

# ***FINAL REPORT: IIU concludes investigation into injuries during arrest by BPS officers***

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On January 22, 2019, the Brandon Police Service (BPS) notified the Independent Investigation Unit of Manitoba (IIU) of injuries to a male following his arrest.

According to this notification, which read in part:

*“On December 19, 2018, at 12:09 a.m., members of the Brandon Police Service Crime Support Unit and Patrol Division executed a CDSA search warrant at a room of the Hillcrest Motel in Brandon, Manitoba. Located within the room was an adult male, later identified as the Affected Person (AP) and an adult female. Both were arrested and a quantity of drugs were seized.*

*On January 5, 2019, a phone call was received on the BPS Criminal Records line (not the normal call taking line) and AP reported that he wished to speak to an officer about being assaulted – though did not expand on the nature of the assault or who the suspects were. AP advised that he could be located at the Brandon Correctional Centre (BCC). On January 7, 2019, a member of the BPS Patrol Division attended to BCC to take the assault complaint from AP. AP advised that he was assaulted by BPS officers when he was arrested and that the Law Enforcement Review Agency (LERA) had instructed him to make a complaint to BPS if he felt that he was assaulted... On January 10, 2019, a videotaped statement from AP was obtained, in which he alleges being assaulted by BPS Officers during his arrest and sustaining facial injuries.*

*On January 14, 2019, a letter was received from the Commissioner of LERA advising that they were investigating allegations made by AP of disciplinary defaults on the part of BPS officers during his arrest. An unsigned, typed attachment to the handwritten LERA complaint listed a number of injuries that AP claimed to have suffered...”*

The list of injuries provided to LERA by AP included a broken nose, fractured cheek bone, two missing teeth, headaches, blurred vision, fractured/bruised ribs and painful breathing and urination.

As these injuries allegedly sustained by AP constitute serious injuries as defined by regulation, the IIU was mandated to undertake an investigation into this matter pursuant to section 66(4) of *The Police Services Act* (PSA). IIU investigators were assigned to this matter.

The information obtained by IIU investigators included:

- witness officers’ notes and reports;
- general arrest report and court disclosure package;
- AP and civilian witness statements;
- GPS data and report;

- BPS radio communications;
- BPS use of force policy;
- prisoner logs;
- photographs of AP; video and photographs of Hillcrest Motel; and
- AP medical reports.

The civilian director designated three BPS officers as subject officers (SO1-3). Additionally, the civilian director designated six other BPS officers as witness officers (WO1-6). IIU investigators interviewed AP and a civilian witness (CW).

### **AP**

AP advised that on December 19, 2018, he was in his room at the Hillcrest Motel with a female friend, CW. They were sitting on a bed talking and watching television when the door to his room flew open and he heard someone yell, "*Police, search warrant.*" AP states he saw four police officers at the door and he immediately put his hands up. One of the officers grabbed AP from behind and held his arms. According to AP, two other officers jumped on top of him and started punching him repeatedly in the face and kneeling him in his ribs. The police officers yelled "*show me your hands*" repeatedly. AP states that he did not resist or fight back during his arrest and detention.

On arrival at the police station, AP states he saw an officer in the garage laughing at him. AP states that he yelled at the officer and told him that they "*...did not have to do that to him.*" According to AP, the officer said he did not know what he was talking about and that he was not even there. AP states that the officer's hands appeared raw and shredded, as if he had just been in a fight. AP stated he suffered a chipped tooth, loosened front teeth and three dislodged teeth. AP admitted that 30 minutes prior to the police kicking in his door, he and CW had consumed cocaine. Nevertheless, AP states that he was aware of his surroundings. AP stated that he had no injuries to his face or body prior to the police entering his motel room and denied any other physical altercation with anyone else in the days leading up to the search of his room and arrest.

### **AP Medical Reports:**

IIU investigators received and reviewed AP's medical reports from BCC and Brandon General Hospital (BGH).

The BCC medical records disclosed that during his admission assessment on December 19, 2018, AP:

- complained of being hit several times in the head and ribs;
- disclosed that a few days earlier he used Cocaine and Meth;
- had multiple abrasions to the left side of his head, bruising and swelling to left eye, and complained of pain to the left side of his ribs; and
- was given Tylenol 500 mg to manage pain.

The BGH medical records noted that a doctor examined AP and had x-rays taken. A physician's review of the x-rays found:

- no left rib fracture was observed;

- no abnormalities were seen in either orbital bone;
- no fracture of the mandible (jawbone) was observed;
- no fluid in the joint was observed; and no underlying fracture was identified.

