



**IN THE MATTER OF AN INVESTIGATION INTO A SERIOUS INJURY DURING AN  
INCIDENT INVOLVING THE MANITOBA FIRST NATIONS POLICE SERVICE**

**FINAL REPORT OF THE CIVILIAN DIRECTOR**  
**OF THE INDEPENDENT INVESTIGATION UNIT**

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## **Introduction**

On October 16, 2022, the Manitoba First Nations Police Service (MFNPS) notified the Independent Investigation Unit of Manitoba (IIU) of an incident.

The written notification disclosed the following information:

*“On October 16th, 2022 at approximately 05:38 hrs. subject officer (SO) and witness officer (WO2) were dispatched to the cemetery in Big Eddy, Manitoba as civilian witness (CW3) reported that the affected person (AP) was in her vehicle with her and he was wanted.*

*Police attended the scene at 05:56 hrs. AP refused to exit the vehicle and was combative with the police. During the altercation, he was Tazered multiple times. AP was eventually secured and transported to the MFNPS (Opaskwayak Cree Nation) OCN detachment.*

*AP was believed to be high on meth. The Pas RCMP members WO5 and WO4 attended OCN at 06:06 hrs to assist. Once at the detachment, members were concerned that he was suffering from excited delirium and contacted EMS as he was still very animated and delirious.*

*AP was transported by EMS to St. Anthony’s General Hospital in The Pas, MB. AP was diagnosed with a dislocated left shoulder and a broken right wrist. AP was treated for these injuries and released into police custody.*

*AP remains in custody for assault police officer x2, resist arrest x2, fail to comply with release order x2, an endorsed warrant, and an unendorsed warrant.*

*SO was injured during the incident.”*

As this matter concerned a serious injury as defined under the IIU regulations, the IIU assumed responsibility for this investigation in accordance with Section 66(4) of *The Police Services Act* (PSA). IIU investigators were assigned to this investigation.

The civilian director designated five witness officers (WO) and one subject officer (SO).

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

- PROS Occurrence Summary for MFNP file
- Use of Force reports authored by SO and WO2
- Narrative Reports of MFNPS police officers, WO1, WO3, WO2 and RCMP WO5
- Notes of WO1, WO2 and WO3
- Prosecutor Information Sheet for charges against AP
- CEW downloads for SO and WO2
- Prisoner report and guard logs for AP
- Audio of 911 call and police radio transmissions
- Audio of statements obtained by MFNPS from CW1 and CW2

The RCMP also provided disclosure in this matter:

- Notebook entries of WO5 and WO4
- Occurrence screen for RCMP assistance file

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- Narrative report of WO4
- Audio of the telephone call from MFNPS requesting RCMP assistance
- Audio recordings of radio communications between RCMP members and RCMP Telecommunications

## **Facts and Circumstances**

### **Canvass**

Investigators viewed the scene of the incident on November 9, 2022, and determined that there were no residences or other buildings in close proximity to the cemetery.

### **Affected Person**

IIU investigators obtained a statement from AP on November 9, 2022. AP stated that he did not have a clear recollection of events from October 16, 2022, due to alcohol and cocaine consumption. He did remember being inside a truck parked at the cemetery in the community when the police arrived. The two officers, known to him as WO2 and SO, told him to get out of the truck and arrested him for “breach or something.”

AP did not remember fighting with the police and did not know how he was injured. He did recall being handcuffed and thrown to the ground and stated that SO pressed a CEW to his skin after he was handcuffed and out of the truck.

AP told investigators that he suffered three broken ribs on his right side, a dislocated left shoulder, a sprained right wrist (not broken as reported in the Part 7 document) and tendon damage in his left wrist as a result of his contact with the MFNPS officers.

### **Witness Officers**

#### **WO1**

IIU investigators obtained a statement from WO1 on November 9, 2022. WO1 stated that he was called at approximately 6 a.m. on October 16, 2022, to assist SO and WO2 with a prisoner. Upon arrival at the detachment, he noted an ambulance in the parking lot and went inside the office where he met briefly with SO. SO told him to go outside and assist WO2, who was in the ambulance with AP. WO1 did not have any discussion with SO about what had happened and stated that SO appeared either angry or distracted. WO1 did not see any injuries on SO.

WO1 went outside and entered the ambulance, where he observed AP on a stretcher in handcuffs. WO2 immediately exited the vehicle and WO1 had no conversation with her.

WO1 rode in the ambulance to the hospital with AP and later received a message from SO informing him that AP was to be arrested for a number of offences. According to WO1, the message contained no details about what had happened during the contact with police in the cemetery. WO1 said he did not remember AP saying anything about what had transpired earlier in the morning.

#### **WO2**

WO2 was initially designated as a subject officer, but interviews and analysis of reports led investigators to seek a re-designation, which was granted by the civilian director on November 24, 2022.

