



**IN THE MATTER OF THE ARREST AND DETENTION OF AN AUTISTIC YOUTH
BY THE RCMP IN ST. ALBERT**

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

Assistant Executive Director:

Matthew Block

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Introduction

On October 7, 2022, pursuant to s. 46.1 of the *Police Act*, the Director of Law Enforcement directed the Alberta Serious Incident Response Team (ASIRT) to investigate the arrest and detention of an autistic youth by the Royal Canadian Mounted Police (RCMP) in St. Albert on October 2. ASIRT designated three subject officers, with notice to each. ASIRT's investigation is now complete.

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 investigators interviewed seven civilian witnesses and six police officers including the subject officers. Investigators spoke with the affected person's (AP) mother, who said that an interview with him would not be possible. Investigators reviewed the AP's medical records. Investigators also reviewed surveillance video from a nearby school, police vehicle video, and all police and 911 communications.

ASIRT's mandate is to investigate police officers and does not extend to other involved individuals such as the paramedics.

Circumstances Surrounding the Incident

The AP was a 16-year-old non-verbal autistic youth.

At 4:15 p.m. on October 2, 2022, civilian witness #1 (CW1) called 911. He said that there was someone at the St. Albert Lacombe School playground who "either has a severe handicap and should not be left alone or is tripping on some drugs and should not be here alone." CW1 thought that police should check for a missing person. The person at the playground, who was the AP, was not causing anyone harm but did not seem like he was fit to be left alone. CW1 described the AP to police, including that he thought the AP was in his early twenties.

Subject officer #1 (SO1) responded to the call and arrived at the playground at 4:47 p.m. SO1 observed the AP first playing in the sand and then on the swings. At 4:49 p.m., SO1

followed the AP through the playground. SO1 said that he tried to get the AP's name and address, but that the AP either ignored him or repeated things. He thought he gave his first name. At this time, civilian witness #2 (CW2) was walking through the park that contained the playground. CW2 heard SO1 tell the AP to go home. The AP was making sounds that were not words, which CW2 recognized as characteristic of someone with a mental disability. At 4:53 p.m., the AP walked through the park and then left the area.

SO1 also left the park and checked license plates for vehicles in the adjacent parking lot. One of the license plates was associated to an individual that SO1 recognized as a drug user who lived in the area, suspect #1 (SU1). SO1 then thought that the person he had just deal with was SU1. In his file, he marked SU1 as the subject of the complaint.

Another license plate was associated to civilian witness #3 (CW3), so SO1 called CW3 and left a voicemail. When CW3 called him back a short time later, SO1 told him that he was looking for a man in the park who was high on drugs. CW3 was at the playground with his family.

At 5:26 p.m., the AP returned to the playground and got on a swing. CW3 saw him return. CW3 said he was skipping and repeating unintelligible words. CW3 left the park and called SO1 to tell him that the man had returned. SO1 asked for additional officers to attend the park, and subject officers #2 (SO2) and #3 (SO3) responded.

SO2 and SO3 understood that they were assisting with the arrest of another person, suspect #2 (SU2). They understood that SU2 was high on drugs and known to be combative with police.

At 5:39 p.m., SO2 and SO3 walked into the park. SO1 drove his marked police vehicle into the park and exited. At this time, civilian witness #4 (CW4) was riding through the park on his bicycle. He observed the three subject officers converging on the AP, who was behaving erratically. One officer asked for the AP's name, and one said he was under arrest for public drunkenness or similar. CW4 said that the officers were calm and measured, and said things such as, "we are just trying to sort this out" and wanting to "make sure everyone is safe." The officers were trying to figure out the AP's name. The officers also discussed that the AP was not who they thought he was. Two officers came from behind the AP, grabbed his arms, and handcuffed him. The AP was yelping, making loud sounds, and yelling erratically. CW4 thought that the AP appeared to have a mental disorder and was not intoxicated. The AP was very distressed and CW4 found it difficult to watch, so he left.

SO2 and SO3 had their audio recording equipment activated during the arrest. The encounter began with:

5:39:19 p.m., officer: [SU2's first name], you're under arrest.

5:39:53 p.m., officer: [SU1's name], get down off that. You're under arrest for public intoxication, get on your knees.

5:40:10 p.m., AP: Help! (repeatedly) (screaming) It's okay (repeatedly).

The officers' tones shift at this point and become noticeably milder. They repeatedly tell the AP to relax.

5:40:23 p.m., officer: You're under arrest for public intoxication until we figure this out, okay? What's your name?

The officers then ask if the AP had any weapons and repeatedly ask him to spread his legs so that they can search him. The AP continues to scream and say, "it's okay" and "mom!"

5:41:04 p.m., officer: K so he's snapped a guy's neck before right?

...

5:42:11 p.m., SO1: He left and then a guy called me back and said he's back. Now that I have an idea who he is. I don't think that's mental health."

Other officer: Well no, he's drunk.

SO1: He literally lives [nearby].

The subject officers then brought the AP to SO1's police vehicle. SO1's vehicle had a camera in the back seat and audio recording. SO1 asked the AP what his name was and where he lived repeatedly. The AP responded with "it's okay," "playground," and screaming. SO1 asked if that was the AP's vehicle over there, referring to SU1's vehicle, and the AP initially responded with "yes." SO1 asked again and the AP responded with "car" and "playground." SO1 asked what his name was, and the AP gave his first name. SO1 asked for his last name and the AP said "police."

