of the officers when he was flailing around. AP also never complained of any injuries he just kept saying things like, *'you guys are corrupt, I was doing nothing wrong'* things like that.

After WO2 left the scene he returned to the station and went home, having no further involvement in this incident.

WO3

On October 3, 2023, IIU investigators obtained a statement from WO3. On October 15, 2022, WO3 attended to the residence of the complainant in regards to a break and enter in progress. While en route, dispatch advised that the suspect had left. Upon arrival, WO3 said he immediately noticed damage to the door and it appeared that it had been kicked in. A dresser had also been placed against the door on the inside. He learned that the complainant had put the dresser against the door after the suspect left because she was scared.

He spoke with the complainant and she told him the suspect was AP and she provided him with a description. She said AP had kicked her door down, he went inside and ran up the stairs. She locked herself in a room. AP was threatening her and her daughter with a knife saying he was going to kill her. WO3 could not recall if the complainant said she saw a knife or not. When she called police, AP ran off. AP had also been texting the complainant all day threatening her saying he was going to kill her and her family. WO3 said he relayed this information to the other BPS members.

While he was dealing with the complainant WO1 was conducting a K9 track. He heard over the radio that WO1 had located a suspect behind the Bethel Church, at the east side of the lot near a shed. WO3 said that Bethel Church is only a few blocks away; therefore, he left the complainant's house and drove to the church to assist.

When he arrived, SO1, SO2 and WO1 had AP in custody. AP was beside a cruiser car and he was handcuffed behind the back laying face down on the ground. They were attempting to search him but he was struggling. He was very agitated and flinging himself around, but they had control of him. He recalled that officers were bent down and on either side of AP. WO1 was still on scene but he was not close to AP because he had his dog with him.

WO3 added that at no time did he see any officer strike or kick AP and AP did not complain of any injuries that he was aware of. WO3 did not see any injuries on AP; however, he did not get a good look at him because he was face down. WO3 stated that AP was yelling, but he could not recall exactly what he was saying. He also did not recall what the officers were saying to AP.

SO1 and SO2 managed to get AP into the police vehicle. WO3 said it looked routine and nothing out of the ordinary happened while they put AP in the back. WO3 then he left to go back to the complainant's residence to take a statement from her and photograph the damage to her home.

Other Police Officer (PO)

The police officer (PO) who transported AP from BPS to BCC stated that did not have anything to provide outside of what was in the CAD report. PO was not designated as a witness officer.

Subject Officers

SO1

SO1 did not provide IIU investigators with an interview. His Use of Force Report dated November 23, 2022 (six days after AP filed his complaint with LERA) indicated the following:

“On 2022-10-15 at approximately 0430 hours, (the complainant) called Police reporting that her ex, (AP), showed up at her house banging on her door. While she was on the phone with Police call-taker, the call-taker could hear someone uttering threats in the background talking about stabbing her. As the complainant was on the phone with Police, the suspect took off down the back lane. Police learned that there was a no-contact order through CPIC between the accused, (AP), and the victim, (complainant). As a result, WO3 attended to the residence to speak with the complainant.

Upon attending there, WO3 radioed to other units that AP had broken into the house and forced the door open. There was damage to the door and the door frame. At the time he was there, he also spoke with the complainant and obtained a statement. Given the severity of the nature of the offence, K9 had been working that night and was directed to conduct a track. As a result, several units set up a perimeter and Police began tracking southbound away from the residence. This confirmed what (the complainant), had stated to Police when she called. WO1 located a suspect matching the description located underneath a wooden pallet on the east side of Bethel Christian Assembly. Bethel Christian Assembly is located in the 400-500 block of Richmond Avenue. I was the first officer there and observed WO1 advise the male that he was under arrest and to come out. It was very dark there. During this time, the male was laying there not responding to WO1. Police believed the male to be in possession of a knife as he was heard saying that he was going to stab the complainant and kill her. I could not see the suspect's hands; however, believed that this was the suspect to the K9 track, as he was wearing a large puffy brown jacket which the caller stated to police that the suspect was wearing. Due to the risk of officer safety because of the knife, I approached the male and instructed him to give me his hands. The male refused to produce his hands. I tried to take control of him, but, he fought with me, pulled his arms away, and it was very dark and I couldn't see while trying to place the male in handcuffs. SO2 assisted and was present trying to help me and the male kept pushing and pulling away. He eventually turned his body and began kicking at Police. I delivered stuns to back and middle of the solar plexus area; however, they were unsuccessful due to the large down jacket. At this time, I delivered high-level head stuns to the male's head to cause stunning effort to get him into handcuffs. Due to the fact that he was kicking officers, officers had to restrain his legs. During the fight, I could smell a strong odour of liquor on his breath and advise him to cooperate with police and stop fighting. Handcuffs eventually were placed on him and while escorting him back to the PC (Police Cruiser) he became very uncooperative and was throwing his body weight to the ground. He also began trying to kick and push at other officers while in handcuffs.