On December 6, 2022, IIU investigators obtained a statement from WO2. She indicated that she was partnered with SO on the date of the incident. They attended a call for service at a cemetery involving the AP, and upon arrival she heard him yelling from the back seat of a pickup truck.

The MFNPS officers approached the truck, where SO informed AP that he was under arrest. AP refused to exit, resulting in SO entering the vehicle via the front passenger door. According to WO2, SO again advised the AP he was under arrest, on the strength of an outstanding arrest warrant, and then engaged in a physical struggle with AP inside the truck. WO2 said she could not see what was going on, due to tinting on the vehicle windows, and she smashed the rear passenger window with her expandable baton. Upon doing so, WO2 could see SO deploying a CEW in drive-stun mode on the AP's arms. The WO stated she did not see SO strike AP.

Both officers then pulled AP out of the truck. AP went to the ground on his back and was still resisting police efforts to take him into custody. WO2 stated that SO managed to get AP onto his stomach, without delivering any strikes, and handcuffed him. They then attempted to load AP into their police vehicle, but the AP kicked WO2 in the chest. He was then taken to the ground again, where they waited for RCMP members WO4 and WO5 to arrive to assist.

WO2 smelled liquor on AP and believed him to be drunk at the time of contact with police. She also believed he was under the influence of drugs, perhaps methamphetamine, at the time, based upon previous interactions with the AP, both while sober and intoxicated.

WO2 said she did not see her partner strike or kick AP at any time in the struggle, nor did she see the AP head butt SO. When asked how the AP suffered broken ribs in the altercation, the WO said she did not know.

At the time WO2 provided a statement to IIU investigators, she brought a different narrative report to the interview than the one that was supplied to the IIU as part of the disclosure process. This second report had the same date and time as the first report and contained a detailed version of the previous report:

*"On October 16, 2022, at 5:52 a.m., the Manitoba First Nations Police in Opaskwayak Cree Nation were dispatched the cemetery near Farmer Road for reports from CW3 stating that AP was there and has an unendorsed warrant.*

*Query of CPIC confirmed that AP has an endorsed and an unendorsed warrant for his arrest. AP is well known to police from previous interactions.*

*At 5:56 a.m., Police arrived on scene and were flagged down by a female next to a black Dodge Ram who stated "he's over here." Police observed AP to be in the backseat of the truck on the passenger side. While approaching the vehicle, WO2 could hear a male yelling; it was unclear what he was yelling at this time.*

*SO advised AP that he had an unendorsed warrant and he was under arrest. SO gave AP four chances to exit the vehicle on his own. CW3 attempted to unlock the truck for police but AP was observed to keep his hand over top of the lock so he could lock it again.*

*At this time, WO2 could see and hear SO struggling to carry out the arrest on AP. WO2 smashed the window in order to assist with extracting AP as he was continually locking the door and refusing to open it. WO2 was unable to enter the other door in the rear of the truck as there was a female sitting there. Due to the inability for WO2 to enter the vehicle and assist SO in carrying out a lawful arrest, she pulled out her issued police baton and smashed the rear passenger window on the vehicle.*

*At 5:59 a.m., police delivered multiple commands of "stop resisting." AP continued to be extremely animated and fight with police, refusing to get out of the vehicle. AP was drive stunned with the Conductive Energy Weapon multiple times by SO in order to gain compliance. AP continually fought with police and began grabbing the side of the vehicle and the doors to avoid being taken into custody.*

*WO2 was then able to pry AP's hand off the lock and was able to unlock the door and open it. WO2 put AP in a headlock span in order to control him so that SO could exit the vehicle and assist with extracting him entirely from the truck. WO2 and SO both grabbed an arm and pulled AP out of the truck.*

*AP was able to be dragged out of the truck by WO2 and SO, and place on the ground on his back. SO stated "(AP) roll on your stomach". AP continued to fight with police and resist them in assisting him rolling to his stomach. During this attempt to get AP to roll over, he continued to spit at police. WO2 pushed APS [sic] head to the side in order to prevent him from spitting on police.*

*At 6:01a.m., members were able to successfully handcuff AP behind the back, however, he continued to kick at police and attempt to evade police. Members attempted to place AP in the rear of PC882 when AP kicked WO2 in the chest and bit SO.*

*(CW2) and (CW3) then came to the police unit and began antagonizing AP as he was on the ground refusing to get into the police cruiser. Both parties were laughing at AP and stating "that's what happens when you fight with the police, f\* idiot". At this time, WO2 instructed both (CW2) and (CW3) to leave the area as they were just making AP more upset and they were not helping him to calm down.*

*At 6:06 a.m., RCMP arrived on scene to assist. At 6:10, WO4 and WO5 were able to place shackles on APS [sic] legs and a mesh spit mask was placed over APS [sic] head.*

