



**IN THE MATTER OF AN IN-CUSTODY DEATH OF A MALE INVOLVING
OFFICERS OF THE ROYAL CANADIAN MOUNTED POLICE (RCMP) IN
PONOKA, ALBERTA ON SEPTEMBER 11, 2020**

**DECISION OF THE EXECUTIVE DIRECTOR OF THE ALBERTA SERIOUS
INCIDENT RESPONSE TEAM**

Executive Director:

Michael Ewenson

ASIRT File Number:

2020-0053(S)

Date of Release:

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Introduction

On September 11, 2020, pursuant to section 46.1 of the *Police Act*, the Alberta Serious Incident Response Team (ASIRT) was directed to investigate the circumstances surrounding a serious incident involving the grave medical condition of a 59 year old male individual, hereinafter referred to as the affected person (AP), while in the custody of the Ponoka RCMP. AP had gone into medical distress after his arrest on the night of September 10, 2020, and ultimately died in the evening of September 11, 2020.

ASIRT's Investigation

ASIRT's investigation was comprehensive and thorough, conducted using current investigative protocols, and in accordance with the principles of Major Case Management. ASIRT interviewed all relevant civilian and police witnesses, obtained and reviewed all available relevant video evidence and considered the findings of the medical examiner.

Overview of the Circumstances Surrounding the Death of the Affected Person

On September 9, 2020, AP attended a friend's residence (civilian witness #1 – CW1) in Ponoka. While there, AP became intoxicated and fell within the residence striking his head. The fall resulted in AP suffering a cut over his left eye. The residents called EMS to assist AP. EMS attended and subsequently transported AP to hospital. At the hospital, AP had a CT scan completed, which showed no abnormalities. AP received some stitches and a bandage for the cut above the eye. He was then released from the hospital.

The following day, September 10, 2020, AP once again attended CW1's residence. He consumed alcohol with those present to the point that he became quite intoxicated. At one point AP went to use the washroom, but ended up urinating in his pants and on the floor of the bathroom. AP came back and sat in a chair. The boyfriend of the home owner (civilian witness #2 – CW2), who was also present, became upset about this and no longer wanted AP in the house; so he lifted AP up and assisted him up the stairs and out of the door to the house, leaving AP outside.

Unbeknownst to anyone at the time, AP subsequently fell off the step he had been left on. AP fell backwards, forcefully striking the back of his head on the ground. Sometime later, CW1 came outside to check on AP. She called a cab to come get him. The cab operator later knocked on her door but CW2 would not let her answer it, as he was not supposed to be in contact with CW1. The cab operator then left.

CW1 went to the bathroom so CW2 would not be aware that she was calling the police. She reported that there was an intoxicated male in the area of her residence. She did not give her actual address, but just a description of the area AP could be found.

RCMP officers were dispatched to check on the welfare of an intoxicated male. Officers subsequently were able to locate AP lying on his back in the parking area to CW1's residence. AP was found to be very intoxicated but conscious. An officer knocked on the door to the residence, but CW2 would not let CW1 answer the door. With nowhere else to take AP, he was arrested for being intoxicated in a public place. He was assisted to his feet and escorted to a police vehicle. AP was transported to the Ponoka RCMP detachment.

Once at the detachment, AP was lodged into a holding cell, to be released when sober. A guard was tasked with monitoring AP. Inside the cell, AP fell from a seated position and struck his head. AP subsequently was sitting on the toilet and fell off hitting his head. The guard summoned an officer to check on AP. The officer conducted a physical check on AP. AP spoke with the officer and indicated that he was okay, other than his eye was sore.

The guard continued to monitor AP, and noted that he was visually breathing. On a subsequent check, he kicked the cell door, but AP did not respond. The guard notified an officer that was coming on shift, she went into the cell and found that AP was non-responsive to external stimuli, so an ambulance was called.

AP was transported to the hospital where it was determined that he had a large brain bleed. AP was originally placed on life support, but later that evening it was removed and he passed away.

Subject Officers

No officers were designated as subject officers in this investigation.

