

FINAL REPORT: IIU concludes investigation into injuries during arrest on Sagkeeng First Nation

On February 4, 2017, at 6:30 a.m., the Independent Investigation Unit (IIU) was notified by the RCMP of a serious injury that had occurred at a residence on the Sagkeeng First Nation during the execution of drug and weapon search warrants. As this notification involved a serious injury as defined by regulation, IIU assumed responsibility for this investigation in accordance with section 65(1) of *The Police Services Act* (PSA). IIU deployed investigators to the scene.

According to this notification, on February 4 at 4:12 a.m., RCMP members from Powerview, 'D' Division, the Integrated Gang Intelligence Unit (IGIU), the Emergency Response Team (ERT) and a police service dog assisted in the execution of two search warrants (for drugs and firearms) at a residence on the Sagkeeng First Nation. All officers were briefed that some residents had a history of violence, gang affiliations and illicit drug use. There was a strong likelihood that weapons may be present. ERT officers were deployed to deal with executing the warrants due to their specialized training and the high risk to police.

As RCMP members gained entry to the residence, a male (later identified as the affected person (AP)) ran down a hallway into a bedroom and towards a closet. An ERT member, the subject officer (SO), fired one round from his beanbag shotgun, striking AP in the abdomen and causing him to fall to the ground. AP sustained bruising to his abdomen and a significant cut to his right hand. During the search of the residence, two firearms, several large knives, cocaine, a large quantity of Percocet pills and other prescription medication were seized.

The RCMP supplied a complete investigative file, including: witness and subject officers' notes and reports, public safety report, seized exhibits, scene photographs, a large hunting knife, a weapon resembling a medieval battle axe, an RCMP-issued Remington 12 gauge beanbag shotgun and a spent shotgun cartridge. IIU also obtained and reviewed medical reports regarding AP and his injuries.

The IIU civilian director designated 24 RCMP officers as witness officers (WO). Following an assessment of the facts, circumstances and file materials, and eliminating those who had a peripheral role during this incident, IIU investigators identified six officers (WO1 through 6) for in-person interviews.

IIU investigators also interviewed five civilian witnesses (CW1 through 5) and two medical doctors who treated AP (D1 and D2).

As outlined under the PSA, a subject officer cannot be compelled to provide his notes to IIU investigators or to attend an interview with them. In this matter, SO declined an interview but did agree to provide his notes to IIU investigators.

During the course of its investigation, the IIU determined the following facts:

On February 1, 2017, police obtained a firearms search warrant to enter and search the residence of AP on the Sagkeeng First Nation, as it was believed he was in possession of a 'black synthetic rifle and ammunition.' On February 3, a second warrant--a CDSA drugs search for possession of cocaine--was obtained. On February 4 at 1:00 a.m., RCMP police officers attached to Powerview Detachment, 'D' Division, Integrated Gang Intelligence Unit (IGIU), Emergency Response Team (ERT) and a Police Service Dog unit were deployed to execute the lawfully obtained search warrants.

INTERVIEWS AND STATEMENTS

Subject Officer:

ERT members, including SO, were assigned to keep watch on AP's bedroom window. SO was instructed to arm himself with an RCMP-issued Remington 12 gauge beanbag shotgun, described as a 'less lethal option,' as he was assigned the responsibility of keeping watch on the bedroom with a 'limited entry' through the window.

At 4:09 a.m., ERT officers took up their positions at the bedroom window. RCMP officers approached the rear door of the house. SO broke some glass from the window, looked into the room, saw the lights were off and that no persons were present. SO was instructed to deploy a "distraction device" into the room. SO then pushed his body through the open window and into the room. He saw AP and a female run into the bedroom and yelled "police, stop" as loud as possible.

SO saw AP run directly to a bedroom closet and, fearing AP was doing so to arm himself with a firearm and possibly become a lethal risk, SO discharged one beanbag round, aiming for AP's centre body mass. Once the beanbag round struck him, AP did a 'superman' leap onto the bed. SO ordered AP to "show his hands." The female was on the ground with her hands up.

