

FINAL REPORT: IIU concludes investigation into serious injury during arrest

On November 25, 2019, the Royal Canadian Mounted Police (RCMP) notified the Independent Investigation Unit of Manitoba (IIU) of an incident where a male suspect sustained a serious injury during the course of his arrest.

According to an excerpt of his notification:

On November 23, 2019 at 4:54 a.m., Fisher Branch RCMP attended to a report of a fight in progress at the Percy Moore Hospital (PMH). It was reported that a male, later identified as the affected person (AP), was fighting with his girlfriend and then left, impaired, driving in a Ford Explorer. Police located AP and arrested him for impaired operation and assault. During his arrest, he was resistant/assaultive towards police.

At the RCMP detachment, during the breath test process, AP was provided the opportunity to use the bathroom, however supervised by police. AP continued to show combative/assaultive behaviours at this time and then pushed an officer, later identified as the subject officer (SO).

AP was advised that he was now under arrest for assaulting a police officer and to go down to the ground. AP did not comply and was pushed into the corner of the cell by SO who then delivered one knee strike to the abdominal area, making connection with AP's groin.

Police then left the cell without further incident. As police continued to check on AP, he swore at police and told them to come back into the cell and fight him.

At 10:54 a.m., AP advised police that he did not feel well and was brought to the PMH. He was found to have swelling in the groin area. AP was subsequently released from police custody and was transported via ambulance to Selkirk for a CT scan and subsequently to the Winnipeg Health Sciences Centre (HSC) where he was admitted to the hospital.

As the allegations in the notification concern internal injuries that resulted in an in-patient hospitalization, pursuant to the provisions of The Police Services Act (PSA), this is deemed a serious injury for which IIU is mandated to initiate an independent investigation. IIU investigators were assigned to this investigation.

Information obtained by IIU investigators included:

- officers' notes and reports;
- occurrence summary;
- cell surveillance videos;

- medical report concerning AP;
- RCMP policy on use of force and knee strikes;
- expert report on use of force

As noted above, the civilian director designated the involved RCMP member as SO. Pursuant to the provisions of the PSA, a subject officer cannot be compelled to provide his or her notes regarding an incident, nor participate in any interview with IIU investigators. In this case, SO provided his notes and a prepared statement but did not agree to participate in an interview with IIU investigators. In addition, the civilian director designated three other RCMP members as witness officers (WO1-3). IIU investigators met with and interviewed AP. IIU investigators also received and reviewed a video recording of the cell location where SO delivered his knee strike.

Affected Person:

Despite all efforts, IIU investigators either could not locate AP, nor when contact was made, did he not keep or attend appointments until approximately 10 months after the notification was originally received.

AP confirmed that he was drinking that night and was arrested by RCMP after his ex-girlfriend had contacted them. AP stated he was taken to Fisher Branch RCMP Detachment. AP stated that while in cells, he wanted to use the washroom and wanted some privacy. AP stated that he was told that he could not have privacy. AP stated that the officer then accused him of assaulting a police officer. AP described an altercation occurring with the officer in the cell. AP stated that he thought the officer was going to land a right hook and hit him. AP stated that he then received a knee to his testicular area, went to the ground and was in pain. AP stated that only one officer was involved in this altercation. AP stated that he had an aggressive attitude but he was not physically violent towards the officer. AP stated that he put his hand out but did not touch the officer.

AP's Medical Report:

On November 23, AP was brought to PMH for treatment. From PMH, he was transferred to Selkirk Regional Hospital and subsequently to HSC. AP was admitted to HSC on November 23 with a right testicular rupture. AP was taken to an operating theatre for a scrotal exploration. It became apparent that the right testicle was beyond repair and the surgeon proceeded with an orchiectomy (removal of a testicle). AP was discharged from HSC the following day.

Witness Officers:

WO1 is a breathalyzer technician and was called in to work to conduct a breath test on AP. WO1 recalled that AP, "...was pissed off, angry" and that his anger was focused toward SO. WO1 stated that AP had to urinate and was escorted to a cell where the urinal was located. WO1 stated that AP and SO were continually talking back and forth to each other. WO1 stated that he could not see inside the cell but he heard the sounds of a scuffle as, "...someone hitting somebody" and then heard SO tell AP that he was under arrest for assault PO or assault police officer. WO1 stated that he entered the cell and saw SO, "...deploy a knee strike to the mid-region of [AP]". AP fell to the ground where officers took control of him.

WO2 detailed how she and SO had arrested AP on an allegation of assault and impaired operation of a motor vehicle. AP was transported to the Fisher Branch RCMP detachment. No

force was employed on AP during the course of his arrest. While AP agreed to provide a sample of his breath for the purpose of analysis, he stated to SO, *“this is going to be a shit day for you”* and that, *“it means what it means...you’ll see”*. WO2 stated that AP was rubbing his clenched fists with alternate hands and, *“...his anger was boiling”*. AP had to use the washroom and was escorted to another cell for that purpose. WO2 stated that SO continuously watched AP to maintain observations prior to the breath test and had not been searched yet. WO2 stated that AP made it clear that he did not want to be watched and walked towards SO as if he was going to leave the cell and, *“... ended up pushing SO on the arm”*. SO pushed back and told AP that he was under arrest for assaulting a police officer to which AP responded, *“no, you can’t do this”*. WO2 stated that she and SO tried to take AP to the ground but he was flailing. WO2 stated that SO delivered a knee to AP causing him to fall to the ground.

