



**INVESTIGATION INTO THE CIRCUMSTANCES SURROUNDING  
THE DETENTION AND INJURY OF A 44-YEAR-OLD MAN IN  
CALGARY POLICE SERVICE CUSTODY ON JULY 3, 2019**

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

**Executive Director:**

**Susan D. Hughson, Q.C.**

**ASIRT File Number:**

**2019-039(S)**

**Date of Release:**

**November 23, 2021**

## **Introduction**

On July 4, 2019, pursuant to section 46.1 of the *Police Act*, ASIRT was directed to investigate the circumstances surrounding the detention in the Calgary Police Service (CPS) Arrest Processing Section (APS) of 44-year-old man, hereinafter referred to as **AP1**, who sustained serious injury while in custody. Based on the available evidence, two officers were identified and designated as subject officers, pursuant to the provisions of the *Police Act*. These officers will be identified below as **SO1** and **SO2**.

## **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 (MCM). All relevant police and civilian witnesses were interviewed. CPS video from the APS was secured and analyzed. The subject officers, as is their right, declined to provide ASIRT investigators with statements.

## **Circumstances Surrounding the Incident**

On July 3, 2019, CPS received a complaint that AP1 had attended Alberta Works (Social Services) earlier in the day and expressed suicidal and homicidal ideations, having been denied financial assistance to obtain medication.

As a result of the earlier events, there was concern that AP1 might be dealing with mental health issues. At 5 p.m., CPS officers spoke with AP1 at his residence. After consultation with the Mobile Response Team (MRT), police decided that they would not apprehend under the provisions of the *Mental Health Act*, but they instead arrested AP1 in relation to an outstanding warrant. Prior to transporting AP1, a shotgun was removed and provided to a friend of AP1 for safekeeping. AP1 was transported to the CPS -APS for processing and to speak to release. In addition to other officers, in terms of those who would have significant contact with AP1, present in APS at the time were the two subject officers, SO1 and SO2, and two additional witness officers, identified as WO1 and WO2.

AP1 was initially placed in a cell with three other detainees. While in that cell, AP1 tied his shirt around his neck and the cell bars and repeatedly tried to hang himself. SO1 and the two witness officers entered the cell and removed AP1 to place him in an individual isolation cell. The isolation cell is essentially four walls and a cement floor with a drain in it, the cell being devoid of anything that a person might be able to use to self-harm. It

is a reasonably small cell. AP1 was uncooperative and struggled against the officers. At approximately 8:45 p.m., upon placement in the cell, AP1's clothing was removed to prevent additional attempts to self-harm and given a blanket-like garment specifically designed for individuals that might be prone to harming themselves and left in the cell. The garment's fabric and construction are designed to be particularly difficult to fashion into any form of ligature or other forms of misuse. Once left in the isolation cell, AP1 put on the garment. He subsequently banged his head against the cell door window four to five times and said that he was not mentally stable.

A short time later, AP1 began attempting to tear strips of fabric off the safety gown he was now wearing. Officers approached the cell and spoke to him. While AP1 initially stopped tearing the gown, shortly after that, he recommenced trying to strangle himself with the garment. Officers approached the holding cell to take away the garment. As they stood outside the cell, they asked AP1 to remove the gown, but he refused and adopted what would best be described as squaring off to the officers at the door, as if preparing to fight.

Four officers, SO1, SO2, WO1 and WO2, discussed entry into the cell and obtained a plastic riot-type shield. At approximately 9:09 p.m., entry was gained into the cell with SO2 entering first, armed with the shield, followed by SO1, WO1 and WO2. Given the small size of the cell, with four officers and AP1, there was not a great deal of room to maneuver. AP1 reacted very poorly and responded by attempting to kick and punch at the officers. AP1 was able to push both SO2 and his shield away to directly engage the other officers. Within a minute, the officers took AP1 to the ground and got him turned face down on the floor, with SO1 straddling the torso of AP1, SO2 on one side, and the witness officers holding down AP1's other arm and his legs, while he continued to try to struggle. As AP1 was taken and restrained on the ground, SO1 delivered approximately eleven punches and two elbow strikes to AP1's head area. SO2 delivered four knee strikes to his torso as a pain compliance technique and later held AP1's right wrist up, bending his palm in another pain compliance technique. Two other officers also came in to assist in controlling AP1. He was placed in leg shackles with his hands handcuffed behind his back. AP1 remained on the floor, stomach and face down with a significant pool of blood now around his head.

