

FINAL REPORT: IIU concludes investigation into serious injuries occasioned during RCMP arrest

On July 9, 2021, the Royal Canadian Mounted Police (RCMP) notified the Independent Investigation Unit (IIU) of serious injuries sustained by a male (later identified as the affected person (AP)) during an interaction with police.

The notification, provided to IIU (edited for clarity), read in part:

“On July 9th, 2021, at approximately 2:00 a.m., Portage la Prairie RCMP located AP in contravention of a no contact order for a domestic assault offence during a traffic stop. AP was immediately placed under arrest by RCMP members.

Upon arrest AP actively resisted members by kicking at them and refusing to get in the police vehicle...due to AP’s aggressive behaviour, back up members were requested to assist...and were involved with subsequent arrest and processing of AP.

Members report difficulty getting AP into the police vehicle due to his non-compliant behaviour.

AP was transported to cells and at 2:51 a.m. complained of having trouble breathing. EMS attended cells and transported AP to the Portage General Hospital (PGH) where he was examined and returned back to police cells. AP was advised by PGH to return in the morning for x-ray.

AP advised hospital staff he was in an ATV accident a few weeks prior but did not go to the hospital.

At approximately 9:00 a.m. AP was returned to PGH for x-rays. AP’s x-ray revealed a collapsed right side lung and multiple fractured ribs which appear recent in nature. AP was left at the hospital to receive medical attention.

AP was released from Police custody on an Undertaking...”

In that notification, information was provided to suggest that AP had sustained broken ribs, from his encounter with police. As broken ribs are defined as serious injuries under Independent Investigation Regulation 99/2015, this matter was a mandatory investigation for which IIU was statutorily required to assume responsibility. A team of IIU investigators was assigned to this investigation.

WPS file material and other information obtained by IIU investigators included:

- radio transmissions
- occurrence summary reports
- officers’ notes
- cell video
- subject behaviour response report
- GPS data for police vehicles

- AP's medical records

Based on the information received by IIU, the civilian director designated three RCMP officers as subject officers (SO1-SO3). The civilian director did ultimately designate three RCMP officers as witness officers (WO1 – WO3). IIU investigators also met with and interviewed AP and two civilian witnesses (CW1 – CW2). IIU also requested a medical opinion from a physician (PW1) on the likely causes of AP's injuries.

Initially, SO3 was designated as a witness officer but following his interview with IIU investigators, it was determined that he be re-designated as a subject officer. In accordance with the PSA and regulations, his original interview and notes were returned to him and no reference or use of them were undertaken by the IIU.

Facts and Circumstances

Affected Person:

AP was in the company of his family (including CW1 and CW2) and had driven them to a 7-11 store to purchase cigarettes and snacks. On leaving the store, AP noticed an RCMP vehicle near the Prairie City Cinema (PCC), in Portage la Prairie, and decided to pull into a parking lot. AP stated that the cruiser car stopped down the street and two officers came walking towards them. One of the officers (identified as SO1), told AP that they just wanted to talk to him and was asked to step out of the vehicle. The second officer (identified as SO2) went back and drove the cruiser car over to them stating that they were going to handcuff AP. AP stated that SO1 handed him handcuffs and told AP to put them on. SO1 said that AP was not going to be charged and that the police just "*wanted to talk to him*". AP stated that he told SO1 to put the handcuffs on himself and he was handcuffed with his hands in front of him. AP stated that SO1 tried to "*rag him around*" (rough him up). AP let SO1 push him around but stated that he went a little too far. SO1 started yelling and asked why he was resisting and assaulting. AP said he did not lay his hands on SO1, but he tried to keep away because he was being hit. AP said SO1 called for assistance and other officers arrived who "*all dog-piled¹*" and kicked and kneed him. SO1 was the main officer who was holding him down. AP said that he ended up on the ground, that officers put handcuffs on his legs and that the police continued to beat him. AP said there were two officers at his legs and one by his head. The officer who was at his head (SO2), applied a pressure point with his thumb on his neck "*where your windpipe is.*" While this occurred, another officer was punching him and a third officer was kneeling him. AP said another officer was jumping on him "*like a trampoline.*" AP said that the officers took a break and then started beating him again. AP said that in an effort to get him into a cruiser car, some officers were pulling his legs, arms and head while others were punching, kneeling, and elbowing him. The officers lifted him up and slammed him onto the ground, knocking the wind out of him. AP said that CW1 tried to stop the officers from beating him but they yelled at her to get back into the vehicle or she would be arrested. AP said that SO1 did all the talking as none of the other officers spoke with him. AP said that he next woke up at the police station and was wondering if he had blacked out. AP said he was sober when the police picked him up. AP said that he was once inside the station, SO1 pulled a cellphone, took pictures of him, and then took his fingerprints. When AP asked why they were taking pictures of him. SO1 responded that it was in case he tried saying the police officers did this to him and that this is what he looked like when he arrived there. AP says he responded, "*Damn right I look like this because you guys beat the s**t out of me at the parking lot*". AP said he was asked if he