Interviews

As AP was in grave medical condition, RCMP Serious Crimes Branch was initially tasked with investigating how he may have sustained the injury prior to coming into contact with the police. As a result, they interviewed CW1 and CW2. ASIRT investigators reviewed those interviews.

CW1 was interviewed by RCMP officers on two separate occasions

CW1 was first interviewed at her residence on September 11, 2020. She provided a version of events that subsequently was believed to have been untruthful. CW1 was interviewed again, later on September 11th, at the RCMP detachment. This version of events is believed to be a truthful account of CW1's involvement/knowledge.

CW1 said she lied to investigators about certain details when they interviewed her earlier that day. She advised that everything she disclosed about the events on September 9, 2020, within her home was true, but she lied about not being home on September 10, 2020, when the RCMP officers attended and found AP on the ground outside her residence.

CW1 stated that on September 9, 2020, she happened to come across AP at a liquor store in Ponoka. They had not seen each other in years. She invited AP back to her place to reminisce about the old days over some drinks. AP attended her residence, and they both drank alcohol.

AP subsequently fell on his way to the washroom and hit his head on a fan or the floor and seemed to have lost consciousness for about a minute. AP had a large lump near his eye and there was blood everywhere. They called 911, and RCMP officers arrived and applied a bandage to AP while they waited for EMS, who then took AP away in their ambulance.

A friend of hers came over and helped clean up the mess. CW2 arrived at her house after the friend left. CW1 was unsure if CW2 arrived late on September 9, or the following morning. She recalled waking up with CW2 and that they argued with each other.

On September 10, 2020, around mid-day AP returned to her house after being released from the hospital. CW1 described AP as unsteady on his feet, appeared confused, but he was not complaining of any pain. She put a tea bag and Polysporin on his injured eye. AP had no recollection of what happened the previous day.

CW1 left AP in her residence with CW2 while she went to the liquor store to buy a case of beer for AP. When she returned, they all sat together within her residence drinking and drumming.

AP got up from a chair and stumbled to the washroom. AP did not take his pants down and urinated all over the bathroom. He came out and sat on a chair. CW2 saw what AP had done, and CW2 got mad. CW2 wanted AP out of the house. CW2 lifted AP up off the chair by the shoulders and assisted him up the stairs and out the exit door.

CW2 then went to the washroom, and at that time CW1 went outside the door to check on AP. CW1 said she did not see him, but heard him gasping. She then called a cab to get

AP home safely. The cab operator later knocked on her door, but CW2 would not let her answer the door, so the cab operator left.

CW1 then went to the washroom to call the RCMP while being out of earshot of CW2. She reported an intoxicated native male in the area of her residence. The RCMP then came to the house and knocked on her door, but CW2 would not let her answer the door and he turned off all the lights in the residence. The police discovered AP outside her residence.

CW1 said that neither she nor CW2 had any physical altercation with AP. The only physical contact was when CW2 pulled AP up the stairs to the exit door. CW1 did not see AP fall off the porch outside her residence.

CW1 was asked by an RCMP investigator why she had not initially told them about CW2 when first interviewed at her house. CW1 said she was worried about retaliation from CW2, knowing there was a no contact order in effect. She said CW2 was hiding in a closet when the police were at her residence.

CW2 was interviewed by RCMP officers

During his interview on September 12, 2020, CW2 advised that both he and CW1 were bound by a court order not to have contact with each other.

CW2 was not at CW1's home on September 9, 2020, but she told him that AP was drinking at her residence that day and fell down and hit his face.

On September 10, 2020, around 7:00 A.M. he attended CW1's residence. Around noon, AP arrived at the residence, and the three of them (CW1, CW2 and AP) sat within the residence and drank rum and beer while they sang and banged on a drum. CW2 said that CW1 and AP were extremely intoxicated. At one point, AP had urinated on himself and fell over in the bathroom. CW2 picked him up and sat him in a chair. As CW1 wanted AP out of the house so she could go to bed, CW2 and CW1 carried AP to the stairs leading to the exit. AP grabbed the railing and began ascending the stairs while CW1 assisted him, and CW2 stayed behind them in case AP fell and he could catch him.

At the top of the stairs, CW2 held open the door and then held onto AP while CW1 helped him through the doorway. CW2 said he did not go outside because he did not want to be seen on the building security camera given his no contact order with CW1.

