

FINAL REPORT: IIU concludes investigation into death following arrest by RCMP officers

On December 30, 2019, the Royal Canadian Mounted Police (RCMP) notified the IIU that a male subject (later identified as the Affected Person (AP)), who was detained under the Mental Health Act, became unresponsive and was in medical distress following his transport to the Selkirk RCMP detachment. Attempts to revive AP were unsuccessful and he was pronounced deceased at 3:00 a.m.

The salient portion of this notification read, in part:

On December 30, 2019 at 1:35 a.m., Selkirk RCMP responded to a call from AP advising that two unknown persons were in his residence and were shooting arrows at his residence. He further reported that he had been poisoned by needles in the floor.

RCMP members attended and determined the complaint to be unfounded, finding AP to be intoxicated on cocaine, hysterical, rambling and not making sense. AP was arrested under the Mental Health Act (MHA) without incident.

AP was transported to the Selkirk RCMP detachment. Once in the detachment Secure Bay, police opened the vehicle door to find AP unresponsive and in medical distress.

EMS and shift supervisor were contacted. CPR was initiated however attempts to revive AP were unsuccessful and he was pronounced deceased at 3:00 a.m.

As this matter concerns the death of a person, which may have resulted from the actions of a police officer(s), IIU assumed responsibility for this mandatory investigation in accordance with section 65 of The Police Services Act (PSA). A team of IIU investigators was assigned to this investigation.

Further, in accordance with section 70(1) of the PSA, the IIU was required to seek the appointment of a civilian monitor as this matter involved the death of a person. IIU requested the Manitoba Police Commission to appoint a civilian monitor.

RCMP and other information obtained by IIU investigators, included:

- RCMP officers' notes and narrative reports
- RCMP in custody death report
- RCMP public safety report
- Occurrence summary
- Forensic Identification Service report
- CEW data downloads
- 911 call audio recordings
- Cell bay video at RCMP Selkirk Detachment
- Autopsy, pathology and toxicology reports respecting AP

Following the review of the agency information, three RCMP officers were designated as witness officers (WO1-WO3). Due to the dearth of information as to the cause of death at the outset of this investigation, it was decided that no subject officer designation would be made at this time, pending the receipt of more detailed forensic pathology reports respecting this issue. IIU investigators were able to identify and interview two civilian witnesses (CW1-2).

Facts and Circumstances

Civilian Witnesses:

CW1 is AP's son. CW1 received a telephone call from AP at 12:30 a.m. CW1 states that AP was yelling unintelligibly, and sounded like he was in distress. CW1 states that he has received similar calls from AP in the past, and that these calls were usually related to cocaine binging. CW1 states that he drove out to AP's residence at approximately 2:30 a.m. and saw two RCMP officers placing AP into the back of a police vehicle. Once the police vehicle door was shut, AP began to yell and kick the windows. CW1 did not see either RCMP officer deliver any physical strikes to AP.

CW2 was AP's next-door neighbour. CW2 states that he heard the sound of an intermittent alarm coming from a truck parked in AP's driveway between 1:00 a.m. and 2:30 a.m. CW2 states that he observed two police officers arriving at AP's residence at approximately 2:00 a.m. CW2 did not see AP at any time.

Witness Officers

WO1 was the acting supervisor at RCMP Selkirk detachment during the overnight hours of December 30, and was called back to the cell bay to assist WO2 and WO3 in lodging AP, described as a larger man, reported to be intoxicated and was unwilling to walk. Upon arrival at the detachment, WO1 was briefed on the circumstances of the detention and then attempted to remove AP from the back of the police vehicle. AP was found to be unresponsive at that time. AP was pulled from the vehicle by WO2, who commenced CPR and chest compressions, assisted shortly thereafter by WO3.

WO2 states that he and his partner, WO3, attended AP's residence in response to a call for service. AP had reported that people were shooting arrows at his house. Upon arrival, WO2 noted a car alarm was going off on one of the vehicles parked in the driveway. WO2 also noted that fresh snowfall around the building did not show any sign of footprints going into or out of the residence. WO2 states that they approached the house and were able to look through a window. WO2 states he saw a lone male, later identified as AP, in a bedroom. AP appeared distraught, and could be heard yelling for assistance. WO2 states that he tried to communicate with AP through the window without success. WO2 states that he went to the front door of the home and forced entry inside. WO2 states he went to the bedroom where AP was observed and found it locked and barricaded. WO2 attempted to communicate with AP without success and forced open the bedroom door. Once inside the bedroom, WO2 states that AP cooperated with his verbal commands. AP did state that there were needles coming out of the floor. WO2 states that he and WO3 dragged AP out of the bedroom and into the living room. Based on his observations, WO2 states that AP was arrested pursuant to the Mental Health Act, was handcuffed and escorted outside to the police vehicle. WO2 states that AP claimed that his legs

were not working and slumped down. WO2 states that he lifted AP into the backseat but once inside AP began to kick at the windows. At this time, CW1 arrived at the house. Both officers showed CW1 the damage done to the house. WO2 states they then departed the scene and drove to the RCMP Selkirk detachment. Upon arrival in the secure parking bay of the detachment, WO2 opened the rear door of the police vehicle and found an unresponsive AP. WO2 states he removed AP from the back seat and commenced chest compressions, until relieved by attending paramedics a short time later. WO2 states that he was aware that he broke several of AP's ribs while performing CPR.

