



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

FINAL REPORT OF THE CIVILIAN DIRECTOR
OF THE INDEPENDENT INVESTIGATION UNIT

Acting Civilian Director:	Bruce M. Sychuk
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Introduction

On May 28, 2023, the Brandon Police Service (BPS) notified the Independent Investigation Unit of Manitoba (IIU) of an incident.

The written notification disclosed the following information:

Excerpt from the Part 7 notification received from BPS on May 28, 2023:

May 27, 2023, SO1 and WO1 were attending a domestic assault call in Brandon. AP and CW1 indicated they had been arguing, no assault was disclosed. AP was on a release order that allowed BPS to search his residence as a result of pending drug charges. When BPS told AP and CW1 that they intended to search the residence, AP and CW1 started to act out and become obstructive. It continued to the point both were arrested for obstruction. A scuffle ensued with AP refusing to give his arms for cuffing and a ground struggle occurred. Eventually AP was handcuffed. While escorting AP out of the residence, he broke free and ran. While trying to take AP back into custody, AP continued to struggle and SO1 delivered two strikes to his face to gain compliance. SO1's strikes to AP's face knocked a tooth out.

The affected person (AP) was lodged after medical clearance. Photos of AP's injury were taken by SO1.

Given the nature of the injury, the IIU civilian director was notified and requested a Part 7 notification be provided.

As this matter concerned an injury to an AP while in the custody of an officer, the IIU assumed responsibility for this investigation in accordance with Sec. 75(1) of The Police Services Act. IIU investigators were assigned to this investigation.

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

- notes and narratives of BPS officers
- injury and scene photos
- video surveillance
- 911 call
- use-of-force report

The civilian director designated one subject officer (SO1) and three witness officers (WO1 to WO3). The IIU interviewed one civilian witness (CW1) in relation to the incident.

Facts and Circumstances

Scene Examination

IIU attended the scene and were able to take photos in relation to the matter as well as obtain video surveillance from nearby businesses. BPS also provided scene and injury photos taken at the time of the incident.

Summary of Interviews

Affected Person (AP)

IIU interviewed AP on May 30, 2023 and were provided the following information:

AP confirmed that he and CW1 were arguing in the residence prior to the incident. AP did not know why BPS attended to the residence, but he assumes it was due to a noise complaint.

AP stated that six or seven BPS officers entered the residence to ensure compliance with his release order. AP confirmed that the release order did allow for BPS to enter the residence for that purpose.

AP stated that when BPS first came to the door of the residence, they informed AP that he was under arrest and that they were going to complete a compliance check in relation to the release order. AP asked BPS if he could sit on the couch while they searched his residence and was advised that he would be taken to a police vehicle.

AP stated at this point BPS roughed him up and called CW1 derogatory names. AP confirms that he was handcuffed by BPS in the residence and taken outside. While in the process of being taken down a ramp by the officers, AP states that he stumbled or tripped and was then punched in the face and kned in the ribs by the officers.

AP stated that as a result of getting punched in the face, he received a black eye, a broken tooth and broken glasses.

AP confirmed that he was taken to the Brandon Regional Health Centre by BPS officers for medical clearance.

Civilian Witness 1 (CW1)

IIU interviewed CW1 on June 8, 2023 and were advised of the following:

CW1 confirmed that she was arguing with AP prior to the incident. CW1 also confirmed that BPS came to the residence; however, CW1 stated that the officers pushed their way into the residence and started to look in the cupboards. CW1 was then taken out of the residence by an officer and asked if she was okay, to which she responded that she was.

CW1 stated that two more officers went into the residence and that they started pushing AP and patting down his body. One of the officers went towards a room where CW1's pet lizard stayed in. CW1 advised the officer that the pet lizard stayed in that room, so the officer went into the bathroom area instead.

CW1 stated that she asked the officer why they were going into the bathroom at which point she was thrown against the wall and arrested. CW1 stated at the same time, AP was taken to the ground and she observed AP being kned or struck in the face area by the officers. CW1 stated that AP was saying that he was not resisting and was handcuffed shortly thereafter. CW1 observed the officers taking AP to the floor, where they continue to strike him and kick him in the stomach. CW1 stated that she vomited on the floor as a result of witnessing this.

CW1 stated that she was then taken out of the residence and placed in a police vehicle. CW1 stated that AP was then brought out of the residence and that his face was all bloody.

CW1 stated that as AP was being taken down the ramp by officers, they took him around the corner and when he came back, AP's face was totally covered in blood.

