

FINAL REPORT: IIU concludes investigation into motor vehicle collision following police pursuit

On November 14, 2019, the Royal Canadian Mounted Police (RCMP) notified the Independent Investigation Unit of Manitoba (IIU) of an incident that had occurred that morning. The incident concerned an allegation that members of the RCMP pursued a suspect vehicle, which resulted in a single motor vehicle collision in which the two occupants sustained serious injuries.

The notification stated (in part):

On November 14, 2019, at 10:28 a.m., the RCMP received a report of a break-in in the RM of Headingly. The complainant reported that they were following the suspect vehicle.

Members attended, patrolled the area, and located the suspect vehicle. When the suspect vehicle saw police, it fled into a farmer's field. Police followed the vehicle into the field.

The suspect vehicle blew a tire, but continued to flee from police. The suspect vehicle then struck an embankment and crashed. Both occupants, a male and a female, fled the vehicle on foot but were quickly apprehended. Shortly thereafter, the male lost consciousness.

Both occupants were found to have injuries from the crash. The female is reported to have two broken arms and the male has an unknown head injury. The male was admitted to hospital.

As the allegations of broken arms and an admission to hospital are both serious injuries as defined by regulation and by operation of the Police Services Act (PSA), the IIU was required to investigate. The male occupant of the suspect vehicle was identified as affect person 1 (AP1), while the female occupant was identified as affected person 2 (AP2).

On November 14, IIU investigators attempted to meet with AP1 at the Health Science Centre (HSC), where he was under RCMP guard in the emergency department. AP1 appeared to be sleeping and did not respond to questions. On November 15, IIU investigators confirmed that AP1 was still a patient in the emergency department. On November 18, investigators learned that AP1 had been discharged and was now in custody at the Provincial Remand Center (PRC). On November 19, IIU investigators attended to PRC to meet with AP1, but he declined to speak with them at that time.

On February 6, 2020, IIU investigators were advised that on January 7, AP1 had contacted the RCMP's Civilian Review and Complaints Commission (CRCC) to file a complaint against the RCMP members. AP1 provided a hand-written statement to CRCC, writing in part:

"There was an alleged break and enter that happened. I was driving down the highway, when I seen two RCMP vehicles coming towards me a far ways ahead. So I turned into a

driveway and took the road going into the fields. The two RCMP vehicles followed. Then out of nowhere, I crashed into a dugout. Then I hopped out and started running and while I was running away, the RCMP officers started shooting at me. All together, the officer shot three times and the third shot hit me, it grazed the side of my head. That is when I went down and started going in and out of consciousness and I was handcuffed the whole time. My witness is AP2. I had no weapons at all. This all took place in Teulon 2019/Nov/14. I was running away from the RCMP. I also have a scar on the side of my head where I had three stitches. I went to HSC Hospital. AP1”

This was the first time IIU investigators were made aware of this allegation. The IIU is required to investigate all allegations of this nature as per the PSA.

Information obtained by IIU investigators included:

- officers’ notes and reports;
- Computer Aided Dispatch (CAD) reports;
- GPS data for RCMP cruiser vehicles;
- audio recordings between RCMP members and telecoms;
- Forensic Identification Service (FIS) report and photographs;
- the Traffic Collision Analyst report;
- a Facebook audio call recording;
- medical reports for AP1 and AP2; and
- a copy of complaint to the CRCC

Due to a lack of information about whether any or all RCMP members were directly or indirectly involved in the cause of the injuries to AP1 and AP2, or whether any or all of them discharged their service firearms, the civilian director designated three witness officers (WO1-3). A decision whether to designate any or all of them as subject officers was deferred until more information could be obtained through this investigation. IIU investigators also interviewed AP1, AP2 and two civilian witnesses (CW1-2).

Affected Persons:

AP1:

By June 2020, AP1 was now in custody at Milner Ridge Correctional Facility (MR). AP1 agreed to meet with IIU investigators. Due to the COVID-19 pandemic and consequent restrictions at MR, the interview could not take place in person. Accordingly, on June 10, IIU investigators were able to conduct an audio-recorded telephone interview with AP1.