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While outside the back of PC112, I located a box cutter type knife that was in open position. This was located in the right pocket of his jacket... due to him consuming alcohol and me delivering stuns to his head, I took him to the Brandon Regional Health Center to be medically cleared. During this time, he was absolutely belligerent while waiting to see a doctor. He was yelling and swearing at the nurse and trying to fight Police. He was moved to a side room which was more secure and out of public view; however, this room is on audio and video recording. During this time, he threw himself off the bed onto the floor, smacking his head and he continually tried to smash his head into the wall. He was restrained with the help of the nurse. At the time, he claimed his handcuffs were too tight and they were loosened by myself and SO2 over three times. One the times we loosened the handcuffs, we removed his jacket so the nurse could get a good set of vitals on him because his jacket was too large.... he was medically cleared and brought back to Brandon Police Services..."

SO2

SO2 provided his notes for inclusion in the file. SO2 declined to be interviewed. SO2's notes indicated that he initially attended to the complainant's residence. She advised SO2 that AP had kicked in the door, threatened to kill her with a knife and then fled down the lane.

The K9 officer had tracked AP to Bethel Church and SO2 attended to that location to assist. When SO2 arrived, he found SO1 attempting to get control of AP's hands so he assisted. SO1 was calling out repeatedly "release your hands." AP resisted throughout and was kicking at officers. SO2 assisted by grabbing AP's hand that SO1 was able to free. SO1 then worked to get the other hand free. SO2 indicated that they were up against a stucco wall and could only work at freeing the arm from one side. AP continually resisted by pulling away, twisting his body and kicking with his legs. When the handcuffs were finally on, AP continued to resist.

Upon checking his pockets, a black box cutter knife was located with the blade in the open position.

AP was transported to the hospital and in the emergency area he was continually yelling and hit the glass that protects the triage nurse so he was moved into another room. There he continued to yell and scream and was banging his head on the floor and walls. SO2 put his foot under AP's head to prevent injury. The nurse then put a pillow down to protect his head.

He continually complained that his cuffs were tight so they were adjusted three times. AP continued to complain. When the cuffs were checked, SO2 could put a finger between the cuffs and his wrist. AP was medically cleared. When he was walked through the emergency area to leave the hospital, AP yelled and screamed at other patients who were waiting for medical attention.

He was transported to BPS and given the opportunity to call a lawyer.

Summary of Other Evidence

Photographs

A photograph of AP was obtained from his arrest. His face appears normal. There are no visible injuries or swelling.

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IIU investigators obtained several photographs, including photos of the damaged door frame at the residence of the complainant, the black box cutter knife that was seized from the AP and a photograph of AP's down jacket.

LERA complaint

In AP's written complaint to LERA, he claimed that he suffered 37 injuries, namely: bruises all over his body and forehead; swelling to both sides of his head; extreme pain in his right leg; cracked ribs; bruises and lacerations to his wrists; kidney pain; his "right temple felt like it was cracked;" swelling and pressure inside his skull; the back of his head was swollen and sore; his "right facial plates moved out;" torn out hair; a black eye; the left side of his neck was swollen with "internal damage;" he suffered hearing loss in his right ear; blood in his stool; and lacerations from the handcuffs.