CW2 told AP to sit down on the lawn chair that was outside. However, AP wanted back in the residence. They told AP that they would call a cab to drive him home. They closed the door and went back downstairs to the living area. CW1 called a cab for AP.

CW2 heard a bang outside and thought AP fell. CW1 went outside and found AP lying on the ground, moaning. CW1 called 911 and told the call taker that she was picking up her friend and saw a native male out back who needed help.

The police arrived at the scene and CW2 could hear them talking to AP. AP was responding to the police. The police knocked on the door to the residence, but neither CW2 nor CW1 answered it because of their no contact conditions. CW2 said there was nothing physical between anyone in the residence.

WO1 was interviewed by ASIRT and provided the following information

On September 9, 2020, witness officer #1 (WO1) was dispatched to a residence in Ponoka to assist EMS with a male bleeding from the head. He attended and found several intoxicated individuals including AP, CW1 and another male. AP had a gash above his left eye that was bleeding. WO1 applied a bandage and pressure on the wound until EMS arrived. AP did not originally want to go with EMS to the hospital, but WO1 advised AP that he would be going as he needed to get looked at. AP ultimately did go with EMS and they transported him to the hospital.

On September 10, 2020, he and witness officer #2 (WO2) were dispatched to a call of a possible intoxicated male. It was reported that the male had an eye patch. This reminded him of AP from the day before. WO1 attended the same address as the day before and found AP lying on his back on the parking pad with his feet and hands crossed. WO1 approached AP, and called out his first name. AP moved and was conscious, although he appeared very intoxicated with slurred speech. AP had a bandage covering his left eye from the injury he sustained the day before. WO1 knelt down next to AP and detected a strong odour of alcohol. AP told him he drank four beers.

WO1 knocked on the door to CW1's suite to see if someone could take care of AP, however it was not answered. A male from a neighbouring residence was outside and he spoke with him. This neighbor said he did not know AP or where he lived.

WO1 formed the opinion that AP could not take care of himself in his present condition. He was cold, shivering and had urinated himself. As such, he arrested AP to detain him in a holding cell until he was sober.

Witness officer #3 (WO3) had also arrived at the scene to assist. He and WO3 assisted AP to his feet. Once upright, AP was unsteady on his feet, but they were able to escort him to a police vehicle. AP was transported to the RCMP detachment without issue.

Once at the detachment, witness officer #4 (WO4) was present in the cell block area and helped WO1 get AP out of the vehicle and into the building.

WO1 asked AP to put his hands up on the wall in order to search him. AP nearly fell over, but WO1 helped prevent him from falling. AP answered questions relating to his eye injury, and any other injuries, address, birthdate, etc. AP was cooperative and cognitive. WO1 did not see any other injuries on AP, nor did AP indicate that he was injured.

WO1 brought AP to a holding cell and requested that he sit on the floor. AP did so with no problem. WO1 had no further dealings with AP.

WO2 was interviewed by ASIRT and provided the following information

On September 10, 2020, around 10:30 P.M., he and other officers responded to a call for service of an intoxicated male by Rex Manor. WO1 indicated over the radio that he had located the male. WO2 attended this location and met with WO1 and WO3, who was also there.

WO2 observed AP lying on his back on the ground near the stairs leading to the residence of where he was found. AP had a bandage on that was partially covering his left eye. WO2 did not observe any other injuries on AP. AP advised that the injury to his eye was due to a previous fall. WO2 noted that AP's speech was slurred and he smelled strongly of alcohol.

AP was wearing a long sleeve shirt/hoody and a single sandal. The other sandal was by the stairs. AP was not dressed for the cold temperature. WO1 knocked on the door to the residence several times, but no one answered. AP said he lived there. The officers were trying to find someone that knew AP and could look after him.

A male came out of a neighbouring residence and was asked about AP. The male indicated that he did not know AP. WO1 then arrested AP for being intoxicated in a public place. WO1 and WO3 sat AP up, and then lifted him to his feet. They assisted him while walking him to WO1's police vehicle. AP was cooperative throughout. WO2 placed the missing sandal on AP's foot before he entered the police vehicle. This concluded his involvement with AP.