The physician's review also found there was considerable soft tissue swelling adjacent to the left elbow and extending down the dorsal aspect of the ulna, as well as soft tissue swelling adjacent to the proximal ulna (long bone in the forearm that stretches from the elbow to the smallest finger).

### **Civilian Witness (CW):**

CW was with AP at the Hillcrest Motel on December 19, 2018. She was sitting on the bed talking with AP and waiting for her ride. CW recalls hearing two loud "boom" sounds and saw police officers rush into the room. CW stated that four or five of the police officers rushed over to AP and jumped on top of him. CW stated she saw AP struggling as some of the officers were hitting him. CW states that she heard smacking sounds as if punches thrown. CW stated that AP's face appeared bloodied and he had a swollen and bloody eye. CW stated that AP asked why they had to beat him up and an officer told him it was because he was struggling. CW stated that AP had no facial injuries prior to the execution of the search warrant. CW advised that she did not consume any alcohol or drugs prior to police arriving at the motel room. CW was unable to recall if AP consumed any alcohol or drugs that night.

Furthermore, according to CW, AP was not involved in any other physical altercation with anyone else, either that day or the day prior. However, CW related that AP told her that unknown people had broken into his room the previous day and held a gun to his head as they searched for drugs and cash. Then CW admitted to being present in the room during this incident, but did not want to say anything further as she did not want to get more involved.

### **Witness Officers**

WO1 is a BPS supervisor who was teamed with WO2, SO1, SO2 and SO3 on December 18, 2018 on a drug investigation targeting AP, who was residing at the Hillcrest Motel in Brandon. Shortly after midnight, now December 19, WO1 and his team members, joined by WO3 and WO4, attended the Hillcrest Motel and force entry into AP's room. Several of the police officers yelled, "*Police, search warrant*" as they entered.

A male and a female were located inside the motel room. WO1 stated that SO1 and SO2 attended to the male on the bed to take him into custody. WO1 stated that SO1 yelled, "*show me your hands*" twice.

WO1 cleared the bathroom and, upon his return, noticed that the police officers were still struggling with the male on the bed. WO1 stated that the male, later identified as AP, was kicking his legs. WO1 and WO2 then held onto his legs while SO1 and SO3 struggled to gain control of AP's hands in an effort to handcuff him. WO1 stated that AP refused to give up his hands and was pulling his arms under his body. However, officers were able to bring him under control and secure him in handcuffs. WO1 stated that he noticed an open blade knife sitting on top of a nightstand next to the bed.

WO1 stated that he did not see any officers strike AP and, if force was used, he, as the supervisor in charge, would have ensured a BPS use of force report was filed. WO1 stated that he would

not have missed the multiple punches and kicks by the officers that AP is alleging. WO1 stated that he did not observe any injuries on AP after he was secured in handcuffs.

On December 18, WO2 was involved in the process to obtain a drug search warrant for AP's motel room. WO2 was assigned to conduct surveillance at this location, while WO1 and his team members completed plans for the execution of the search warrant. WO2 indicated that he observed the BPS officers attend and gain entry into AP's room. At that point, WO2 stated that he left his vehicle and joined to assist the other officers. As WO2 was making his way to the motel room door, he could hear someone say, "*Police, search warrant.*" WO2 stated that he then heard an officer say, "*Stop resisting and show us your hands.*" When WO2 entered the room, he noticed that a male, later identified as AP, was face down or to his side on a bed. There was also a woman who was either on the bed or just beside it and was handcuffed. According to WO2, it was a "*dog pile*" on top of AP. AP had his arms under his body and WO2 believes SO1, SO2 and SO3 were struggling to gain control of him. WO2 does not believe he saw any kicks or punches thrown by the officers. While WO2 does not recall seeing any injuries on or hearing complaints by AP, he did observe some redness to the left side of AP's face. None of the involved officers disclosed to WO2 that they used any kind of force on the AP.

WO3 stated that he and WO4 were assigned to assist in the execution of a Drug Search Warrant at the Hillcrest Motel. WO3 stated that at 12:09 a.m. on December 19, BPS officers attended to AP's room at the Hillcrest Motel. SO1 forced entry into the room, as other BPS officers were shouting, "*Police, search warrant.*" Upon entry, WO3 observed a male and female sitting on a bed. WO3 handcuffed the female without difficulties and escorted her outside. WO3 stated that he observed some officers involved with the male, later identified as AP. WO3 heard several loud commands given by police officers to AP to show his hands. WO3 did not see the interactions between the arresting officers and AP.