Medical Information – Brandon Regional Health Centre

A one-page document was provided which briefly indicated that AP was extremely agitated on arrival; they were unable to triage through triage barrier and he was moved into triage treatment. AP was unco-operative with police and medical personnel. The report indicated "*Threw self on floor and began banging head on floor. Yelling and resisting. Kicking out at BPS. Swearing and threatening myself and police. With backup, BPS able to remove parka, sweaters and readjust cuffs. More cooperative following. Denies alcohol or drugs. Complaining of no circulation to hands from cuffs. Hands pink and warm with brisk cap refill, Face flushed, reddened area to back of head. No bumps felt. States he is having a heart attack from police attacking him. Was reportedly threatening harm and death to others and destructive prior to arrest.*"

BRHC Outpatient and Emergency Report Form was also provided. Registration time was 5:31 a.m. and the physical assessment was at 6:10 a.m. The form was difficult to read; however, it noted the following:

- complains that the cuffs were tight.
- threatening to sue everybody stating he was going to die in cells and it will "*be your fault*"
- A checkmark was indicated beside "vitals", "sugar", HR = 105/min Sugar 8,3
- Diagnosis: Substance abuse, cleared for cells
- Plan of Care: No obvious injuries, dry blood on lips
- *Cleared for cells*

Medical Information - Brandon Correctional Centre

Four pages of medical records were initially received by IIU investigators and an additional 12 pages were received on February 8, 2024. The medical records indicate that AP attended to see a doctor on 16 occasions between October 15, 2022 and November 25, 2022. The medical report does not indicate numerous injuries on AP, nor the injuries in his complaint (e.g., black eye, moved facial plate, cracked rib, torn hair, hearing loss, etc.). On two occasions AP was seen by a doctor who did a neurological assessment. Doctor indicated "no concerns". No X-rays or scans were ordered by the doctor. AP received Advil and, on numerous occasions, also received

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Gravol. The medical records later indicate AP was likely using Gravol to assist him to sleep. The medical records include:

- On October 15, 2022, AP stated he had a sore right thigh and was given Advil and an ice pack. There is no mention of any other injuries or complaints from AP.
- On October 16, 2022, AP reported being beat up by police and stated he had nausea, headache, dizziness and chills. Denies any drug use/withdrawal. The notes indicate no bruising noted to right thigh/calf. No bruising to ribs, no shortness of breath. Bruising noted to knuckles on right/left hands. Ibuprofen for pain.
- On October 17, 2022, notes indicate it was difficult to assess pupils as AP would not open eyes enough. Referred to a doctor to assess. On October 19, 2022, seen by the doctor. Indicates no bruises interior wall. However, other bruises in process of healing. Advil and Gravol prescribed, as needed. On October 22, 2022, AP requesting to see neurologist. The notes indicate that he was just assessed by the doctor. On November 2, 2022, asking for neurological exam, “same completed Oct. 19, 2022 - no concerns”.
- On November 6, 7 and 8, 2022, AP was requesting Gravol for complaints of nausea due to head injury. Same was given. On November 11, 12 and 15, 2022, Gravol given again as AP said he had concussion symptoms; however, the notes indicate that AP would not specify symptoms. The doctor further noted that AP had only been utilizing Gravol - likely as a sleep aid.
- On November 16, 2022, seen by the doctor - another neurological assessment. Somewhat difficult to do. Not very co-operative. “Grossly normal though – including sensory, motor system and reflexes, gait, speech....”
- On January 2, 2023, AP complains of “internal bleeding.” The notes indicate no visible abnormalities to abdomen or back. Hemorrhoids causing the blood in stool.

911 Recordings

A review of the 911 recordings demonstrates that while the complainant is on the phone with the 911 attendant, numerous loud banging sounds are heard in the background. An aggressive male voice is heard in the background stating “*I’m gonna stab you in the face.*” The complainant states to the 911 attendant that AP “...*kicked my door open downstairs and broke a window.*” The complainant gives a description of AP and the clothes he was wearing, including his jacket.

Police Radio

The call was entered at 5 a.m. Officers voiced over the radio that they had someone and they were yelling “show us your hands..”

Bethel Trinity Church Video

Video was obtained from Bethel church. The video did not capture the incident.

Police Watchguard Videos

A review of several watchguard videos do not capture the incident. The videos demonstrate that it was very dark out. PC105 video, at 5:10:52 two officers are seen running to where the AP is located, behind a garage/shed. At 5:12:20 officers are seen walking back to a police cruiser with

the AP handcuffed and walking on his own. The officers and AP are standing by the rear driver side door of the cruise for a moment. Very dark, difficult to see what was transpiring. Then one officer is seen hitting AP in the back of his leg, and the AP falls down. The officers then pull AP up and put him into the cruiser. Moments later, the K9 officer and his dog are seen on the video, a bit further back from the location where the officers and AP had come from.

Brandon Regional Health Center Video

No video was obtained from BRHC as video recordings are only held for 30 days.