WO3 was interviewed by ASIRT and provided the following information

On September 10, 2020, around 11:00 P.M., he responded to a check on the welfare call for service involving a male reported to be intoxicated and lying on the ground. He assisted WO1 in trying to locate this individual, and initially were unable to find him.

Subsequently, WO1 advised over the radio that he had found the male. WO3 attended that location.

Upon arriving there, he met with WO1 and observed AP lying on the ground on his back. AP had an injury to his left eye with a patch over it. He noted that AP was shaking, and determined that he was shivering from the cold.

WO1 and WO2 spoke with AP who responded with slurred speech. He said he had four beers. WO3 noted a strong smell of alcohol coming from AP. AP pointed to Rex Manor and told them he lived there. AP told them he did not remember how he got there and he was cold, and may have been there for a couple of hours.

A tenant next door came outside and WO3 asked him if he recognized AP. This person said he did not recognize AP. As the officers could not determine where he came from or if anyone could take care of him, WO1 placed AP under arrest for being intoxicated in a public place. WO3 heard WO1 say that he had dealt with AP the day before and he was treated at the hospital. WO3 was at ease after learning that AP had been to the hospital as he was concerned with his eye injury.

He assisted WO1 in getting AP into a seated position. Together they lifted AP to his feet and walked with him to the police vehicle. AP walked unsupported to the vehicle. WO3 said that AP was dressed in long clothing, sandals and no socks. He noticed that AP had urinated on himself. He described AP as being cooperative and responsive.

WO4 was interviewed by ASIRT and provided the following information

On September 10, 2020, around 11:00 P.M., WO1 brought AP to the detachment via the secure vehicle bay. WO1 assisted AP in removing his shoes. WO4 filled out the prisoner booking in form. Both AP and WO1 provided information required to complete it. AP said he had high blood pressure, and his last drink was approximately an hour before the RCMP arrived. WO4 completed the rest of the booking form. WO1 assisted AP by holding him upright.

AP seemed heavily intoxicated, had a bandage on his left eye, but did not display any other injuries. AP was cooperative, seemed happy and in good spirits, and did not complain about anything. WO4 learned from WO1 that AP had fallen the day or two prior and hit his head, which resulted in the bandage on his left eye.

AP's balance was off while being searched, and he nearly fell. WO1 was able to prevent him from falling. WO1 thereafter escorted AP to and searched him in a cell.

Several hours later, around 5:00 A.M., the cell guard, civilian witness #3 (CW3) advised him that AP had fallen off the toilet and was not moving. WO4 entered the cell to check on AP.

AP looked up at WO4 as he walked in. He asked AP if he was doing alright, as he heard that he had fallen off the toilet and may have hit his head. AP responded that he was fine but his left eye was hurting. AP was lying on the floor, on his left side, and had turned his head towards WO4 and responded to his questions. WO4 asked if there was anything else bothering him, AP said no, he was okay. WO4 did not see any blood on the cell floor. He did not assist AP to sit up, as he felt AP was already in a recovery position, and that was the best position to be in.

AP was coherent and answering WO4's questions. He was not slurring his words as much as when he was brought into the detachment. WO4 felt AP was sobering up, and able to answer questions better. He advised CW3 to notify him if anything changed in AP's condition.

WO5 was interviewed by ASIRT and provided the following information

She came on shift the morning of September 11, 2020. Part of her duties is to review the passover log. At 6:55 A.M. she went to the cell block to review the log and saw that AP was arrested at 11:00 P.M. the previous night. As it was almost 7:00 A.M., she thought she could likely release him. She entered the cell that AP was in and called out his name, with no response. She did this a few times. AP was snoring, she thought that was a good sign.

She went and got some gloves on and reentered the cell. She gave AP a sternum rub, with no affect. She tried this a couple of times, but there was no reaction. She performed a pressure test behind his ears with no arousal of AP. She called over the radio to ask for an ambulance to be called. She noticed AP's breaths were very shallow and not normal. She pulled AP into a recovery position. She kept monitoring to make sure he was breathing. She moved his head to clear his airway, and continued to check on him. She did not notice any injuries. He had purple colouring around his face, and she believed that was likely a sign of lack of oxygen.