*EMS was requested for AP as he was exhibiting signs of borderline excited delirium. AP was extremely animated, and had abnormal strength, experiencing no pain when police attempted pain compliance. AP appeared intoxicated by drug and was sweating despite the fact that it was cold outside. Police were wearing winter jackets as the overnight temperatures caused the ground and air to frost over. AP was only wearing a t-shirt. AP continued to kick the rear of the police car, and yell the entire time police were transporting to the detachment. ”*

### **WO3**

On November 4, 2022, IIU investigators obtained a statement from WO3. He stated that he had no direct knowledge of how AP suffered his injuries. WO3 said he was called out early in the morning of October 16, 2022 to assist in taking a prisoner to the hospital. Upon attending the OCN detachment, he noted an ambulance in the parking lot and looked to see WO2 inside. He had no conversations with her. He went inside the detachment where SO told him to go to the hospital and guard AP while he received medical attention. WO3 did not ask about the incident and did not have conversations with the AP while with him at the hospital.

### **WO4**

On November 8, 2022, IIU investigators obtained a statement from WO4. WO4 stated he was working a night shift on October 15-16, 2022, when he received a dispatch from RCMP Telecoms advising that MFNPS members required assistance at the cemetery in Big Eddy, as there was a male resisting arrest, who had been subjected to multiple CEW deployments. He attended the location and upon arrival noted that the AP was face down on the ground, handcuffed behind his back. SO was lying on AP's back and the AP was still struggling, moving his head and spitting on the ground. WO2 was standing to the side.

SO told WO4 that he had been bitten by AP and showed WO4 his hand. SO also said he had used his CEW multiple times on AP. WO4 thought that perhaps SO also said that the AP was not showing his hands when commanded to do so or was reaching for his waistband.

Because AP was spitting, WO4 put a spit mask on him, adding that there was no force required to put the mask on. WO4 did not remember hearing the AP say anything about being injured. At that point, another RCMP officer, WO5, arrived on scene and applied shackles to AP's ankles. WO4 did not know why shackles had to be applied to the AP.

WO4 recalled that the four officers then loaded AP into the back of the MFNPS vehicle. WO5 and SO lifted AP up and put him in the back seat while WO4 and WO2 went to the opposite side of the vehicle to assist in getting AP inside. Once the prisoner was secured in the back seat, SO and WO2 departed for OCN detachment, followed by WO5. WO4 stated he took a different route, and upon his arrival at the detachment he noted the other three officers were already there. AP was walked into the cell area, searched by SO and WO5, then EMS attended to examine the AP. WO4 and WO5 were then dispatched to another call for service in The Pas.

WO4 did not see any use of force on AP and was unaware AP was injured in the incident until he was notified of the IIU investigation. He described the AP as co-operative and intoxicated during the lodging process at OCN detachment.

### **WO5**

WO5 was interviewed on video on November 8, 2022. He told investigators that he and WO4 received a call shortly after 6 a.m. on October 16, 2022 stating that MFNPS officers needed assistance, as a male subject had been subjected to CEW deployments and was not compliant. WO5 stated he arrived at the scene and observed AP on the ground with handcuffs behind his back and a spit mask on his face. WO4 was already on scene standing nearby, while

SO and WO2 were on top of the AP. SO was on his upper torso and WO2 was attempting to control AP's legs, which were moving around. WO5 added that the AP was not saying anything, and he could not remember if the two MFNPS officers were saying anything to their prisoner.

WO5 said WO2 asked for leg restraints, and he went and got a pair of shackles from his police vehicle, then applied them to AP's legs. WO5 and SO then got AP to his feet and moved to put him into the MFNPS police vehicle. AP went into the back seat of the vehicle front first. WO2 and WO4 were on the other side of the police vehicle and assisted getting AP into the back seat by pulling him into vehicle.

WO5 followed the MFNPS vehicle back to the OCN detachment, and once there assisted in walking AP into the cell area and directly into a cell where the handcuffs were removed by SO. The WO stated AP was compliant and did not complain of injuries at that time.

AP was then laid on a cell mat, the shackles were removed and the search of his person was completed, with WO5 removing his socks. The officers then attempted to get AP to sit up, but he said he could not. At that point WO5 believed the AP was in pain.

At some point during this incident, SO said AP had been exposed to multiple CEW deployments totaling thirty seconds. The SO added that the AP had bitten him earlier. Paramedics then attended the cell area to treat AP, due to him being subjected to CEW deployments, according to WO5. WO5 said he and WO4 then got called away on an RCMP dispatch. SO texted WO5 at 8:17 a.m. on October 16, 2022, to inform him that the matter was going to be referred to IIU and he should have good notes.

WO5 told investigators he observed SO at the hospital in The Pas several days later; WO5 was there on RCMP business and SO was there as a patient. SO said that AP had head butted him on the nose during the altercation on the 16th. WO5 added that at some point, either in the cells or later, SO also told him that AP had been going for his waistband and he had delivered strikes to AP.