¹ The act of everyone piling on top of one person

wanted to contact his lawyer to which he replied yes. AP said his lawyer was never contacted nor was he provided an opportunity to place a call to his lawyer and was put into his cell. AP said it was hard to breath and it was hard to sleep. AP said he asked the officers to take him to the hospital but they did not take him right away. AP said he was told he had a punctured lung and ribs. He was in the emergency area and then he was in surgery for a tube to be inserted into him to drain fluids and air so he could breathe.

AP's Medical Records:

AP provided IIU investigators with a signed consent for the release of his medical records and reports in which the following was noted:

"Was in quad accident 2 weeks ago and did not seek medical help..."

"...presented to ER very early July 9/21 with R sided chest pain after resisting arrest. He was discharged in police custody and told to return in the morning for an XR. CXR at this time demonstrated a moderate A pneumothorax w/ 5th/6th rib fractures. A pigtail chest tube² was inserted and he was to be admitted for analgesia and further monitoring. It appears patient eloped after two hours. He returned July 11/21 and his extension tubing and Heimlich valve were dislodged and subsequently replaced. Repeat CXR demonstrated a large pneumothorax w/ mediastinal shift. His Pig tail flutter valve was noted to be backwards - after fixing this he had complete lung re-expansion. He returned July 12/21 for reassessment- CXR demonstrated no significant residual pneumothorax. He was instructed to return the next day for repeat XR. He unfortunately did not return until today (July 15/21). Today he denies any pain or dyspnea. Eager to have chest tube removed."

Civilian Witnesses:

CW1 said that at approximately 1:30 a.m., with AP and two others (including CW2), they went to a 7-11 to get "munchies". On their way back, CW1 noticed that police were following them, so AP pulled their vehicle into a lot beside the Prairie City Cinema. CW1 said that AP did not have a valid driver's license at the time nor was the vehicle registration present. A police officer came over to their vehicle and asked AP to get out of the vehicle because he wanted to talk to him. The police officer said that AP was not under arrest and asked him why he keep running. A second police officer attended and both walked AP to their police vehicle where he was told to put handcuffs on. CW1 said that the police officers put handcuffs on AP with his hands in the front. CW1 said that AP asked why this was happening if he was not under arrest. One of these police officers was SO1. The police officers tried to get AP into their cruiser car and they started beating him up. CW1 said that more officers arrived but could not understand why as AP was already in handcuffs. CW1 says they all jumped out of their car and told the police to stop. A police officer told CW1 to get back into the vehicle or would be arrested. CW1 stated that more than 5 police officers were jumping on AP while he was laying face down on the ground. CW1 said that the police told her to leave the car and walk home. CW1 said that there were no outstanding arrest warrants for AP.

CW2 was with AP and CW1 when they went to a 7-11 store, between 11:00 p.m. and midnight, to get some slurpees. AP was driving their vehicle. As they were driving home, CW2 said that the police were following them, so AP pulled over near the Prairie City Cinema. CW2 said that AP got into the back seat of the vehicle. A police officer attended the vehicle and told AP that he was not

² A small percutaneous (needle puncture) chest tube for treating a simple pneumothorax.

under arrest and they just wanted to speak with him. AP did exit the vehicle and spoke with the police. AP was then placed in handcuffs. AP began to cry because he did not want to go to jail. CW2 said that more police officers arrived at the scene and began to fight with AP. CW1 had exited their vehicle to try to help but a police officer said that if she exited the car she would be arrested. CW2 did not know how many police officers were at the scene but there were a lot. CW2 said that AP was asking the police officers to stop hitting him but they continued to stomp, punch and kick him on his side and chest. AP was then handcuffed around his ankles.