Three EMS members arrived and began medical treatment. One paramedic said he may have sustained a head injury. They prepped AP for transport to the hospital. CW3 told her that AP had been on the toilet for an hour and he fell over and struck the wall. CW3 advised that he had WO4 check on AP within the cell about two hours before she had entered it.

WO5 relayed her actions after AP left for the hospital in investigating what may have caused AP's condition, but nothing further in her statement to ASIRT related to the mandate of ASIRT's investigation.

CW3 was interviewed by ASIRT and provided the following information

He is an on-call guard at the Ponoka detachment. He was called in at approximately 11:00 P.M. on September 10, 2020. The prisoner check protocol is to check a prisoner every 15 minutes. Guards are not to enter the cell unless absolutely necessary. If there are concerns, the guard is to notify an officer.

CW3 checks his prisoners on the CCTV monitor and by going to the cell door and visually checking them by peering into the cell via the door window. He would go the cell and visually check to observe the prisoner's breathing to ensure he was satisfied that the prisoner was doing fine. If he does not see movement, he kicks the door in an attempt to speak with the prisoner so he could see the prisoner is breathing and moving.

"LOB" in the log means "lying on back." The investigator read to CW3 an entry that said at midnight AP had sat up on the floor and then fell back and hit his head on the wall. CW3 recalled that AP had urinated on himself because he had difficulty getting to the toilet. He attempted to dry himself with his T-shirt.

Later on, AP was able to make his way to the toilet and sat on it. At 5:15 A.M., CW3 observed AP fall off the toilet and strike his head on the side where he was already wearing an eye patch.

CW3 notified WO4 about AP falling off the toilet and hitting his head. WO4 was conducting an interview, but shortly thereafter he conducted a physical check on AP by entering the cell. CW3 stayed at the guard station to remain out of WO4's way. CW3 recalled hearing WO4 ask AP if he was okay. He heard a muffled response from AP, and when WO4 came out of the cell he informed CW3 that AP just indicated his eye was sore. CW3 remembered that AP had a patch over his left eye.

CW3 stated he monitored AP more closely now that he had struck his head quite hard. The ASIRT interviewer read two entries from the prisoner log to CW3 that indicated CW3 had checked on AP. CW3 was asked what V.I.B. meant? CW3 said it means "visually breathing" (V/B). Reading from the log at 6:45 A.M., CW3 had kicked the door and AP did not respond. He advised WO5 at 6:58 A.M. when she came on shift. After speaking with someone on the phone, she attended the cell and performed a sternum rub and other things to check on AP. She then called for an ambulance. AP was transported the hospital.

CW3 said in retrospect he thought AP should have been taken to the hospital prior to attending cells. He also thought AP had been injured prior to coming to the cell block.

Prisoner Log

The times on the prisoner log for AP start on September 10, 2020, at 11:00 P.M. to 7:30 A.M. the next morning.

Checks on AP are done every fifteen (15) minutes by CW3 and documented in the log as per RCMP policy.

For the first hour, AP was lying on his back on the floor.

At midnight, it was documented that AP sat up and hit his head on the back wall.

From midnight to 4:00A.M., AP was documented as moving all over the cell. It was noted that he had laid on the floor on his back.

At 4:15 A.M., AP was sitting on the toilet.

At 4:30 A.M., AP was seen trying to dry out his T shirt.

At 4:45 A.M., AP was seen sitting on the toilet again.

At 5:00A.M., AP was sleeping while seated on the toilet.

At 5:15 A.M., AP fell off the toilet and hit his sore eye. CW3 left his station and informed WO4 of the fall.

At 5:30 A.M., AP was lying on his back on the left side of the toilet and moving.

Between 5:45 and 6:15 A.M., AP was lying on his back on the left side of the toilet, visibly breathing and snoring.

At 6:30 and 6:45 A.M., AP was lying on his back, on the left side of the toilet, snoring. CW3 tried to wake him up by kicking the door, calling his name with no response.