WO3 was working the dayshift and arrived at the Fisher Branch RCMP detachment at 8:00 a.m. AP was already present at the detachment and was seated in the *“telephone room”* while other officers were outside of it. WO3 stated that she was briefed by SO and WO2 regarding the circumstances of AP’s arrest. WO3 stated that she went to the lockers to change for her shift when she heard, *“...a disruption coming from the cell bay”*. WO3 stated that she attended the cell area and saw AP face down on the floor with SO, WO1 and WO2 holding him down.

Subject Officer

As previously stated, a subject officer cannot be compelled to provide his or her notes regarding an incident, nor participate in any interview with IIU investigators. In this case, SO provided his notes and a prepared statement, but did not agree to participate in an interview with IIU investigators.

SO’s notes and six page statement were reviewed. SO details his interaction with AP and notes that the initial arrest was without incident. Once at the Fisher Branch RCMP detachment, SO notes that AP was escorted to the, *“...phone/breath room”* where he was allowed to contact his legal counsel in private. After the phone call, AP was described as now uncooperative and saying to SO, *“...It’s going to be a shit day for you”*. SO noted he asked AP if he was threatening him to which AP replied, *“...It means what it means...You’ll see”*. SO noted that AP’s fists were clenched and he appeared angry. AP told SO that he had to *“pee”* and if he did not take him to the washroom, he would, *“...piss on the chair and floor”*. SO wrote that he escorted AP to Cell two, to use the washroom. SO wrote that he maintained continuous visual contact of AP, standing in the cell doorway. SO wrote that he did this as AP was to undergo a breathalyzer test and it was necessary to ensure he did not ingest anything prior to this test. SO wrote that AP was vocal about being watched while he was urinating. SO wrote that AP walked towards him to which SO,

“...gave [AP] a light push on the shoulder to keep him in the cell and told him to go pee...To the best of my recollection, [AP] came back towards the door and pushed me with his left hand hitting my upper right arm”.

SO wrote that he advised AP that he was now under arrest for assaulting a police officer and ordered him to the ground as he, *“...pushed him back into the cell to create time and distance between”* himself and AP. SO noted that he ordered AP to get on the ground several times but he did not comply. SO reported that he decided to take control of AP to prevent further aggressive behavior and attacks on himself or the other police officers. SO reported that he,

“...made a split-second decision to knee [AP] in the stomach and use that force to bring him down”. SO reported that he had no intention of kneeling AP in the groin and that he was not aware that he actually struck the groin until later.

Cell Video Review and Analysis:

IIU Investigators reviewed the cell video footage which showed the interaction between police and AP. The video is not smooth flowing and is choppy, not showing every moment of interaction between AP and police. There are two separated videos; one is the entirety of the time that AP was in cells, including the altercation with police, and concludes after he is escorted from the cells. The video commences at 7:45 a.m. and concludes at 11:15 a.m. The second video is shorter and commences shortly before the altercation and ends shortly after the altercation. The videos are recorded at one frame per second. There is no sound recorded on either video.

The longer video depicts the following key events:

8:20:58 a.m. AP is escorted into cell two – two officers are standing outside an open door - AP stands at urinal

8:21:18 a.m. AP walks towards SO who is standing in doorway - SO pushes AP away and back into cell - AP approaches SO again - SO pushes AP against a wall and is pointing to the floor - AP remains standing and faces SO who takes hold of AP’s right hand - AP reaches toward SO’s neck and arm area

8:21:30 a.m. SO appears to knee AP in the groin - AP goes to the ground and officers secure him

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 SO. During this review, the assigned Crown Prosecutor requested that an expert opinion on use of force by police be obtained and provided to that office. An expert was engaged, a report was prepared and it was forwarded to Manitoba Prosecution Service to be incorporated into the IIU investigative file.

Following the review of the IIU investigative file and other material, MPS provided a written opinion, in which it was stated:

“Manitoba Prosecution Service (MPS) has reviewed the IIU investigation of [SO]. While it is always in the public interest to hold police officers accountable, there must also be a reasonable likelihood of conviction for MPS to prosecute a matter. In this case, after considering all of the evidence and expert opinion, MPS has concluded that there is no basis for any criminal charge to be laid against [SO]. When MPS is consulted for charge authorization in any criminal matter, we employ the same standard for proceeding with criminal charges.”

Accordingly, MPS will not authorize any criminal code charges against SO as there is no reasonable likelihood of conviction in this matter.

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

Final report prepared by:

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