AP1 stated as follows:

- There was an alleged break and enter and as he and AP2 were leaving the residence, he noticed they were being chased by a civilian in a truck. He observed the RCMP coming towards them and decided to drive onto someone’s property and through the fields. The RCMP followed them into a field, where he crashed into a dugout. He hopped out of the vehicle and started running away from the police, and an RCMP officer pulled out his

firearm and told him to stop. He kept running, and the RCMP officer started firing at him. He fell down, lost consciousness and woke up in the hospital. When he crashed into the dugout, he was wearing his seatbelt. He struck his head on the windshield, but was not cut or injured from this impact. He did not know whether AP2 hit her head or not. He said he RCMP “ripped” AP2 out of the vehicle, as she was unable to exit it by herself. The shooter was a male police officer, and he did not warn that he would shoot He was on the phone to his brother during the pursuit and his brother recorded the phone call, in which shots can be heard.**AP1 Medical Records:**

According to a review of HSC medical records, AP1 underwent a CT scan on November 14, which showed a punctate hemorrhage¹ and a diffuse axonal injury (DAI)². No other injuries (particularly evidence of a gunshot wound) were observed. AP1 self-reported that he was feeling fine and had no headaches. There was no evidence of injuries to the heart, thoracic region, abdomen or pelvis.

AP2:

AP2 stated as follows:

On November 14, she and AP1 were in a car on a highway in St. François Xavier when they encountered the police. Three RCMP cruiser cars were chasing them and had their emergency equipment activated. AP was driving, and at some point, he made a decision to leave the road and drive in a field. The RCMP continued to follow them. AP1 drove onto a “...*rough track in the field...then sped up as he approached a large ditch and drove head first into the ditch.*”

She estimated the entire pursuit lasted approximately ten minutes.

She further stated she was not wearing a seatbelt, and that when the airbags deployed she smashed her head on them. She believes that is when she broke her arm. After their vehicle crashed, AP1 exited the vehicle and ran away, but was apprehended within seconds. She heard an officer say that AP1 was unconscious She did not try to run. The police had their weapons out (she was not certain whether these were firearms or tasers) and ordered her to the ground. The police did not force her to the ground and did not lay hands on her. An ambulance arrived on scene and she was treated for her broken arm.

When asked if she heard any gunshots after the crash into the ditch, she said, “*Not that I recall.*”

AP2 Medical Records:

AP2 was admitted to HSC on November 14 and discharged on November 18. The following injuries were identified:

- Fracture to the upper right arm

¹ Punctate hemorrhage is a capillary hemorrhage into the skin that forms petechiae - round spots that appear on the skin as a result of bleeding. The bleeding causes the petechiae to appear red, brown or purple. Petechiae commonly appear in clusters and may look like a rash.

² DAI is diagnosed after a traumatic brain injury with GCS less than 8 for more than six consecutive hours. Radiographically, computed tomography (CT) head findings of small punctate hemorrhages to white matter tracts can indicate diffuse axonal injury in the setting of an appropriate clinical presentation.

- Fracture to the left arm

Surgery was required to repair the right arm fracture and a metal pin was inserted.

Civilian Witnesses:

CW1:

CW1 is a relation of AP1. She stated as follows:

On November 14, she received a telephone call from AP1's friend, CW2, advising that something had happened. CW2 electronically sent her a recording of a phone call that he had with AP1 at the time of his arrest. When listening to the recording, she could hear a repeating sound of a car horn, followed by what she believed to be the sounds of three gunshots. She went to HSC to visit AP1, and the RCMP told her that no shots were fired. AP1 never told her that he was shot or shot at when they spoke at the hospital. She no longer had a copy of the recorded telephone call.

CW2:

CW2 stated as follows:

On November 14, he received a "Facebook phone call" from AP1. He started to record this call after he heard the sound of a crash. He heard a female voice saying, "Don't leave me baby." He then heard what sounded like two gunshots and then an officer on the phone. The Facebook phone call originated from AP2's cellphone, but he was speaking with AP1. He received the call minutes before the crash. He could hear sirens in the background. Sometime later, he spoke with AP1 about the incident and asked if he had been shot. AP said, "I don't even know. I don't remember anything."

Witness Officers:

WO1:

WO1 states as follows:

He was dispatched to a call in the RM of St François Xavier and received information that suspects in a residential break and enter, where weapons may have been stolen, were driving in a grey truck, eastbound on highway 26 towards Winnipeg. WO2 and WO3 were also at the detachment office when this call was received. WO2, who at the time had two weeks of service, accompanied him. They were driving westbound on highway 1 to get to highway 26, when he noticed a grey truck in the vicinity. The grey truck made an abrupt left turn and drove through a yard. He radioed his observations and pursued the grey truck to attempt a road stop. The grey truck then entered a field and a tire came flying off the suspect vehicle. The grey truck kept driving and appeared to be travelling between 100 and a 120 k/ph. He received a direction from his supervisor to continue the pursuit as long as it did not interfere with the public or return to the public roadways. His vehicle closed the gap with the grey truck to within 50 to 70 feet, but was never close enough to contact the suspect vehicle with his police vehicle. The grey truck then hit a drainage ditch. As they pulled up to the grey truck, a male, later identified as AP1, exited out the driver's side and started running eastbound. A female, later identified as AP2, was standing at the passenger side.