At 6:58 A.M., WO5 entered the cell and tried to wake up AP with no response. She called an ambulance and AP was transported to Red Deer.

At 7:30 A.M., CW3 cleaned the cell and completed his shift.

Incident Communications

The recording of the call from CW1 requesting that police check on the welfare of a male, and the subsequent dispatching of this call for service is 7 minutes and 38 seconds long.

CW1's call is answered by the operations call centre and the operator is told by the female caller (CW1) that she was driving through Ponoka, when she saw a "drunk native in Ponoka, not doing to good, I don't think." She said the male has an eye patch and he looked like he needed medical attention. When asked for the address, CW1 said she was not sure, as she was just driving through. She gave an approximate location on 46 Avenue. The call operator explained that she needed a better location description to try and locate this individual. Eventually, CW1 said near the Rex apartments. She said, he looks like he needs help. CW1 was asked if she knew who he was. She stated "No."

The operator questioned CW1, "You're long gone from there, hey?" CW1 responded with, "Oh, yeah." And stated she was driving back to Red Deer. CW1 was asked about whether she knew if this male had any COVID symptoms? CW1 replied that she did not know, as "I don't even know the guy." She indicated she just saw him as she was picking up a friend, and he was a "mess". Throughout the call, CW1's speech sounded slurred and she was slow to answer some questions from the operator.

Once the call terminated with CW1, a dispatcher advised over the radio that there was a call for service involving a "heavily intoxicated indigenous male by the Rex apartments."

Video Evidence

CCTV video footage from the rear of Rex Manor was available. The security camera at this location was only motion activated. Investigators found that there were several segments from September 10, 2020, but only a small portion of those segments were directly relevant to the investigation involving AP's death. The relevant segments were of varying lengths, from 39 seconds to over six minutes.

In one segment, AP exited the residence onto the porch. He appeared to be unsteady on his feet. About thirty-six seconds after AP exited the suite the porch light was turned off. AP then bent forward to grab the armrest of a nearby lawn chair. He grabbed the furthest armrest on the chair, AP then stumbled and fell backwards against the house. He ended in a sitting position with his legs mostly stretched out in front of him. As he moved about on the porch in the seated position, he turned his head and the camera

captured his left eye covered with a patch. AP moved about on his rear and reached for either the door knob or door bell. He then repositioned himself such that he appeared to be leaning against the wall of the residence.

While not seen on camera, AP must have made it to a standing position, as the next video shows AP standing outside the door to the residence, and he appears to be either pushing on the doorbell or attempting to turn the door knob with his left hand. Seconds later, AP lost his balance and stumbled backwards and fell off the small porch landing. AP fell backwards and landed very firmly on the ground. The back of AP's head struck the ground forcefully. Once on the ground, AP remained largely motionless lying flat on his back. AP could be seen to still be breathing and there was some slight movement in his arms.

Based on the timestamp on the videos, it appears that AP remained largely motionless for approximately two minutes. Thereafter, AP is clearly awake, first lifting his head off the ground, and then rubbing his head/face with his hands. He remains lying straight out on his back. AP then makes several attempts to get up off his back by rocking his body and trying to use his legs to get momentum to do so. The best he can do is get to a seated position for a short period of time before he falls back into a lying position again. This happens a couple of times.

While AP is lying on the ground on his back, CW1 comes out of the door to the residence and stands on the porch. It appears that she is looking for someone/something. While she does look in the direction of where AP is, you can not tell if she actually sees AP. [Given the relatively close distance of the two, it would be more likely than not that she did, even with the limited external lighting in the area.] CW1 then returned inside the residence. AP again rocked himself in an attempt to get up, and was only successful in getting to a seated position before he fell onto his back once again. This happened twice.

All of the foregoing video evidence would have been unknown to the officers at the time they arrived where AP was found. The following relates to what was captured after AP was located by police.

AP is still lying supine when WO1 arrives. WO1 approached AP and you can see AP moving his arms and head. WO1 approaches and stands over AP. It appears that a conversation of some sort is occurring between the two. WO2 then arrives and approaches the two. Followed shortly thereafter by the arrival of WO3. WO1 goes to the door of the residence and appears to push something [maybe a doorbell] and then knocks on the door. It looks like he uses a flashlight that he is holding to knock on the

door a couple more times. WO3 then walks around the corner of the residence out of sight. WO2 appears to be conversing with AP who is still lying on the ground.