WO5 was unaware how the AP received his injuries and had no conversations with SO about that. He did not see any use of force directed at AP.

## **Civilian Witnesses**

### **CW1**

On November 9, 2022, IIU investigators interviewed CW1. She stated that she was the driver of a vehicle parked at the cemetery in OCN with the AP, CW2 and CW3, when an argument broke out between AP and CW2, resulting in a call to the police. CW1 said two RCMP officers, one male and one female, showed up and the male officer was aggressive with AP.

CW1 stated that the male officer arrested AP then forced his way into the vehicle and started punching the AP. Later in her interview, she stated that she did not remember seeing the officer punch AP. She did recall hearing the officer tell AP to get out of the vehicle and said she was pretty sure she heard police telling him to stop resisting.

CW1 stated that she did not see AP assault the officer and said the male officer took AP out of the vehicle on the passenger side. At that time, CW1 got out of the vehicle and stood on the driver's side, at which time she heard a CEW being deployed three to four times.

CW1 said everyone in the vehicle, except her, had been drinking liquor at the time of the interaction with police, and she did not know how the AP suffered his injuries.

## **CW2**

On November 21, 2022, IIU investigators interviewed CW2. She stated that she was in a pickup truck at the cemetery in Big Eddy in the early morning hours of October 16, 2022. CW2 was seated in the back seat of the truck, behind the driver. Also in the back seat with her was her boyfriend, AP, who was behind the front passenger seat. CW2's mother, CW3, was seated in the front passenger seat.

According to CW2, she had consumed five alcoholic coolers and done a gram of cocaine with the AP about an hour before their contact with police. She estimated her level of sobriety was a five on a 10-point scale.

CW2 said she and AP were arguing, which resulted in her mother calling the police. CW2 could not remember what her mother told the police in the call, but First Nations police officers (WO2 and SO) arrived at the cemetery some time later. AP would not get out of the back of the truck when instructed by police, who told him they wanted to talk to him. CW2 said the police did not tell AP he was under arrest.

CW3 got out of the front passenger seat, and the First Nations officer (SO) got into the seat and told AP to co-operate and get out of the vehicle. CW2 said there was an exchange of words between SO and AP, but she could not remember what was said, then added that the officer started using his CEW on AP. Later in her statement, she admitted she did not see this, instead she was relaying what she was told about the incident by AP.

CW2 believed WO2 smashed the rear passenger window of the truck, but did not see that directly. She could hear AP say, "No, stop" but she did not see what the police were doing when that was said.

CW2 did not see how AP was taken out of the truck and only knew that he ended up outside the passenger side of the vehicle. She then got out of the truck and went around to the other side, where she observed the AP face down on the ground, with SO kneeling on his back. The other officer, WO2, was just standing there. She thought that the police were trying to handcuff AP, and AP was kicking his legs saying he could not breathe. CW2 said she and the others from the truck were telling the police to take it easy on AP. She stated that SO was deploying a CEW on AP, but she did not see any wires coming from the device, so believed it was being touched to his body. Both First Nations officers then picked up AP and started to walk him to their police vehicle, but somehow AP ended up on the ground again; she was not sure why that happened. RCMP officers arrived on scene. CW2 went back to the truck and she and the other witnesses left the area.



During the altercation, CW2 heard SO say, "quit kicking me (AP)." She also heard the officers telling AP, "quit resisting."

CW2 did not see either SO or WO2 punch, hit or kick AP at any time. She did not see the RCMP lay hands on the AP and did not know how AP suffered his injuries, other than to guess that they happened when SO was kneeling on his back.

### **CW3**

On December 8, 2022, IIU investigators interviewed CW3. She stated that she called police for assistance on the night in question because AP and her daughter, CW2, were arguing inside the vehicle they were in. She said First Nations police arrived, a male and female officer, and the male officer jumped in the back seat of the truck and accused AP of being under the influence of methamphetamine. CW3 denied that the officers told AP he was under arrest, and the male officer got inside the vehicle via the rear driver's side door, where he subjected AP to between five and seven CEW deployments. The female officer smashed the rear passenger window, and the police pulled the AP out and onto the ground, where they used the CEW six more times on him. The police also twisted his arm behind his back. CW3 said AP was not resisting the police, and the police told her to move away from them, so she did. Ten minutes later the police put AP into the back of their police vehicle.

CW3 stated that she was sober at the time of the incident. She provided more details of the events and stated that when the police arrived, AP did not want to get out of the vehicle, and the male officer climbed into the vehicle via the rear driver's side door and a struggle ensued. She stated that the male officer did not tell AP he was under arrest before laying hands on him. According to CW3, the male officer jumped on AP's legs first, then onto his body as the fight progressed. She observed the officer strike the AP with his arm to AP's face, then began to use the CEW on his ribs. CW3 could hear the officer swearing at the AP and telling him to stop resisting. She did not see the male officer strike AP in the torso during the altercation in the vehicle. She initially indicated that she did not see either the male or female officer deliver any strikes to the AP; however, later in her statement she said she did see the male officer hit AP in the back with his forearm at least four times.