Witness Officers:

WO1 was on duty that evening and was aware, through a radio broadcast, that SO1 and SO2 were involved in a traffic stop. Moments later, SO1 broadcasted a request for urgent assistance. WO1 and SO3 left the detachment and made their way to the location of the traffic stop. On arrival, WO1 said she could see SO1 and SO2 in a physical struggle with AP and that there were three others “*in the mix*”. WO1 said she went to assist getting AP into a police cruiser. AP was on the ground and when WO1 approached him, AP swept at her legs, causing her to fall backwards. AP was not complying with the arresting officers or listening to their instructions. WO1 got up and grabbed AP by the arm and walked him to the police vehicle, turning him over to WO2 and SO2. WO1 made her way to the other side of the police vehicle when she heard yelling and screaming. WO1 said that she saw SO1 falling back and AP was getting out of the back of the police vehicle. SO3 then tackled AP to the ground. WO1 said she heard AP say that he would stop resisting but continued to thrash. AP’s legs were bound to prevent him from kicking or fighting. WO1 said that AP was placed into the back of the cruiser car again and then was taken to the detachment. WO1 said that AP apologized for tripping her. Once AP was lodged in cells, he requested medical attention and Emergency Medical Services (EMS) were immediately called.

WO2 was on duty beginning at 7:00 a.m. on July 9. A senior member advised that a prisoner needed to be transported to hospital for x-rays and diagnosis. WO2 attended the cell area and was directed to AP. AP was complaining about his right arm, that it hurt and he could not move it. WO2 noted that AP could not put his hands behind his back, so he handcuffed him to the front, shackled his legs and transported him to hospital. AP was seen by an attending physician. The doctor directed that an ultrasound test be conducted on AP. WO2 stated that the doctor determined that AP had fractured ribs and there was air outside of his lung. A procedure was conducted on AP to release the air. The doctor advised WO2 that AP’s injuries were fresh.

WO3 was at the detachment when he heard a radio broadcast concerning a traffic stop near the Prairie City Cinema. A short time later, RCMP officers requested back up to attend. WO3 ran to a cruiser car and drove to the scene to assist. WO3 said that on arrival, he observed RCMP officers involved in a physical struggle with AP, who was using his legs to kick at police, was thrashing his body, using his handcuffs (that were in the front) to push officers away and throw punch at them. WO3 said he exited his vehicle, ran towards AP, and issued a warning that he would deploy his conductive energy weapon (CEW). It took four officers to successfully control AP and get him into the rear seat of a police vehicle. WO3 did not deploy his CEW. WO3 saw AP kick SO1 in the chest, knocking him off balance. WO3 believed that AP was displaying behavior (super strength and stamina, and sweating), associated with excited delirium. WO3 said that in an effort to counter AP’s aggressiveness, he was rolled onto his stomach and his ankles were handcuffed³. AP relaxed and

³ WO3 stated that handcuffs were used as leg shackles were not available at the time

became compliant after he was restrained. During this encounter, a female who had been in the vehicle with AP was asking him to cooperate with the police. WO3 noted that at this time, AP was subject to and in violation of a no contact or communication order concerning CW1 and in breach of a curfew requirement. WO3 stated that handcuffs should be put to the back of a subject and never to the front.

Subject Officers:

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, neither SO1 nor SO2 attended for an interview with IIU investigators. As noted earlier, SO3 was originally designated as a witness officer and was interviewed by IIU investigators. When it was determined that SO3 should be re-designated as a subject officer, his notes and interviews were returned in accordance with IIU regulation 99/2015. SO1 did provide a copy of his notes and general report. SO2 did provide a copy of his notes and general report to IIU investigators. SO3 did not re-attend for an interview with IIU investigators.

According to SO1's report, he and SO2 were on a general patrol in Portage la Prairie when he observed a grey Jaguar S Type vehicle with a burnt out taillight. SO1 was familiar with this vehicle from previous contacts. The suspect vehicle stopped in a parking lot, with its lights turned off. SO1 wrote that they conducted a traffic stop with the suspect vehicle. When they approached the vehicle, SO1 observed CW1 in the passenger seat and AP in the back seat. SO1 was familiar with both of these individuals. SO1 wrote that he believed AP jumped into the rear of the vehicle before the traffic stop because he was prohibited from driving. SO1 asked AP to step out of the vehicle so he could speak with him, who complied without issue. AP stated that someone named "Jack" was driving the car and had fled over the fence. A license check determined that the vehicle was registered to CW1 and the registration was inactive. Furthermore, it was determined that AP was subject to a no contact or communication order concerning CW1 and subject to a curfew of 9:00 p.m. to 9:00 a.m. daily. AP was in violation of both orders. Accordingly, SO1 arrested AP for non-compliance with the court orders. SO1 wrote that AP was cooperative and handcuffed him with his hands in the front. AP begged the officers not to put him in the police cruiser. SO1 wrote that he told AP he would be taken to the detachment. AP refused to comply with his request to get in the police cruiser. SO1 and SO2 attempted to push AP into the police cruiser. AP resisted and grabbed the cruiser door and tried to pull himself away. SO1 took AP to the ground. AP attempted to stand up and flee. SO1 wrote that he and SO2 repeatedly asked AP to stop resisting and comply with their directions. CW1 approached the police cruiser and closed the back door to prevent AP from being placed inside. CW1 was told to return to her vehicle or she would be arrested for obstruction of a police officer. SO1 and SO2 continued to struggle with AP on the ground. SO1 requested additional units to attend for assistance. WO1, WO3 and SO3 arrived on scene to assist with the arrest. SO1 wrote that all five officers had difficulty loading AP into the police cruiser. At one point, AP pushed SO1 with his legs causing him to recoil. SO1 wrote that as soft physical control was ineffective he delivered three closed fist strikes to AP's face. AP seemed unaffected by these strikes and continued to resist police. AP was taken to the ground multiple times before police could handcuff his ankles and once restrained, he became cooperative and compliant. SO1 and SO2 transported AP to the detachment. SO1 obtained photographs of AP's injuries and then placed him in cells. AP advised that he was having trouble breathing. SO1 immediately requested EMS to attend the detachment to assess AP. AP was then transported to hospital for a medical assessment. SO1 wrote that AP was cleared but advised that he was to return to hospital the following morning for X-rays. When SO1 arrived at work the following