WO3 returns into the video. All three officers appear to be speaking to each other, and at times to AP. WO1 then appears to be speaking directly to AP for approximately one minute. After which, WO2 places a sandal back on AP's foot, and WO1 moves in and takes a hold of AP's left arm, while WO3 moves in and takes a hold of AP's right arm. Both officers then assist AP in standing up. Once upright, AP initially appears unsteady standing, but as the officers escort him towards a police car, he appears to be largely walking on his own. A spotlight from the police vehicle greatly obscures the view of AP entering the rear of that police vehicle.

Ponoka RCMP cell block video

WO1 entered the secure garage bay to the detachment in a marked police vehicle. He exited and subsequently opened the back door for AP to exit the vehicle. AP required approximately 45 seconds to get out of the vehicle and to walk a short distance to the booking counter. He was slow and was unsteady on his feet.

When first brought into the holding cell, AP presented as being very intoxicated. He was unsteady on his feet and for the first eight hours while he is in custody, he spent most of the time lying on the floor of the holding cell. On a multitude of occasions, he tried to sit up but fell backwards resulting in hitting his head on the cell wall or floor.

On two occasions, he fell off the toilet, hitting his head. One of these falls was around 4:31 A.M. This fall appeared to be the most severe of the falls while in cells. However, shortly thereafter AP pulled himself up using the toilet and proceeded to lower his pants and sit on the toilet. Around 4:35, AP stood up from beside the toilet and pulled his pants up. He bent over and picked up his T-shirt in a fairly coordinated fashion. He walked to the cell door and pushed on it. He flapped his shirt in an apparent attempt to dry it. AP seemed to stand fairly well. Around 4:40 A.M. AP sat down on the toilet with his pants still on, it appeared he was using it as a seat. His coordination at this time seemed good compared to when he was first placed in cells. Around 5:25 A.M. AP was still sitting on the toilet when he fell off onto his left side. It appeared that he struck his head on the floor and/or wall. AP remained motionless for approximately a minute and a half.

At approximately 5:26 A.M. WO4 entered the cell to check on AP. He spoke with AP and then exited the cell leaving AP lying on the floor on his left side near the toilet. Periodically, AP sat up but then laid back down. At 5:48 A.M., AP placed his shirt on

top of his chest. At 6:05 A.M. he is lying motionless on his back with his right hand facing up towards his right shoulder. He remained in this position until approximately 7:09 A.M. when WO5 entered the cell.

WO5 checked on AP and applied external stimuli to him. She then placed him in a recovery position. At 7:20 A.M. EMS arrived in the cell and attended to AP. Four minutes later, EMS took AP out of the cell on a stretcher.

Autopsy Report

An autopsy was conducted on AP. The pathologist's finding for the immediate cause of AP's death was blunt force trauma to the head. The report also stated, in part:

Considering the history, circumstances, autopsy examination and ancillary test results the cause of death is due to blunt force trauma to the head, with liver cirrhosis considered a contributing factor to death. The manner of death is determined to be accidental and appeared consistent with complications from the fall on September 10, 2020, prior to police arresting the decedent.

RCMP Policy on Intoxicated Individuals

Assessing Responsiveness and Medical Assistance

The relevant portions of RCMP policy says:

2.1.2 Seek immediate medical assistance and provide the necessary first aid when a person exhibits any of the following:

2. 1. 2. 1. appears to be unconscious, semi-conscious, or there is a marked change in their state of consciousness;

2. 1. 2. 2. displays signs of having sustained a head injury or is reported to have sustained a head injury;

2. 1. 2. 3. possible drug overdose and/or alcohol poisoning;

2. 1. 2. 4. believe to be concealing drugs internally;

2. 1. 2. 5. excessive vomiting; or

2. 1. 2. 6. exhibits any other signs indicating an injury or illness for which medical attention should be sought.

NOTE: Consider seeking a medical assessment if an individual is suspected of having a drug or alcohol addiction and if they have been detained for longer than eight hours.