CW3 added that another MFNPS vehicle showed up 20 to 25 minutes later, and a short, dark-haired male officer hit AP with his whole body and forearm on the left side of his back, before the AP was loaded into a police car and taken away.

### **Subject Officer**

SO declined to provide an interview; however, he provided IIU investigators with a copy of his notebook entries and narrative report from the MFNPS file, via his legal counsel. The narrative report contained the following entry:

*"5:56 a.m. the writer and (WO2) on scene in marked police unit PC822 in full issued police uniforms. Both the writer and WO2 had large patches with white letters that stated "POLICE" on the front and back identifying the officers as police. The writer observed a black pick-up truck parked in the cemetery. The alarm began going off. Police approached and were met by CW3, she stated AP is in the truck and he has warrants. She wanted him removed.*

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*The writer approached and located the vehicle occupied with multiple females unknown to the writer. The writer could hear a male screaming but was unable to make anything out. The writer saw the male in the back passenger seat and immediately recognized him as AP. The writer stated that he was under arrest and to exit the car. AP yelled "NOO" The writer had CW3 unlock the car and AP immediately locked it again. This happened several times. The writer entered the front passenger seat and once again told AP he was under arrest. AP was breathing in long deep breaths. AP had his teeth gritted and his teeth were showing. AP appeared to expand his arms and chest to make himself look bigger. The writer noted that APs eyes were wide open and not blinking nor reacting to light. The writer knows AP to be a drug user and the writer believed he was high on a stimulant drug.*

*The writer took all these to be pre assault indicators, The [sic] writer believed he was preparing himself mentally and physically for a fight with police. The writer continued to attempt verbal intervention and de-escalation with no results.*

*The writer observed AP make a furtive movement with his hand to his sweater pocket. The writer was unsure if he was grabbing for a weapon. AP was wearing loose bulky clothing. The writer entered the back seat and began attempting control techniques. AP became highly animated and began [sic] fighting with police. He was making active attempts to keep the door locked as the writer attempted to unlock it to remove him.*

*AP bit the writers left arm causing it to rip the writers [sic] winter jacket. As AP was assaulting police, the writer used two short ranged left forearm strikes (hard control technique) to APS [sic] left jaw in attempts to stop him from biting and to distract him from his assaultive behavior. AP stopped the assaultive behavior (biting) but was continuing to resist and scream. The writer was still attempting to open the door to extract him. The writer determined that the soft control was not effective and deployed the police issued conductive energy weapon (CEW) in the drive stun configuration for pain compliance. The writer was unable to use OC spray at this time for fear of officer contamination. The distance was too short to use the CEW in probe configuration.*

*The writer continued to yell "STOP RESISTING "as AP continued to fight. The writer began issuing drive stuns with the CEW to APS left side of his body. AP continued to fight and would not stop resisting. The writer continued to apply drive stuns to areas of large muscle groups (arms, legs and back). The writer issued stuns for approx. 1-2 second intervals. AP was using his free hand to grab at the writer's external police vest. AP did not change his behavior with the delivery of the repeated drive stuns. The writer was unable to obtain the proper counter pressure to issue sustained contact with the CEW. AP knocked the writers [sic] hat off his head in the struggle. WO2 shattered the window and was able to open the door. AP continued to resist and was holding onto the handles of the truck as police attempted to extract him.*

*The writer noted exceptional strength due to his intoxication on a stimulant drug. The writer issued a drive stun to APS [sic] right forearm as it was still holding the door handle. The writer re-holstered the CEW and AP was pulled from the truck. Police continued to yell "STOP RESISTING". It appeared at this time that AP was experiencing no pain at all due to his level of intoxication/animation.*

*AP was on his stomach and still actively resisting. Police made multiple attempts to control his arms with no results. AP was actively flailing and trying to stand. The writer was straddling his torso in attempts to keep AP secured on the ground. AP appeared to be reaching for his waist band as his left arm made a 45 degree angle. The writer knows this from past experience as behavior consistent with someone attempting to retrieve a weapon. The writer feared for safety of the officer's present as AP is known to carry concealed weapons including firearms. The writer attempted to stay low to stay stabilized on AP. AP threw his head back and struck the writer in the nose and forehead. This caused pain to the face area and made the writer taste blood.*

*The writer controlled his head on the ground until his hands could be secured behind him and in hand cuffs. AP continued to resist while secured in cuffs. The writer was out of breath and nearing exhaustion at this time due to the extended attempts to secure AP.*

*The writer requested RCMP attend as the occupants were still outstanding and with unknown intentions.*