Upon further questioning by IIU investigators, CW1 stated that the officers kicked AP while handcuffed and that she was not made aware by the officers of their ability to search the residence in accordance with AP's release order.

CW1 denied that AP was trying to escape from the officers and was instead taken around the corner by the officers.

Witness Officers

Witness Officer 1 (WO1)

IIU interviewed WO1 on Aug. 8, 2023 and were advised of the following:

WO1 attended to a domestic disturbance call where SO1 and WO3 had already arrived. WO1 could hear arguing from inside the residence. Officers knocked on the residence and CW1 answered the door. CW1 confirmed that there was an argument but said that nothing physical occurred.

WO1 confirmed that he was aware that AP was subject to a release order that allowed the residence to be searched. WO1 and the rest of the officers decided they would search AP's residence once the domestic issue was resolved.

WO1 stated that AP became belligerent with the officers after coming out of the bathroom. WO1 further stated that both AP and CW1 became belligerent with officers after being advised of the intent to search the residence. WO1 was dealing with CW1 but observed AP resisting SO1 and WO3 attempting to place handcuffs on AP. WO1 went over to assist SO1 and WO3 in handcuffing AP. WO1 stated that no strikes or pressure points were administered to AP during the handcuffing. WO1 stated that the officers only forced AP's hands behind his back as AP had been keeping his hands beneath him.

WO1 and SO1 proceeded to escort AP out of the residence. WO1 was utilizing an arm lock on AP from one side and SO1 was holding onto AP's other arm while escorting him down the

residence ramp. AP leaned back into WO1 and SO1 and was able to break free from their grasp. AP ran down the ramp and turned right at the bottom. WO1 was able to grab hold of AP at the bottom of the ramp; however, AP was dragging him. SO1 caught up to AP at this point and punched him twice in the face, knocking out AP's tooth. AP immediately went to ground at this point, allowing WO1, WO3 and SO1 to escort AP into a police vehicle.

WO2 was assigned to watch AP and CW1 while the other officers completed a search of the residence. Upon completion, SO1 and WO3 took AP to the hospital.

Witness Officer 2 (WO2)

IIU interviewed WO2 on Aug. 8, 2023, and were provided the following information:

WO2 was the last officer to arrive to the incident. WO2 was in the process of bringing out CW1 when WO2 arrived. WO2 noted that CW1 was belligerent and yelling at this point. WO2 was assisting WO3 in placing CW1 into the police vehicle when WO2 heard a commotion behind him.

WO2 observed SO1 and WO1 on the ground with the AP. WO2 went over to assist the other officers in getting AP to his feet and into a police vehicle.

WO2 did not witness any strikes by any officer during his time on scene.

WO2 confirmed that he was tasked with watching AP and CW1 in the police vehicles. WO2 also confirmed taking AP to the hospital with SO1.

Witness Officer 3 (WO3)

IIU interviewed WO3 on Aug. 8, 2023, and were provided the following information:

WO3 was partnered with SO1 on the day of the incident. WO3 confirmed they had attended the residence due to a domestic disturbance call. WO3 confirmed that CW1 answered the door and that the officers were informed by CW1 that the parties were arguing but that nothing physical occurred.

WO3 confirmed that the officers were aware of AP's release order and decided to search the residence for compliance upon completion of the domestic investigation. WO3 stated that AP and CW1 were advised of the officers' decision to search the residence at which point both become belligerent. WO3 placed CW1 under arrest for obstruction, handcuffed her and placed her on a kitchen chair inside the residence.

WO1 and SO1 were attempting to handcuff AP at this point; however, he was resisting by not providing his arms to the officers. WO3 assisted the officers by tripping AP to the ground allowing SO1 and WO1 to handcuff AP.

WO3 then escorted CW1 to the police vehicle while SO1 and WO1 escorted AP out of the residence. While WO3 was placing CW1 in the police vehicle, he heard a struggle behind him. WO3 observed WO1 and SO1 on the ground with AP. WO3 went over to assist SO1 and WO1

with AP by holding down his legs as AP was kicking them. WO3 did not observe any other additional use of force.

When AP was back on his feet, WO3 noticed blood coming from AP's mouth. AP commented at this point that his tooth had been knocked out.

WO3 took CW1 to the police station, and SO1 and WO2 took AP to the hospital.