2. 1. 3. A person showing the signs described in sec. 2.1.2. should not be placed in an RCMP cell.

EXCEPTION: A medical practitioner has declared the person medically fit for incarceration.

Analysis

A person taken into custody by police is owed a duty of care by the officer(s). Failure to provide that care can, in some cases, result in criminal liability under failure to provide the necessities of life (section 215, *Criminal Code*). The officers could also be criminally liable under section 219 *Criminal Code* for criminal negligence causing death.

Section 215

To make out this offence¹ the Crown would be required to prove that:

- the officer's failure to obtain medical treatment and intervention constituted a marked departure from the conduct expected of a reasonably prudent police officer in the circumstances; and
- it was objectively foreseeable that the failure to provide medical treatment and intervention would endanger AP's life

While the videos do show that AP was obviously very intoxicated, it is much less clear that his condition was such that medical assessment was mandatory before being lodged in cells. AP presented as most heavily intoxicated people do. RCMP policy does not require even heavily intoxicated individuals to be assessed prior to being lodged in cells. A detainee needs to exhibit signs of "possible drug overdose and/or alcohol poisoning". While policy does not have the effect of law, it can inform if an officer's actions are consistent with training and expectations of officers faced with that situation. This can be relevant to whether the impugned actions, or failure thereof, constitute a marked departure from the conduct of a reasonably prudent officer in the circumstances. In this case, all of the officers involved believed they were dealing with an intoxicated individual. There was interaction with AP, with nothing causing any of the participants to believe that AP was suffering from anything but intoxication. While definitely

¹ *R. v. Doering*, 2022 ONCA 559 at para. 48

intoxicated, there were aspects of AP's behaviours (e.g. responsive communication with the officers when they first located him and how he walked with the officers to the police vehicle at the scene) that objectively supported the officers beliefs. At that time, it was objectively reasonable to not believe AP was suffering from "alcohol poisoning". Additionally, aside from the injury to his left eye, that had been dealt with by medical staff the previous day, AP did not exhibit any other signs of injury or illness for which medical attention should have been sought. With the policy requirements apparently satisfied, the lodging of AP without first being seen by medical staff was within the possible responses of a reasonably prudent police officer in those circumstances.

Section 219

To make out this offence² the Crown would be required to prove that:

- The officer(s) conduct constitutes a marked and substantial departure from what a reasonably prudent person would do under the circumstances.
- Criminal negligence requires proof that the accused showed a wanton or reckless disregard for the life or safety of another.

Criminal negligence is the more serious of the two offences. For the reasons previously discussed, the offence of failing to provide the necessities of life is not made out in this case. As such, for much the same reasons the offence of criminal negligence causing death is also not made out.

Conclusion

ASIRT was directed to investigate the death of AP as it occurred in circumstances involving him being in the custody of the RCMP, at the time he went into medical distress.

In this case, it is clear that there was only minimal physical contact by police officers on AP. No substantive "force" was used by a police officer prior to AP going into medical distress.

² *R. v. F.(J.)*, [2008] 3 S.C.R. 215

When AP was noticed to be in medical distress, emergency medical aid was sought for AP. While AP was transported to hospital alive, his condition deteriorated, and he sadly passed away later that day.

As previously noted, the OCME reported the cause of AP's death to be blunt force trauma to the head, with liver cirrhosis considered a contributing factor to death.

All of the officers involved believed they were dealing with an intoxicated individual. There was interaction with AP, with nothing causing any of the participants to believe that AP was suffering from anything but intoxication. We now know that this was not the case. With the benefit of hindsight, we know that AP should have been medically assessed before being lodged in calls. Whether this would have averted the tragic outcome will never be known.

Determination of what, if anything, could be done differently (e.g. policy/training) in the future to avoid similar circumstances is something that is within the purview of a Fatality Inquiry.

Given the foregoing, while AP's death was untimely and tragic, there are no reasonable grounds to believe that any officer(s) committed an offence(s).

ASIRT's investigation having been completed and our mandate fulfilled, I have concluded our file.

Original signed

Michael Ewenson
Executive Director

August 31, 2023

Date of Release