*The writer believes due to the strength and violence of APS [sic] actions that he may be experiencing excited delirium. The writer made the decision to stand him up and walk him to the police car. The writer stood him up and he continued to pull ways [sic] violently from police. He was walked to the police unit. AP refused to get in and made multiple attempts to stop police from securing him. The writer went to the other side and pulled AP through as he kicked at WO2. Due to his height, he was able to place his feet on the prisoner door and extend his body out so the door shouldn't be shut.*

*The writer tried to pull his legs in. At this time AP extended his neck out towards the writer's groin area and bit the writer's left pinky and ring finger. The writer was wearing issued duty gloves and was able to pull the hand away. The writer feared further assault, the writer pulled him out and attempted to secure him on the ground where he could be more easily controlled. AP rolled to his back and pulled his knee to his chest. The writer feared that he would kick police. AP then spit up towards police. The writer moved to control his body with the writer's body on the ground. AP was rolled over onto his stomach and the writer sat on his buttock and held his arms behind his back until RCMP arrived.*

*AP was still resistive and would kick his legs. AP continued to spit blood out to his side.*

*WO4 attended and the decision was made to place a spit mask on AP for the safety of other officers on scene.*

*WO5 attended a short time later. A hobble restraint was not available so shackles were used.*

*Police placed AP in the back of the police unit. AP kicked his legs out to attempt to stop police from closing the door.*

*6:14 a.m. Unit departed. AP was kicking the back window of the police unit and screaming.”*

## Use of Force Report

A Use of Force Report from SO contained the following:

*“Officer A and Officer B were called to a report of an unwanted person. The caller indicated that Subject A had warrants for his arrest. Officer A was familiar with Subject A as a criminal gang member. Officer A knew Subject A to carry concealed weapons that included firearms. Officer A had arrested Subject A before where Subject A tried to escape lawful custody. Officer A knows Subject A to be a drug user. Officer A and B conducted a CPIC check and learned that Subject A had two warrants for his arrest (weapons related). Subject A was also breaching a release order. Officer A and Officer B attended the graveyard in a marked police unit. The complainant advised that Subject A was in the back of the complainant’s vehicle. Subject A could be heard screaming and yelling. Officer A and B approached the vehicle. Officer A advised Subject A he was under arrest. Subject A was actively resistant by locking the door of the vehicle as the complainant unlocked it.*

*Subject A was given repeated chances to get out. Officer A entered the front seat of the truck. Subject A was breathing heavy, bearing and gritting his teeth. Subject A was expanding his upper torso to make himself look bigger. Subject A had wide open eyes that did not respond to light. Officer A believed him to be high on drugs. Officer A perceived these pre assault indicators. Officer A believed that Subject A was preparing himself mentally and physically for a fight. Officer A told Subject A he was under arrest and to exit the vehicle again. Subject A reached for his hoody pocket with his hand. Officer A believed [sic] Subject A may be attempting to retrieve a weapon. Officer A entered the back seat and attempted to restrain Subject A with soft controls. Subject A became assaultive towards Officer A. Subject A bit Officer A on the left forearm. Officer A delivered 2 left forearm blows to Subject A’s left jaw Une [sic] (hard impact) to deter further assault. Subject A stopped biting but was still actively [sic] fighting Officer A. Officer A deployed the CEW in drive stun configuration on large muscle groups on Subject A. The CEW was used for pain compliance and Subject A was still actively fighting. Due to the bulky loose clothing and the animation of Subject A Officer A was only able to make contact for short 1-2 second applications. Officer A was giving repeated verbal commands to stop resisting. Subject A was grabbing Officer A’s vest. Due to the lack of counter pressure and the bulky clothing, sustained contact could not be achieved.*

*Officer B smashed the truck window out and Officer A exited the truck. Subject A was still actively resisting by holding onto the truck handles. Officer A applied a drive stun to Subject A’s right forearm.*

*Officer A re holstered the CEW and pulled Subject A from the truck. On the ground Subject A was still actively resisting by trying to flail his body and stand up. Subject A was reaching for his waist band. Officer A attempted to control his body by straddling his torso. Officer A was in a low position to stabilize. Subject A threw his head back and stuck Officer A in the nose and face. After being able to control Subject A’s head, Officer A and B were able to secure him in hand cuffs. Officer A was near physical exhaustion at this time. RCMP was asked to attend and assist*

*Officer A and B made the decision to move him to the police unit. Officer A believed he was experiencing excited delirium. When stood up Subject A continued to pull away from Officers.*