Once the officers had AP1 physically restrained, he was injected with a sedative by an on-site AHS paramedic. AP1's visible injuries were a cut above his right eye and a cut beside his left eye. At 9:25 p.m., AP1 was removed from the cell. He was transported to hospital, treated, and given a CT scan. He was discharged back into police custody and

returned back to APS. CPS was contacted by the hospital who advised that subsequent to his discharge from hospital it had been determined that AP1 had sustained a significant head injury, a subdural hematoma, often referred to as a brain bleed, and needed to be returned to hospital immediately. AP1 was returned to the hospital and admitted.

The AP1 has a dated criminal record. While some of his ten convictions are for relatively serious charges, the convictions are all at least 23 years old. At the time of the incident, he had three outstanding charges.

During the course of this investigation, it was recognized that SO1 had been designated as a subject officer in another ASIRT investigation in relation to an incident in APS. The potential for the involvement in another incident was considered as possible similar act evidence. The obvious similarity is a potential improper use of force on a prisoner. That having been said, there were several significant dissimilarities. The test for admissibility of similar act evidence is so high, that it is entirely likely that the evidence of these incidents would not be permitted. Given that the evidence in this case was potentially capable of providing reasonable grounds, both investigations were forwarded to the Crown.

Involvement in two incidents can reasonably create a need for increased scrutiny of the subject officer. It is reasonable for the community, involved officers and potential AP1s to expect that multiple allegations of excessive use of force by the same officer will be thoroughly examined by investigators, prosecutors, and, when appropriate grounds exist, the Courts.

### **Executive Director Initial Review – Reasonable Grounds**

Once the investigation was completed, it was reviewed. The conclusion was that the evidence was capable of providing reasonable grounds to believe that the offence of assault had been committed. While some use of force may have been necessary, punching AP1 approximately 11 times and administering two elbow strikes to the head of AP1 while he is on the floor is arguably excessive and, given that the blows would have occurred while AP1's head was on the cement floor or in a position where the blow would force his head into the cement floor, they certainly risked significant injury to AP1. In these circumstances, the investigation was forwarded to the Alberta Crown Prosecution Service (ACPS), in accordance with the provisions of the *Police Act*, for an opinion as to whether the evidence met the Crown standard for prosecution.

The ACPS opinion provided to ASIRT found the evidence did not meet their standard for prosecution for either subject officer. ASIRT was advised that the “test for proceeding with a prosecution is not met” for both officers.

ASIRT and the Crown are distinct entities with different responsibilities. ASIRT does not direct the Crown nor does the Crown direct ASIRT. The standards applied are also different. ASIRT may charge when there is evidence capable of providing reasonable grounds to believe an offence has been committed. The Crown standard for prosecution requires a reasonable likelihood of conviction and that it is the public interest to proceed. As such, there is a potential gap between these two standards that can explain why an officer may not be charged.

### **Analysis**

It should be noted that ASIRT considered the actions of all officers involved and whether the two witness officers might have some jeopardy as a party to any offences that may have been committed by the subject officers. There is a difference between a situation where individuals hold someone down so that they can be assaulted and what happened in this case. The witness officers were both lawfully entitled to use force for a legitimate law enforcement purpose and acting reasonably in the lawful execution of their duties to restrain AP1 so that steps could be taken to remove the safety garment that AP1 had been misusing. There is no evidence that would support a belief that there was a common purpose or plan to commit an unlawful assault. Some use of force was reasonably necessary to attempt to prevent AP1 from self-harm. Any excess of force used would rest with the individual officer in the circumstances.

From the outset of CPS’s interactions with the AP1, there were signs of mental health issues. By the time that the AP1 was potentially attempting to commit suicide in the APS cells, it was clear that he was in a mental health crisis. How this mental health crisis presented on that day created a difficult problem for the officers. The AP1 was attempting to hurt himself, but he was also physically resisting attempts to stop him from hurting himself.

There were numerous uses of force from the subject officers and other officers throughout the AP1’s time at APS. Most were relatively minor. The exception was the use of force used to subdue the AP1 in the individual cell after he was trying to harm himself with his gown. In this interaction, SO1 delivered approximately eleven punches and two

elbow strikes to the head area of the AP1, and SO2 delivered four knee strikes to his torso. This use of force warrants further examination.