Police Detachment Videos

A review of the videos demonstrates AP walking into the detachment with officers. AP is standing and walking on his own. AP and officers appear calm. AP is seen resting on counter as the officers are booking him in. Cell videos demonstrate AP lying down in the cell. There are no officers seen yelling or threatening AP outside the door.

Applicable Law

Sections 25 and 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.

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.

Under section 25 of the *Criminal Code*, police officers are permitted to use as much force as is necessary to execute their duties. The allowable degree of force to be used remains constrained by the principles of proportionality, necessity and reasonableness. Further, the officer's action should not be judged on a standard of perfection. *R. v. Nasogaluak, [2010] 1 S.C.R. 206*

“Police actions should not be judged against a standard of perfection. It must be remembered that the police engage in dangerous and demanding work and often have to react quickly to emergencies. Their actions should be judged in light of these exigent circumstances.”

Also see *R. v. Power, 476 Sask. R. 91 (CA)*, where (at para. 35), the court notes:

“On the basis of the foregoing, a determination of whether force is reasonable in all the circumstances involves consideration of three factors. First, a court must focus on an accused’s subjective perception of the degree of violence of the assault or the threatened assault against him or her. Second, a court must assess whether the accused’s belief is reasonable on the basis of the situation as he or she perceives it. Third, the accused’s response of force must be no more than necessary in the circumstances. This needs to be assessed using an objective test only, i.e. was the force reasonable given the nature and quality of the threat, the force used in response to it, and the characteristics of the parties involved in terms of size, strength, gender, age and other immutable characteristics.”

The courts have also stated that there is no obligation on the police to employ only the least amount of force to achieve their objective:

“It is both unreasonable and unrealistic to impose an obligation on the police to employ only the least amount of force which might successfully achieve their objective. To do so would result in unnecessary danger to themselves and others. They are justified and exempt from liability in these situations if they use no more force than is necessary having regard to their reasonably held assessment of the circumstances and dangers in which they find themselves.”

R. v. Bottrell (1981), 60 C.C.C. (2d) 211 (B.C.C.A.); *Levesque v. Zanibbi*, [1992] O.J. No. 512

Conclusion

It is the IIU’s mandate is to consider whether the actions of the police officers who arrested AP are justified under Section 25. The evidence demonstrates that:

Use of Force

- The complainant advised WO3 that the affected person had been threatening her and her daughter with a knife, saying he was going to kill her. WO3 relayed this information to other BPS members.
- SO1 believed AP may be in possession of a knife given the information that AP was going to stab his ex-spouse and kill her.
- SO2 also indicated that he was aware that AP had kicked in the complainant’s door and threatened to kill her with a knife, and then took off from her residence.
- Both SOs indicated that the AP was not complying with requests to come out.
- It was dark outside.
- AP stated that one officer was pushing his knee into his calf muscle, then started kneeling him in the legs. Another officer was punching him. He said he moved his hands to try to protect his ribs but the officer kept hitting him and he was punching the tops of hands. He stated that all three officers were involved the entire time.
- AP said the officers pinned him down and put his hands behind his back. AP also stated that he willingly put his hands behind his back.
- AP stated that the K9 officer kicked him in the head. However, WO1 stated he did not get close to AP. He held his dog back. He waited for back up. He stepped aside once SO1 and

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SO2 were dealing with AP, as he did not want to risk the dog biting anyone. Consistent with evidence from SO1 and SO2, WO1 and dog are seen on PC105 video, walking further back from the location where the arresting officers and AP came from. WO3 also stated that WO1 was not close to AP as he had his dog with him.

- SO1 was calling out repeatedly “release your hands.” AP resisted throughout and was kicking at officers.
- SO1 stated AP was refusing to give his hands to SO1. As SO1 tried to take control of AP, he fought back and pulled his arms away. SO1 tried to assist SO2 but AP kept pushing and pulling away, turned his body and began kicking at police.
- SO1 stated that he applied stuns to the solar plexus area; however, these were unsuccessful due to the large down jacket of AP. He then delivered high-level head stuns to AP’s head to cause stunning effort to get him into handcuffs.
- SO2 stated that he assisted in the arrest of AP by grabbing AP’s hands to be able to put on the handcuffs.
- AP stated that two officers were carrying him by his arms and his legs were dragging. However, PC105 video demonstrates AP handcuffed and walking on his own to the police cruiser with two officers.
- A review of PC105 watchguard video demonstrates that it took one minute and 28 seconds to effect the arrest of AP by the two officers.