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*Subject A was refusing t [sic] get into the police car and was actively pushing away. Officer A went too [sic] the other side of the police unit to pull him in. Officer A saw Subject A kick Officer B in the chest. Subject A put his feet on the door and pushed through. Officer A was at the head and tried to pull his legs through. Subject A extended his neck and bit Officer As fingers. Fearing further assault Officer A pulled Subject A out of the car to secure him on the ground. Subject A rolled to his back immediately and brought his knees to his chest. Officer A beloved [sic] he would kick Officer A. Officer A moved to control Subject A on the ground. Subject A spit blood at Officer A. Subject A was moved to his stomach where Officer A sat on his buttock and controlled his arms while he continued to resist. 2 RCMP members attended where a spit hood was placed as Subject A was still spitting. Subject A was placed in shackles and brought to the police unit where he still actively resisted getting put in the unit. EMS was called as it was believed Subject A was experiencing excited delirium.*

*Subject A kicked the police unit until he was brought to cells. Subject A was passively resistant when brought into cells to lodge.*

*Both Officer A and Subject A sustained injuries and were checked by the hospital.”*

## **Summary of Other Evidence**

### **Conducted Energy Weapon**

IIU investigators obtained a report regarding the CEW (Taser) used by the SO during the incident. It indicates that SO deployed the taser in contact-mode a total of 22 times, ranging in duration from 0.09 seconds to 2.31 seconds.

### **911 Dispatch Calls**

A review of the dispatch call confirms CW3 reported she was at the cemetery, AP was in her vehicle, she said he was wanted on a warrant, and she wanted him removed. She called 911 again stating SO was still there and was asking for police to attend again. The audio demonstrates that a struggle ensued with SO and AP. SO is heard stating he believes AP is highly intoxicated on meth. Audio demonstrates the officer to be out of breath stating AP was now in custody but still fighting with police. SO asks for RCMP assistance. SO is heard stating that AP bit him again, that AP hit him multiple times and that AP kicked him in the face. SO confirms they will use hobble restraint. SO is still out of breath, states that AP is in the back of the vehicle, trying to kick out the back door of the police vehicle, and highly animated on some type of stimulant drug, and police are still trying to get him to cells requesting RCMP helping officers to lodge AP.

### **Medical Reports**

IIU investigators obtained a copy of AP’s medical records from October 16, 2022 and October 20, 2022 at St. Anthony’s General Hospital in The Pas. The records indicated that the AP suffered a dislocated left shoulder and broken ribs on his right side. AP suffered a bone bruise to his right wrist.

IIU investigators also obtained medical records of SO who attended St. Anthony's General Hospital in the evening of October 16, 2022. The medical records indicated that he was treated for a human bite wound to his left hand, shoulder strain and a nasal contusion caused by being head butted during an arrest earlier in the day.

## **CCAIN**

A search of the Criminal Courts Automated Integrated Network (CCAIN) indicates that on July 4, 2023, AP plead guilty to assaulting SO in regards to this incident.

## **Crown Opinion**

Civilian Director Zane Tessler, as he then was, forwarded the IIU investigative file to Manitoba Prosecution Service (MPS) requesting an opinion. The IIU received a Crown opinion from MPS, which included the following:

*On October 16, 2022 Manitoba First Nations Police Service were dispatched to the cemetery in Big Eddy, Manitoba, to deal with the AP, who was subject to outstanding warrants and would not leave the vehicle belonging to the complainant.*

*(SO) and (WO2) of MFNPS attended the scene and it was clear that (AP) was under the influence of drugs and/or alcohol. Despite numerous requests to exit the vehicle, (AP) refused and became physically combative with (SO). Despite repeated taser deployments that had no effect on him, (AP) continued to fight, kick at, bite and head-butt (SO), and eventually both individuals landed on the ground twice.*

*Other RCMP were called and assisted in subduing (AP) as he continued to resist arrest and to spit. He was placed in handcuffs with a spit sock placed over his head.*

*Once at the detachment, EMS were called and (AP) was transported to St. Anthony's General Hospital in The Pas, Manitoba, where he was diagnosed with a dislocated left shoulder, broken ribs and a bruised right wrist. (AP) was treated for these injuries and released into police custody. (AP) was charged with a number of offences as a result of the incident.*

*The IIU investigation was extensive. It included witness statements from civilians who were with (AP) in the vehicle and observed the altercation, all reports and statements of attending and involved officers, the dispatch audio and available audio from the incident, medical information, and the record of disposition for (AP)'s charges.*

*On the whole, despite (AP)'s unfortunate injuries, the evidence discloses that even if the use of force by (SO) was "significant," it was necessary and justified to effect the lawful arrest of (AP).*

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*As such, the Crown is of the opinion that s. 25 of the Criminal Code of Canada provides that no charges are warranted as against (SO).*

### **Applicable Law**

Sections 25 (1), (3), (4) and Section 26 of the *Criminal Code of Canada* are applicable to this analysis:

*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*

*26. Everyone who is authorized by law to use force is criminally responsible for any excess thereof, according to the nature and quality of the act that constitutes the excess.*

In addition, police officers are entitled to rely on the self-defence provisions of the *Criminal Code* under Section 34:

34. (1) A person is not guilty of an offence if

(a) they believe on reasonable grounds that force is being used against them or another person or that a threat of force is being made against them or another person

(b) the act that constitutes the offence is committed for the purpose of defending or protecting themselves or the other person from that use or threat of force

(c) the act committed is reasonable in the circumstances

The allowable degree of force to be used remains constrained by the principles of *proportionality, necessity and reasonableness* (*R. v. Nasogaluak*, [2010] 1 S.C.R. 206). The Supreme Court noted, (at para. 35):

*“Police actions should not be judged against a standard of perfection. It must be remembered that the police engage in dangerous and demanding work and often have to react quickly to emergencies. Their actions should be judged in light of these exigent circumstances.”*

Also in *R. v. Power*, 476 Sask. R. 91 (CA), at para. 35, the court notes:

*“On the basis of the foregoing, a determination of whether force is reasonable in all the circumstances involves consideration of three factors. First, a court must focus on an accused’s subjective perception of the degree of violence of the assault or the threatened assault against him or her. Second, a court must assess whether the accused’s belief is reasonable on the basis of the situation as he or she perceives it. Third, the accused’s response of force must be no more than necessary in the circumstances. This needs to be assessed using an objective test only, i.e. was the force reasonable given the nature and quality of the threat, the force used in response to it, and the characteristics of the parties involved in terms of size, strength, gender, age and other immutable characteristics.”*

## **Conclusion**

Following due consideration of all the circumstances of this matter and a careful, thorough review of all evidence and material facts obtained in this investigation, including:

- SO and WO2 were dispatched to a call for service where it was reported the AP was an unwanted passenger in a vehicle and wanted on warrants.
- SO confirmed AP was wanted on outstanding warrants.
- Upon arrival at the scene, the police located a four door pickup truck, with AP seated in the back right seat. From all accounts provided, AP refused to exit the vehicle and a struggle between him and SO ensued inside the vehicle.
- CW1, CW2, CW3, SO and WO2 all stated that SO was telling AP to stop resisting arrest.
- According to WO2 and SO, SO advised the AP he was under arrest on the strength of outstanding warrants. CW2 and CW3 stated they did not hear SO tell AP he was under



arrest. CW1 stated that the male officer arrested AP and then forced his way into the vehicle.

AP stated that WO2 and SO told him to get out of the truck and arrested him for “breach or something.”

- CW3 stated that she did not see either the male or female officer deliver any strikes to the AP. However, later in her statement she said she did see the male officer hit AP in the back with his forearm at least four times.
- SO admitted hitting AP with two short-ranged left forearm strikes, as the AP was assaulting him (biting).
- SO admitted he used CEW multiple times in drive stun mode.
- WO2 broke the window on the truck and AP was dragged out onto the ground and handcuffed. AP continued to resist arrest by kicking his feet and spitting.
- AP kicked WO2 and bit the hand of SO.
- AP had been taken to the ground twice during the struggle.
- SO reported that he was head butted by AP during the struggle on the ground.
- SO’s medical records indicated that he had a human bite wound to his left hand, shoulder pain and swelling to his nose due to being head butted.
- It was not until two RCMP members arrived that the officers were able to put the AP in the back of their police vehicle and transport him to the detachment, where he was seen by paramedics and then taken to hospital.
- SO states that AP had abnormal strength, experienced no pain when police attempted pain compliance and appeared intoxicated by drug.
- AP admits having consumed alcohol and cocaine.
- AP was unable to remember much about his contact with police that night due to liquor and drug consumption. He did remember being subjected to multiple CEW deployments, but could not recall how his ribs or shoulder were injured.
- AP’s medical records indicated that he had a dislocated left shoulder and broken ribs on his right side.

A police officer is authorized to use force in the lawful execution of his duties, and as much as is necessary for that intended purpose. Moreover, a police officer is authorized to use force to defend or protect himself from the use or threat of force by another person, provided it is reasonable in all of the circumstances. If the force used is in excess of what is necessary or reasonable in the circumstances, such force is not justified and the acts may constitute an assault under the *Criminal Code of Canada*.

In this investigation, I must determine whether SO was in legal execution of his duties and whether consequences should flow from the SO’s actions in consideration of all the circumstances. On careful review of the available evidence and material facts obtained in this investigation, I am satisfied that AP was legally arrestable, and he was resisting arrest and being assaultive and combative. Further, I am not satisfied there are reasonable grounds to believe that SO exceeded the ambit of justifiable force during his contact with AP given all of the circumstances. It is my view that the force used by SO was necessary and in compliance with Section 25 of the *Criminal Code of Canada*.

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Further, MPS has also opined that the use of force by SO was necessary and justified to effect the lawful arrest of AP and that no charges are warranted against SO.

Accordingly, I am not satisfied that reasonable grounds exist to charge SO with any offences. This investigation is now completed and the matter is now closed.