He exited his police cruiser, ran through the ditch and ran after AP1. He had his service revolver drawn, told AP1 he was under arrest and told him to stop. AP1 stopped, turned around and got on the ground with his hands above his head. The foot chase was about 40 feet in length and he did not have to use any force to control AP1. He never had his service revolver pointed at AP1 - the muzzle was pointed at the ground and his finger was on the frame. He did not discharge his firearm because there was no reason for him to do so. He did not hear any type of firearm discharge or sounds while he was on scene.

He placed AP1 under arrest and handcuffed him. Then, AP1 lost consciousness. He looked back at the grey truck and noted that the driver side windshield showed damage, leading him to believe that AP1 had contact with it. He was concerned that AP1 sustained a head injury, and received medical instructions over the radio to maintain a lookout for AP1's wellbeing while awaiting EMS response. AP1 was subsequently transported to HSC.

WO2:

WO2 was with WO1 when they were pursuing the grey truck. WO2 states as follows:

Their police vehicle did not make contact with the suspect vehicle at any time. The suspect vehicle crashed into a ditch. Subsequently, she saw two people within the vehicle open the doors and exit. The driver, later identified as AP1, ran away. WO1 ran after AP1.

She drew her service revolver and told the passenger, later identified as AP2, to keep her hands where they could be seen. She did not use any force to control AP2. Her service revolver was not pointed at AP2. She did not discharge her firearm. She could not remember if WO1 had drawn his service revolver, but did recall seeing AP1 on the ground and WO1 handcuffing him. She did not hear anything that sounded like a gunshot while on scene.

WO3:

WO3 was the driver and sole occupant of a second police cruiser that was pursuing the grey truck. WO3 states as follows:

He was trailing WO1 during the pursuit. Neither police cruiser had contact with the grey truck. After the grey truck turned into a field, he had issues with his police cruiser and could not keep up with the pursuit. Eventually, WO3 made it to the scene of the crash and observed WO1 running after a male, later identified as AP1. He saw WO2 with a female, later identified as AP2. He was about to draw his service revolver, but re-holstered it when he saw AP2 secured and on the ground. He assisted WO2, but before he could apply handcuffs, he realized that AP2 was injured. There was no reason for the officers to discharge their firearm as both AP1 and AP2 were on the ground and obeyed the commands they were given. Neither WO1 nor WO2 reported that they discharged their firearms at the scene. If any officer had discharged their firearm, he would have seen and heard it, which he did not.

FIS Report, Collision Analyst Report, RCMP Vehicle Pursuit Policy:

A series of 19 photographs were taken of the suspect vehicle occupied by AP1 and AP2. Both air bags had deployed inside the suspect vehicle. There are two large dents on the windshield, consistent with both the driver and front seat passenger hitting their heads on it. The driver side shows blood and hair in the broken glass. Photographs of AP1, taken at HSC, show that he has a small cut to his right eyebrow, a significant cut to his right temple above his ear and blood

pooled in his right ear. Photographs of AP2, taken at HSC, show she has a small cut above her left eye, blood on her nose and a small cut to her chin.

The Collision Analysts Report notes that the grey truck travelled approximately 1.5 kilometres in a field from Two Mile Road. That vehicle was travelling at 77 kph approximately five seconds before the crash occurred and at 51 kph at the point of impact in an irrigation ditch. The accelerator pedal was depressed at 100 per cent, at approximately four seconds before impact and at 99.5 per cent at 1/2 seconds before impact. The Airbag Control Module (ACM) indicated that neither occupant was wearing a seat belt at the time of impact.

RCMP vehicle pursuit policy was not breached by any of the RCMP members involved in this matter.

Audio analysis and whether any gunshots were fired:

As referenced, on January 7, 2020, AP1 filed a written complaint with the RCMP's CRCC, alleging that police officers had fired their guns at him as he ran away from the vehicle collision. AP1 had written that one of the gunshot rounds grazed his head and that he collapsed unconscious. A 44-second recording of a phone call made by AP1, via Facebook shortly after the crash was provided to IIU investigators by CW2. This is a video recording showing another cellphone used to record the audio of the crash and aftermath.

Several distinct sounds are heard in this recording:

- A police radio with transmissions
- A car horn sounding intermittently throughout the recording
- A clicking noise consistent with a turn signal
- Three loud bangs that resemble gunshots sounds

Furthermore, on the video recording, a male is seen holding a cellphone that is playing the audio of the Facebook call. When the first two loud bangs, resembling gunshots, are heard, the male's head turns suddenly to the left and away from the phone that is held. It appears that this male is reacting to the loud bang by turning towards the sound.