Under s.25 of the *Criminal Code*, police officers are permitted to use as much force as is necessary for execution of their duties. Where this force is intended or is likely to cause death or grievous bodily harm, the officer must believe on reasonable grounds that the force is necessary for the self-preservation of the officer or preservation of anyone under that officer's protection.

The subject officers and the other officers were acting in execution of their duties in their various actions taken to try and keep AP1 safe and unable to self-harm. The goal each time they acted was reasonable. It was reasonable to remove clothing and all other potential risks from the AP1 after he tried to hang himself in the first cell. It was reasonable to want to remove the gown when AP1 had shown that he would not stop trying to use it to harm himself. It should be noted that on video, he did not appear to be having much success. When the AP1 resisted the officers' actions to take the gown back, they were entitled to respond with force, but only as much force as was reasonably necessary.

The setting involved when the officers were attempting to get the gown back was different from that of many police interactions. The AP1 was in an unadorned cell. He had no weapons, and there could be no risk from other people or the surroundings. There were four police officers to start (ultimately six), and only one person to control. They had access to considerable resources while in APS, including equipment, more officers, and medical professionals. While the situation was not completely controlled at the outset, the risks presented were limited. The amount of control the officers had over the situation also gave them the ability to take more time to resolve it without resort to force.

When the officers came into the cell, AP1 actively engaged in assaultive behaviour. He had no lawful authority to resist the officers acting in the lawful execution of their duty. From the video from inside the cell, it is unclear exactly how or if he was actually hitting them since he was slightly out of the camera's view. The witness officers referred to the AP1 as punching and kicking at them, but did not say that anyone was actually hit. The officers were justified in using as much force as was reasonably necessary to protect themselves and bring AP1 under control. Shortly after the officers entered the cell, AP1 was brought to the ground and partially covered by the shield. He was in view of the camera. He was not punching, but did appear to be actively resisting the officers.

Once brought to the ground, all four police officers were in dominant positions, either on top of AP1 or holding his limbs. Their level of control was reasonably high, although some force was still required to bring him fully under control. The amount of force reasonably necessary to execute that duty was less than when the situation was less controlled.

The force used by SO1 when AP1 was approximately eleven punches and two elbow strikes to the head area. While pain compliance techniques are permissible, the head is a particularly vulnerable area and if injury is sustained, it can be incredibly serious, potentially even resulting in death. This was an escalation in the use of force by SO1, and was also more likely to result in serious injury to AP1, despite the increased control the officers had over the situation.

This considerable use of force raises the question of whether this amount of force was intended or was likely to cause grievous bodily harm, as defined as seriously interfering with comfort or health. If so, the force could only be justified if the officer believed on reasonable grounds that the force was necessary for the self-preservation of the officer or preservation of anyone under that officer's protection. Thirteen strikes to the head area of a person on the ground would seem likely to interfere seriously with comfort or health.

SO2 delivered four knee strikes to the AP1's torso during the time when he was on the ground. These can be contrasted with the actions of SO1. While there may be attendant potential consequences including rib fractures and, as a corollary, a collapsed lung, the severity of any potential injury is substantially lesser than that of a possible brain injury. Knee strikes are a pain compliance tactic that is applied to a relatively safe area of the body, and can be appropriate to gain compliance from a struggling person when used reasonably.

Certainly, the actions of SO1 could have been a cause of AP1's significant head injury. That said, the evidence did provide an alternate possible cause that would present a challenge to any prosecution. AP1 had banged his head repeatedly on the cell door prior to the officer's re-entry into the cell. A trier of fact would have to resolve whether the evidence was capable not just of providing grounds to believe that the SO1's conduct caused the significant head injury, being the brain bleed, but of proving this beyond a reasonable doubt. If the trier of fact was unable to do so, the evidence would still have supported that the conduct of SO1 resulted in the two cuts to the face of AP1, which could still constitute bodily harm but of a much less serious nature.