Subject Officer

In accordance with their rights, SO1 declined to be interviewed by IIU. SO1 did provide a copy of the use-of-force report and his investigator report through his legal counsel.

In the reports, SO1 confirmed his attendance at AP's residence for a domestic matter. SO1 confirmed hearing arguing sounds inside the residence and that CW1 answered the door to the residence. SO1 stated that WO1 continued to talk to CW1 outside and that WO3 and SO1 went into the residence to speak with AP.

SO1 confirmed that the officers were aware of AP's release conditions and that the officers decided to search the residence. SO1 stated that CW1 and AP were advised of the decision to search, at which point they became belligerent and unco-operative. SO1 stated that a decision was made to handcuff CW1 and AP to prevent the situation from escalating further.

SO1 asked AP to stand up and place his hands behind his back. AP did stand up; however, he started to walk towards the door. SO1 grabbed AP's arm and AP lost his balance and fell to his knees. SO1 and WO1 were able to lay AP on his stomach; however, AP would not provide the officers his hands. SO1 delivered two knee strikes to AP's thigh, which allowed SO1 to handcuff AP.

SO1 and WO1 brought AP to his feet so they could escort him out of the residence. As SO1 and WO1 were in the process of taking AP down the ramp, AP jerked backwards and was able to break free from the officers' grasp. AP turned right down the alleyway and SO1 was able to grab hold of AP part way down the alley. AP did not stop and was dragging SO1 at this point so SO1 struck AP in the face twice. AP went to the ground at this point allowing WO1 and SO1 to gain control of AP again. SO1 observed blood coming from AP's mouth and that his front tooth was missing.

SO1 confirmed that after completing the search, he and WO2 took AP to the hospital.

Other Evidence

Video Surveillance

From reviewing the video surveillance available, the following points should be noted:

- AP did not appear to have blood coming from his face while being escorted out of the residence at the top of the ramp. Blood could be seen on AP's face after reappearing on the surveillance video from the alleyway.
- Police officers did not take or direct AP into the alleyway. It appears from the surveillance that AP attempted to break free from the officers and run away down the alley.
- Only four officers were dispatched to the residence in relation to this incident.

Scene and Injury Photos

From reviewing the photos, the following observations can be made namely:

- AP's glasses were intact and were being worn by AP during the time injury photos were being taken.
- No scene photos taken inside the residence captured vomit as suggested by CW1.

Officer Statements and Use-of-Force Report

Information provided by witness officers along with the use-of-force report are at times in conflict with each other. The following examples are noted:

- SO1 stated that he struck AP twice in the thigh inside the residence while attempting to handcuff him. WO1 suggested that no such strikes occurred.
- SO1 suggested that he did not know how AP fell to the ground when he grabbed his arm, yet WO3 stated that he tripped AP to the ground in his statement to IIU.
- SO1 did not mention that WO1 was holding AP around the corner in the alleyway when SO1 administered the two strikes to AP's face.

Applicable Law

Criminal Code of Canada

All relevant sections of the Criminal Code of Canada were considered with respect to this incident. Sections 25(1), 25(3) and 25(4) of the Criminal Code of Canada have been emphasized here for consideration:

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.

(3) Subject to subsections (4) and (5), a person is not justified for the purposes of subsection (1) in using force that is intended or is likely to cause death or grievous bodily harm unless the person believes on reasonable grounds that it is necessary for the self preservation of the person or the preservation of any one under that person's protection from death or grievous bodily harm.

(4) A peace officer, and every person lawfully assisting the peace officer, is justified in using force that is intended or is likely to cause death or grievous bodily harm to a person to be arrested, if

- (a) the peace officer is proceeding lawfully to arrest, with or without warrant, the person to be arrested
- (b) the offence for which the person is to be arrested is one for which that person may be arrested without warrant
- (c) the person to be arrested takes flight to avoid arrest
- (d) the peace officer or other person using the force believes on reasonable grounds that the force is necessary for the purpose of protecting the peace officer, the person lawfully assisting the peace officer or any other person from imminent or future death or grievous bodily harm
- (e) the flight cannot be prevented by reasonable means in a less violent manner

Conclusion

On April 26, 2024, the IIU investigative file was sent to Manitoba Prosecution Service to review the matter to determine whether any Criminal Code offences should be authorized against the subject officers.

Given that the Manitoba Prosecution Service's opinion is that the standard for prosecuting charges has not been met, the civilian director will not be authorizing charges. Therefore, no charges are recommended and the IIU investigation is now completed and closed.