At 5:46 p.m., SO1 got out of the police vehicle and went to SU1's residence. SU1 was at home. SO1 returned to the vehicle and asked for the AP's last name and where he lived.

The AP continued to scream and repeat words. SO1 then started to drive back to the detachment. The AP kicked the door and hit his head against the partition between the seats repeatedly. The AP was extremely agitated throughout the drive to the detachment.

At 6:00 p.m., they entered a secure bay at the detachment. Two officers took the AP out of the car and put him in a cell. His handcuffs were removed, and he was left in the cell.

The AP paced in the cell and pounded his fists on the door. At 6:09 p.m., he hit his head on the cell door four times.

At 6:37 p.m., five officers and two paramedics entered the cell. The AP was already on the ground and the officers held him down by kneeling on him. While the paramedics refused to speak to ASIRT investigators, medical records show that a sedative was administered at this time.

Paramedics transported the AP to a hospital, arriving at 7:26 p.m. His injuries were mild swelling to the front of his head and redness on his wrists.

At 7:28 p.m., RCMP dispatch aired that the AP was reported as missing.

Subject Officer #1 (SO1)

ASIRT investigators interviewed SO1 on February 1, 2022. He provided a written statement and answered follow-up questions. SO1 gave a thorough account of the incident, including the below.

SO1 told ASIRT investigators that his grounds for arrest were “the yelling, flinging of arms, and erratic behavior, the obsession of the repeating words over and over, and a grown adult in the playground, as well his pupils appeared dilated.” He also said that the AP “was preventing the lawful enjoyment of the park because they feared this individual in the park.” He said there was no force used in the arrest and that they just grabbed his arms and put the handcuffs on.

SO1 said that he did not arrest the AP only because he thought he was SU1. He said he would have arrested anyone who was acting in that way, who was intoxicated, and who was bothering other users of the park.

Subject Officer #2 (SO2)

ASIRT investigators interviewed SO2 on February 1, 2022. He provided a written statement and answered follow-up questions. SO2 gave a thorough account of the incident, including the below.

SO2 told ASIRT investigators that the AP, when he first saw him, was digging in the sand and making weird noises. As SO2 got closer, he could see the AP's eyes and thought that he was high on drugs. SO2 told the AP that he was under arrest for public intoxication, and the AP jumped onto a piece of playground equipment. They grabbed his arms and handcuffed him. SO3 said that the person they had arrested was not SU2, and SO1 said he was SU1.

Subject Officer #3 (SO3)

ASIRT investigators interviewed SO3 on February 1, 2022. He provided a written statement and answered follow-up questions. SO3 gave a thorough account of the incident, including the below.

SO3 agreed with SO2's account of the initial encounter and arrest. He also said that the AP kept repeating a certain phrase and making strange sounds when they tried to talk to him.

Analysis

If a police officer arrests an individual without the proper grounds, they may be committing the offence of unlawful confinement. If force is applied in the arrest, the officer may also be committing an assault.

Here, the subject officers arrested the AP for public intoxication. That offence is found in s. 115 of the *Gaming, Liquor and Cannabis Act*:

115(1) No person may be intoxicated in a public place.

(2) If a peace officer on reasonable and probable grounds believes that a person is intoxicated in a public place, the peace officer may, instead of charging the person with an offence, take the person into custody to be dealt with in accordance with this section.

(5) No action lies against a peace officer or other person for anything done in good faith with respect to the apprehension, custody or release of a person pursuant to this section.

The AP was not intoxicated. He was a non-verbal autistic youth. Three of the four civilian witnesses who observed the AP recognized that he could be or was likely neurodivergent.

The subject officers all seem to have thought they were dealing with specific known drug users, SU1 and SU2. This appears to have affected how they treated the AP.

There were therefore reasonable grounds to believe that an offence may have been committed by the subject officers and, as required by the *Police Act*, this matter was referred to the Alberta Crown Prosecution Service (ACPS) for an opinion on whether charges should be laid.

On February 8, 2024, the ACPS recommended no charges.

It is important to note that ASIRT and the ACPS are bound by different standards when assessing the viability of charges arising out of an investigation. ASIRT, as the investigative body, applies a *Criminal Code* standard that determines whether reasonable grounds exist to believe that an offence has been committed. The ACPS, based on its internal policy regarding criminal prosecutions applies a standard which examines whether there is a reasonable likelihood of conviction arising out of the evidence, and whether it is in the public interest to proceed with a prosecution. As is evident in this case, the application of these two different standards to the same investigation will, in some cases, result in different conclusions regarding the same file. In this case, while ASIRT found reasonable grounds to believe an offence had been committed, for the reasons provided in their opinion, the ACPS did not recommend that charges be laid.

Conclusion

On October 2, 2022, the AP, a non-verbal autistic youth, was playing in a park near his house. CW1 observed the AP and was concerned that he should not be left alone, either due to a mental health concern or drug intoxication. He called police, and SO1 responded. SO1 went and spoke with the AP, who left the park for a brief time.

The AP returned to the park, and SO1 asked for additional officers to attend. At this point, SO1 thought he was dealing with SU1 and the additional officers, SO2 and SO3, thought

they were assisting with the arrest of SU2. Both SU1 and SU2 are known drug users. The three officers arrested the AP for public intoxication. The AP was not intoxicated.

In the police vehicle and in cells at the detachment, the AP was extremely agitated and hit his head intentionally.

Relying on the opinion of the ACPS, no charges will be laid against the subject officers.

Original signed

Matthew Block

Assistant Executive Director

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