The fact that SO1 was also a subject officer in another ASIRT investigation that took place required greater scrutiny. The legal test for admitting evidence from one incident at the trial for the other is high, so it would not necessarily have impact at any trial. However, at the investigation and charging stage, two incidents reasonably demanded increased scrutiny of SO1. It is a reasonable expectation that multiple allegations of potential excessive force by officers will be thoroughly examined by investigators, prosecutors, and the Courts. In this case, however, there were significant differences in the nature of the use of force, with this case involving deliberate, violent interaction with AP1. To be fair, the need for an escalation in the need for force was largely driven initially by AP1's conduct.

### **Executive Director's Decision**

To step back and view the entirety of AP1's interactions with police that day presents a troubling picture. AP1 was clearly in the midst of some form of a mental health crisis. While he seemed to be intent on self-harm, the interventions, particularly on the part of SO1, led a serious risk of harm. The consequences of a head injury can be extremely serious and there is hard to reconcile when the response to a person attempting to self-harm causes grievous bodily harm. To put it another way, any use of force must be proportionate to the situation and arguably, once AP1 was in an isolation cell and clearly demonstrating mental health issues, it is arguably disproportionate to repeatedly rain blows to AP1's head when his head is either on a hard cement surface or where those blows might drive his head into that hard cement surface, particularly where other efforts at de-escalation might have been possible.

When the analysis moves from the overall picture into the minute-by-minute decisions of the officers, the majority of the officers' decision are reasonable. As AP1 used his clothing and then the gown to try to harm himself, the officers reasonably needed to remove those items in order to prevent further self-harm.

The officers' plan to enter the cell was not perfect, as demonstrated by the quick failure of the shield and the intense confrontation that followed. While there may have been alternative responses, and the plan was less than perfect, in general, the officers did what one might expect them to do. There was a brief opportunity for de-escalation prior to entry.

Dealing first with the evidence as it relates to the overt uses of force employed by SO2, the *limited* use of knee strikes was within a reasonable range of conduct. It is also not



believed that SO2 has jeopardy as a party to the actions of SO1. This is consistent with the Crown opinion on SO2's conduct. As such, he will not be charged with any offences.

In executing the plan to enter the cell, there was an initial violent confrontation between the AP1 and the officers. However, he was quickly brought to the ground and under more control. His arms were controlled once he was on the ground. Although he was still resisting, the risk to the officers was reduced. It is in that context that SO1 struck AP1 approximately thirteen times in the head area, while it was on or next to the ground, and it is possible to infer that this conduct was intended to or likely to cause grievous bodily harm.

In the circumstances of this case, the force would arguably not be justified unless the officer believed, on reasonable grounds, that the force was necessary for the self-preservation of the officer or preservation of anyone under that officer's protection. With four officers on top of or holding the unarmed AP1, it is difficult to find evidence that would support a finding that it was objectively reasonable.

Even if it is not concluded that the strikes were intended or likely to cause grievous bodily harm, the force used must still be only as much as was necessary. From the time that the AP1 was on the ground with four officers on top of or holding him, he was resisting but not attacking anyone. While some force might be reasonably necessary, again, it is arguable that the number and force of the blows delivered by SO1 to the vulnerable head of AP1 exceeded that which was reasonably necessary.

It should be noted that this report has repeatedly stated that the evidence "arguably" provided grounds to believe an offence was committed, or that it was "arguable" that the force used exceeded that which was reasonably necessary. This is not the clearest of cases, particularly because there was, objectively, evidence that would support a finding that some measure of force was reasonably necessary, including potential pain compliance and stun techniques. This makes, in this case, the use of force a question of degree. The law is clear that the assessment of police use of force is not measured against a standard of perfection, police are not expected to measure their force "to a nicety", and that having regard to the exigencies of a situation, the law does not require that police use the absolute least amount of force possible, instead, accepting that there may be a range of reasonable force. In these circumstances, where conduct crosses from reasonable to excessive can be difficult to articulate. That said, in this case, approximately 13 forceful blows to the head of AP1 in the circumstances of this case, likely causing AP1's significant head injury, seemed disproportionate and not reasonably necessary. At a minimum, it is

concerning that in an attempt to prevent someone from self-harm, grievous bodily harm is caused. In other words, the consequences of the attempted solution to AP1 trying to self-harm, resulting in extremely serious harm.

In accordance with the opinion provided by the ACPS, SO1 will not be charged with any criminal offences.

Original Signed by Executive Director

November 23, 2021

**Susan D. Hughson, Q.C.**  
**Executive Director**

**Date of Release**