Injuries

- AP says he suffered a terrible beating that just kept going.
- AP indicates he received 37 injuries and lost consciousness twice during his arrest. He claimed that he suffered: bruises all over his body and forehead; swelling to both sides of his head; extreme pain in his right leg; cracked ribs; bruises and lacerations to his wrists; kidney pain; his “right temple felt like it was cracked;” swelling and pressure inside his skull; the back of his head was swollen and sore; his “right facial plates moved out;” torn out hair; a black eye; the left side of his neck was swollen with “internal damage;” he suffered hearing loss in his right ear; blood in his stool; and lacerations from the handcuffs.
- AP indicated that he was bedridden for 19 days, was dizzy, had nausea and headaches, and could barely move or walk.
- AP indicated that he was screaming in pain at that hospital. He stated that he did not see a nurse or doctor at the BRHC. AP stated that he had bumps on his head but no one felt his head and no one looked at the marks from the cuffs. AP stated that he was yelling and screaming because his handcuffs were so tight and he was in a heightened emotional state.
- BRHC medical records indicate AP saw medical staff and AP was medically discharged. Medical record indicate that his head was in fact verified, “reddened area to the back of the head. No bumps felt”.
- Both SOs as well as the nurse at BRHC indicated that AP was yelling, swearing, resisting, threatening medical staff and officers, kicking at officers and banging his head on the floor and walls. The nurse and SO2 both took measures to protect his head.

- Both SOs and the nurse indicated that AP's handcuffs were loosened, on more than one occasion. SO2 indicated that he could put a finger between the cuffs and AP's wrist.
- BCC medical records indicate that the AP attended to see a doctor on 16 occasions between October 15, 2022 and November 25, 2022. The medical report does not indicate numerous injuries on AP, nor the injuries in his complaint (e.g., black eye, moved facial plate, cracked rib, torn hair, hearing loss, etc.). On two occasions AP was seen by a doctor who did a neurological assessment. Doctor indicated "no concerns." No X-rays or scans were ordered by the doctor. AP received Advil and, on numerous occasions, also received Gravol. The medical records later indicate AP was likely using Gravol to assist him to sleep.
- The arrest photo taken of AP does not demonstrate any injuries or swelling to his face.

The fact that AP sustained injuries during the arrest is not conclusive that excessive force was used, but is some evidence that I must consider. However, it is important to note that the extent of all the injuries alleged by AP are not substantiated medically, and it is unclear whether AP may have contributed to his own injuries by banging his head on the floor while at the hospital.

I now turn to whether the subject officers' actions were justified under Section 25.

Under Section 495 of the *Criminal Code of Canada*, officers may arrest a person without a warrant if they have grounds to believe the person has committed an indictable offence. The subject officers had been advised that AP had broken into the residence of his ex-spouse and had uttered threats to stab her. I am therefore satisfied that the police officers were the in the lawful execution of their duties in arresting AP.

The subject officers believed AP to be in possession of a weapon given the serious threats he made minutes prior. It was later learned that AP did in fact have a box cutter knife on his person. The evidence demonstrates that it was dark out and the officers had difficulty in seeing AP's hands. AP was moving around, resisting arrest and kicking at officers. WO1 told AP to crawl out from the pallets and yelled at least three times, "show me your hands or you are going to get bit;" however, AP did not comply. AP also did not comply with verbal commands by SO1 to produce his hands. AP was pushing, pulling away and kicking at police. SO2 stated that he grabbed AP's hands to assist SO1 in handcuffing AP. SO1 indicated that he delivered stuns to AP's solar plexus, but they were unsuccessful due to his large down jacket. He then delivered head stuns to cause stunning effort to get AP into handcuffs. The head stuns administered by SO1 were not a matter of first resort, but after multiple verbal commands and attempts to physically restrain the AP, which had not succeeded.

Given the totality of the circumstances, I am satisfied that the use of force by SO2 was necessary and reasonable to effect the arrest of AP. I am also satisfied that the use of force by SO1 in delivering stuns to the AP's solar plexus and head was also necessary and reasonable in order to take the AP into custody.

Therefore, there are no grounds to support any charges against the subject officers. This investigation is now completed and the matter is now closed.