day, WO3 advised that AP was assessed and determined to have sustained broken ribs and a punctured lung.

SO2 wrote that he and SO1 were on a general patrol in Portage la Prairie. SO1 observed a Grey Jaguar S Type operating without tail lights. SO2 wrote that they followed the vehicle and it appeared that its driver was attempting to lose them. SO2 wrote that they found the vehicle parked in a lot near the Prairie City Cinema. SO1 exited their cruiser as SO2 pulled in behind the subject vehicle, initiated a traffic stop and notified police dispatch. As SO1 spoke with AP, SO2 conducted computer checks on the vehicle and occupants. It was determined that AP was subject to court orders not to have contact or communication with CW1 and was outside in contravention of a curfew. SO2 wrote that AP was provided an opportunity to say goodbye before being taken away. However, when asked to enter the police cruiser, AP started to resist by crouching down, becoming dead weight, holding onto the door and refusing to get inside. AP was taken to the ground and asked to be compliant. Once on the ground he said, "Okay, sorry, I'll get in the car". Once police helped AP up, he would start fighting and try to get away. AS SO1 and SO2 tried to put AP into the police cruiser, CW1 ran over and shut the door making it difficult to assist AP into the car. SO1 called for back up and for additional units to assist. SO3, WO1 and WO3 arrived on scene to assist. Even with additional members present, AP continued to vigorously resist. AP kicked SO1, knocking him off balance. AP managed to exit the police cruiser and started to run but SO3 managed to bear hug him to the ground. SO1 struck AP twice to get AP into the car but he continued fighting. The two officers and CW1 were telling AP to stop fighting, to stop resisting and get into the cruiser.

Medical Opinion:

On February 10, 2022, the entire investigative file was referred to Manitoba Prosecution Service (MPS) with a request that IIU be provided with a Crown opinion on whether any criminal code charges would be authorized in this matter.

On May 16, 2022, the assigned prosecutor requested that he be provided with an expert medical opinion and provided a detailed facts for consideration.

On May 17, 2022, IIU investigators contacted PW1, forwarded the prosecutor's request and asked for a medical opinion to be provided.

On May 19, 2022, IIU investigators received the following medical opinion from PW1:

After reading through the information you have provided, I can offer the following:

The rib fractures AP sustained were described as posterior (meaning the back part of the rib near the spinal column). Posterior rib fractures may occur as a result of compression of the chest. They may also occur as the result of direct pointed blunt trauma applied to the chest wall (such as a kick).

It would be possible for posterior rib fractures to occur if the subject was tackled and brought to the ground with the weight of the tackler coming down on the chest and compressing it.

I also note that the subject was reportedly in an ATV accident shortly before the interaction with police. It seems unlikely that he could have struggled as effectively as he did with broken ribs, but the possibility that the rib fractures occurred as a result of the ATV accident should be considered.

Conclusion

On June 3, 2022, MPS provided IIU with a written crown opinion report in which it advised that it was not recommending any criminal charges against SO1, SO2 and SO3, and provided the following explanation:

Manitoba Prosecution Service (MPS) has reviewed the IIU investigation of Officers SO1, SO2 and SO3. 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 the medical opinion, we have concluded that we are not satisfied that there is a reasonable likelihood of conviction. When MPS is consulted for charge authorization in any criminal matter, we employ the same standard for proceeding with criminal charges.

Accordingly, IIU has completed its investigation and this matter is now closed.

Final report prepared by:

Zane Tessler, civilian director
Independent Investigation Unit
June 6, 2022

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