WO3 states that he and WO2 attended a disturbance call at the AP's residence, arriving to find a lone male in a bedroom of the home calling out for assistance. WO3 states that he kicked in the front door of the residence to gain access inside, when the officers found themselves facing a barricaded bedroom door. WO3 states that he could hear smashing glass inside the bedroom, and he drew his Conducted Energy Weapon (CEW) while WO2 forced entry into the room. Once inside the bedroom, WO3 used the light from the CEW to illuminate the room and he could see a lone male inside. The male, later identified as AP, was ordered to show his hands. When AP complied, WO3 holstered the CEW. AP asked the officers to get him out of the room, but added that his legs were not working, so WO3 and WO2 dragged him out and into the living room. AP was arrested under the Mental Health Act and handcuffed. AP stated that his heart was racing and requested water. He was given water by WO3 and escorted to the police vehicle, where he laid down in the back seat. WO3 states that CW1 arrived on scene and told officers that AP used cocaine and that was why he was acting strangely. At the same time, AP began to kick the door and window of the police vehicle. CW1 called out to AP telling him to calm down. WO3 states the officers showed CW1 the damages done to the house during the arrest. WO3 states they departed with AP and drove back to RCMP Selkirk detachment. On arrival, AP was found to be unresponsive and CPR was commenced.

Pathology, autopsy and toxicology reports

A post mortem examination of AP was conducted on December 31. An immediate cause of death was not identified, pending toxicology results. Broken ribs and abrasions of the liver were noted during the examination, but the pathologist speculated this might have been the result of CPR being performed on AP. On July 24, 2020, IIU investigators received an autopsy report from the Office of the Chief Medical Examiner, in which cause of death was listed as "*Toxic effects of cocaine*", with a contributing factor of an enlarged heart (cardiomegaly).

The attending pathologist wrote the following:

The findings of bilateral rib fractures and superficial lacerations of the liver and spleen associated with scant hemoperitoneum¹ are most likely secondary to cardiopulmonary resuscitation; however, trauma cannot be entirely excluded. There are no overlying cutaneous contusions of the trunk to suggest a traumatic cause.

Given the history of hallucinations and agitation in the context of cocaine intoxication, the possibility of excited (agitated) delirium is noted. The concentrations of cocaine and

¹ presence of blood in the peritoneal cavity

*benzoylecgonine² detected in the decedent's post-mortem blood are quantified within established **toxic to lethal ranges** (emphasis added); therefore, death is attributed to cocaine toxicity with a contributing factor of cardiomegaly³. In cases of excited (agitated) delirium, the concentrations of stimulant drugs (when detected) are usually insufficient to explain death. As such, the diagnosis of excited (agitated) delirium is not appropriate for this case, although there is evidence of cocaine-induced psychosis.*

Conductive Energy Weapon Download

IIU investigators requested downloads of the CEW'S assigned to WO2 and WO3 as evidence gathered showed that WO3 had drawn his during his initial interaction with AP. Conducted Energy Weapons (CEW) carried by both officers were downloaded at the request of IIU investigators. Neither CEW showed that it had been discharged on December 30.

Conclusion

This investigation must consider whether the actions of any or all of the police officers who responded to the call for service caused, or in any way contributed, to the death of AP.

I am satisfied that based on the circumstances of AP's mental condition as described, that at all material times, the attending RCMP officers were operating under the authority of the MHA, in particular, sections 12(1) and 12(2), which states:

12 (1) A peace officer may take a person into custody and then promptly to a place to be examined involuntarily by a physician if

(a) the peace officer believes on reasonable grounds that the person

(i) has threatened or attempted to cause bodily harm to himself or herself,

(ii) has behaved violently towards another person or caused another person to fear bodily harm from him or her, or

(iii) has shown a lack of competence to care for himself or herself;

(b) the peace officer is of the opinion that the person is apparently suffering from a mental disorder of a nature that will likely result in serious harm to the person or to another person, or in the person's substantial mental or physical deterioration; and

(c) the urgency of the situation does not allow for an order for an examination under section 11.

12(2) A peace officer may take any reasonable measures when acting under this section or section 9 or 11 or subsection 44(1) or 48(2), including entering any premises to take the person into custody.

I am satisfied that police have the right to enter a residence and to take an individual into custody, pursuant to the powers conferred on them under the MHA (see *R. v. Tereck, (2008) 228 Man.R. (2d) 260 (CA)*).

² The corresponding carboxylic acid of cocaine, its methyl ester. It is formed in the liver by the metabolism of cocaine, catalysed by carboxylesterases, and subsequently excreted in the urine

³ An enlarged heart

I am satisfied that the attending RCMP officers were in the lawful execution of their duties, in accordance with the powers conferred pursuant to the MHA, during the time they were in the residence. I am satisfied they had sufficient information, considered both objectively and subjectively, available to them to satisfy that appropriate grounds existed to proceed under the MHA in dealing with AP that night. I am satisfied there were sufficient grounds to arrest AP under the MHA.

In this matter, a forensic pathologist examined AP post mortem and determined that AP's death was a result of cocaine toxicity with a contributing factor of cardiomegaly. While rib fractures and superficial lacerations of the liver and spleen were noted and while the pathologist could not entirely exclude trauma, the likely cause of those injuries was consistent with CPR performed on AP at the detachment. I am satisfied that the life saving efforts using CPR was not the cause of death and certainly was a reasonable use of force in these circumstances.

Based on all of the available information, I am satisfied that no actions by any police officer caused or contributed to the cause of AP's death in any degree.

In conclusion, there is no evidence that would justify the designation of any of the police officers as subject officers and there is no further requirement to continue with this investigation.

Accordingly, this matter is now closed.

Final report prepared by:

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

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