- At 14 seconds into this recording, a loud bang, similar to a gunshot, is heard.
- At 25 seconds, a male voice is heard asking "201, Just to Confirm is EMS rolling"
- At 26 seconds, a second loud bang is heard.
- At 39 seconds, a third and more faint loud bang is heard.

The RCMP provided 63 separate audio recordings of the incident, from the beginning of the pursuit to the point when AP1 and AP2 are transported to hospital. The first RCMP recording is time stamped at 10:28:57 a.m. and the last is time stamped at 1:15:30 p.m.

The following is a breakdown of three critical recordings:

RCMP recording at 10 38 08 a.m.:

- At 10:41:23 a.m., the suspect vehicle is reported crashed by WO1 at the scene.
- At 10:42:38 a.m., both occupants of the stolen vehicle are reported in custody by WO3 at the scene.

RCMP recording at 10 46 39 a.m.:

- At 10:47:04 a.m., WO1 is heard saying “*Break break break, 201- I need STARS rolling now, I have one male out of consciousness and loosing breaths.*”

RCMP recording at 10 47 21 a.m.:

- At 10:47:50, an RCMP supervisor asks, “*201, Just to confirm is EMS rolling.*”
- The RCMP supervisor is not yet at the scene of the crash, travelling from Winnipeg.

Analysis and comparisons:

- The crash of the suspect vehicle is reported at 10:41:23 a.m.;
- Both AP1 and AP2 are reported in custody at 10:42:38 a.m.;
- The RCMP supervisor (on route to the scene) asks to confirm if EMS is attending at 10:47:50 a.m.;
- Using the RCMP supervisor’s question concerning EMS as a benchmark, each of the three loud bang sounds are heard at 10:47:39 a.m., 10:47:51 a.m., and 10:48:04 a.m. respectively;
- In his complaint to the Civilian Review and Complaints Commission, AP1 states that he was hit by the third shot fired. According to the time line above, that third shot would have been fired **5 minutes and 42 seconds** (my emphasis) after WO3 voiced that AP1 and AP2 were in custody.
- At 10:47:04 a.m., AP1 was reported in custody, in distress and unconscious. The first loud bang was heard 35 seconds later;
- Not a single sound resembling gunshots, loud bangs or a car horn or alarm are heard on any of the sixty three RCMP radio transmissions;

The Facebook audio/video recording provided by CW2 was taken to an independent audio production agency to determine if it had been manipulated (if the loud bangs were added later). A senior engineer of this agency examined the recording. However, due to the poor quality of the recording, he could not determine if the recording was manipulated.

Conclusion:

Following the completion and review of this investigation, the following conclusions can be made:

1. All RCMP members involved in this incident were lawfully placed and acting within their lawful authorities as police officers;
2. AP1, the driver of the grey truck (suspect vehicle), bears sole responsibility for its crash, given the manner of driving, location and speed. AP1 bears sole responsibility for the injuries sustained to both himself and AP2;
3. I am not satisfied that there is any factual support to the allegation that any RCMP member discharged a service revolver. I am not satisfied that a bullet grazed AP1 just before he was apprehended and placed under arrest. I reach both those conclusions on the following grounds:
 - a. AP1 makes no complaint nor any statement regarding the discharge of a firearm during his pursuit while at HSC to CW1, or at a later date to CW2;

- b. AP1 was physically examined at HSC and there were no findings of any injuries consistent with a grazing gunshot wound on his person;
- c. No RCMP member at the scene reported a discharge of their service revolver or any other firearm;
- d. The RCMP recordings were disclosed to and received by IIU investigators months before AP1 filed his complaint with CRCC;
- e. There are discrepancies between the RCMP audio recordings and the Facebook call recording - in that neither the loud bangs or car horn that are present on the Facebook call are not heard on any RCMP recording. Audio of the supervisor's message are heard on both sets of recordings. Furthermore, the timing of the loud bangs and the arrest of AP1 and AP2 are not in accord. The respective timelines do not match. These sounds are unique to the CW2 recording.

In my opinion, the bangs and car horn sounds heard on the Facebook call recording are consistent with external sounds to CW2's location and captured during the recording of the call with AP1. They are not associated with anything or matter occurring at the crash scene.

Based on the foregoing, I am not satisfied that any action by any police officer caused or contributed to the cause of AP1 or AP2's injuries in any degree. I am not satisfied that any evidence exists to confirm or corroborate that any police officer discharged their service revolver or any firearm during all interactions with AP1 or AP2. There is no evidentiary or factual support to justify the designation of any police officer as a subject officer.

Accordingly, this matter is concluded and the investigation is closed.

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

Final report prepared by:

Zane Tessler, civilian director
Independent Investigation Unit
October 15, 2020

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