WO4 provided a similar account of events as those described by WO3. WO4 believes that he was the last BPS officer to enter the room once the entry was forced. Once inside, WO4 observed that officers were trying to take the male into custody. WO4 assisted WO3 in handcuffing and securing the female. WO4 observed the male was resisting as he kept pulling his arms under his body and away from the officers that were trying to handcuff him. WO4 did not recall seeing any BPS officer strike or punch AP and did not observe any injuries on the AP.

On December 19, WO5 was assigned to speak with AP at BCC about his assault allegations against several BPS officers. During his interview, AP indicated that police came barging into his room at the Hillcrest Motel yelling, "*Police, search warrant.*" The officers came in and started assaulting him - punching and kicking him about the body. According to AP, one of the officers was throwing "hammer fists" at him. Police continued to yell, "*Show me your hands,*" but he was not resisting.

WO6 was requested to transport AP to BCC. WO6 did not notice any facial injuries on AP nor did he complain about being injured or requiring medical attention. The entire transport of AP to BCC was audio and video recorded on the in-car recording equipment.

### **Subject Officer**

Pursuant to the provisions of the PSA, a subject officer cannot be compelled to provide his or her notes regarding an incident nor to participate in any interview with IIU investigators. In this case,

SO1, SO2 and SO3 each provided their notes to IIU investigators, but declined to participate in an interview. However, each did provide a prepared statement to IIU investigators, summarized as follows:

SO1 wrote that he attended to the Hillcrest Motel at 12:09 a.m. on December 19 with several members of BPS to execute a drug search warrant for the suite of AP. SO1 was tasked to force the room door open. SO1 yelled "*Police, search warrant*" when the door was opened. Once inside the room, SO1 observed AP and a female laying on the bed. SO1 yelled for them to show their hands and told them they were under arrest. AP then rolled on to his right side and SO1 could not see his hands. SO1 was concerned that AP might have a weapon on him or close by and might be attempting to reach for it. SO1 yelled, "*show me your hands*" and got on the bed in an effort to pull AP's hands away from his body and handcuff him. AP actively resisted SO1's efforts by pulling his arms under his body. SO1 wrote that he delivered a number of strikes to AP's upper body and face area as he yelled for him to quit resisting and show his hands. SO1 was able to pry one arm away from AP's body and assist with SO2 in handcuffing AP. SO1 observed that AP had a slight puffiness around his left eye, but did not observe any cuts or wounds to his face or body.

SO2 wrote that he attended to AP's room at the Hillcrest Motel with several members of BPS to execute a drug search warrant. Upon arrival, entry was forced as police knocked down the front door to the room. As the entry was gained, some of the BPS officers were yelling, "*Police, search warrant.*" SO2 observed AP and a female on the bed, as well as a knife in close proximity to them. AP ended up laying across the bed with his hands near his abdomen and waistband area. AP was kicking his feet wildly while SO2 and SO1 were trying to gain control of his hands to bring him under control and handcuff him. SO2 delivered multiple low impact strikes to AP's lower back and hips hoping he would give up and release his hands to the officers. At no time did AP indicate he was injured or required medical attention while in police custody. SO2 did not observe any injuries on AP.

SO3 assisted in the execution of a drug search warrant at AP's room in the Hillcrest Motel. Force was used to gain entry to the room and the "*Police, search warrant*" warning was announced several times. SO3 wrote that SO1 and SO2 were the first police officers to enter the room. Upon entry, SO1 and SO2 engaged with AP, who was on the bed. According to SO3, he and WO3 immediately went around the bed and dealt with the female who was on the floor, later identified as CW. SO3 wrote that he could hear a struggle on the bed behind him and someone yelling at AP to show his hands. AP was actively resisting arrest by thrashing around on the bed with his hands pulled tight into his body. SO3 wrote that he now assisted to help gain control of AP's hands. SO3's only contact with AP was pulling on his arms/hands in an attempt to restrain him and place him in handcuffs, possibly his left arm/hand. At the station, SO3 observed some redness on the left side of AP's face and forehead. However, there was no bleeding and there was no indication that AP was suffering from any serious injury, such as a fractured jaw or broken ribs. In addition, AP never requested any type of medical attention for any injuries.

**Conclusion:**

Following the completion of this investigation, the civilian director forwarded the IIU investigative file to Manitoba Prosecution Service (MPS) and requested a review and opinion on whether any Criminal Code charges should be authorized against any or all of the subject officers.

Following the review of the IIU investigative file, MPS advised IIU that this matter did not meet the prosecution-charging standard, in that there is no reasonable likelihood of conviction against any or all of the subject officers. Accordingly, MPS will not recommend any charges against SO1, SO2 and/or SO3.

The IIU investigation is now complete and this file is closed.

**Final report prepared by:**

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