SO entered the bedroom after the incident to retrieve the distraction device he had used. SO saw blood on the walls and on the bed, the beanbag shotgun shell in the room, and the expended beanbag on the bed. SO also observed a rifle with scope and ammunition strapped to it, leaning up against the open closet where AP had been heading. He noted a 'large fixed blade tactical knife' and a 'battle axe', in two pieces, near the bed.

Witness Officers:

WO1 and WO2 were assigned to the same window location as SO. As other ERT officers began to enter the house, WO1 broke the bedroom window. WO2 recalled the bedroom window being smashed. Both officers recall SO standing on a ladder with the beanbag shotgun at the window. WO2 heard SO say the words, 'police, police show your hands, show me your hands' before hearing the discharge of his shotgun. WO2 heard SO say, 'police, police show me your hands' again after the shotgun had been discharged.

WO3 entered the bedroom as SO advised him, “suspect on bed, he went for gun, can’t see hands, can’t see hands.” AP then told WO3 he had been shot. WO3 said that AP was lying on a bed with his hands up in the air and he could see blood dripping from one of them. WO3 described seeing a black, long barrel rifle, with ammunition attached to the stock, in the bedroom closet.

WO4 was an ERT officer deployed to enter the residence through the main door. He knew the layout of the residence from prior involvements there. Upon entering the residence through the door, he saw AP running down the hallway to a bedroom. He heard someone shout “Police. Stop.” He did not initially see which bedroom AP ran into, but he followed and, as he did, he heard the sound of a gunshot. He did not know where in the house the shot had occurred, but it sounded like it came from down the hallway. He heard a male voice shout that he had been shot. WO4 entered the bedroom and began to offer first aid to AP. WO4 examined AP and observed a laceration on his right hand with moderate bleeding. WO4 saw a rifle leaning up against the closet. WO4 also said that a second firearm was found in another bedroom in the residence.

AP was placed under arrest and led from the house. WO5, one of the arresting officers, noted AP’s hand injury was bleeding excessively. AP was conveyed to Pine Falls Hospital for medical treatment. Once AP was discharged from hospital, he was taken to Powerview detachment. WO5 obtained photographs of the hand injury as well as an injury to AP’s stomach.

WO6 noted that he looked into the bedroom and saw that AP had been hit in the hand. SO advised WO6 that AP had run into the room and was going for the closet. WO6 observed a black rifle in the closet.

Other witnesses and findings:

IIU investigators attended the residence and found the bedroom. Investigators seized the beanbag sock in the bedroom and took photographs of the room, including the damaged window. They observed blood spatter in and around the bedroom and the mattress leaning up against a wall. A large hunting knife and a weapon having the appearance of a medieval battle-axe were seen on the bedroom floor.

IIU investigators met with AP on February 4 while he was in police custody but he declined to be interviewed at that time. He did sign a consent form authorizing the release of his medical records to IIU investigators. Further efforts on February 22 to speak and interview AP at his residence were not successful, as he was not home. A message asking him to contact IIU investigators was left with occupants, who agreed to pass it on. On March 23, AP telephoned IIU offices. He wanted to discuss compensation for his injuries, saying police had shot him twice and he had lost fingers. The IIU mandate was explained several times to him and then arrangements were made for him to attend the IIU offices for an interview on April 3. Although he agreed to attend for an interview, he did not show for his appointment and all further attempts to contact him were unsuccessful.

Civilian witnesses in the residence described during their IIU interviews that AP was at the kitchen table and then ran towards the bedroom when they heard banging (as police entered the residence). None of them was in the bedroom at the time AP was shot. CW1 described that she

ran down the hallway behind AP. She heard police say "get down," so she lay on the floor in the hallway. She did not enter the bedroom or see when AP was shot. She did, however, see AP bleeding on the bed with two or three police officers pointing guns at him. She did not know what caused the bleeding.

AP and SO are the only two persons who could account for what occurred in the bedroom at the time the Remington 12 gauge beanbag shotgun was discharged once. Although SO wrote that he saw a "male and a female running into the bedroom," based on CW1's account, it is likely that SO saw her at the doorway as AP entered the bedroom. CW1 advised that she lay down in the hallway and she did not enter the bedroom. SO did include that he saw the female in the doorway and that she immediately put her hands up. CW1 described seeing AP bleeding on the bed with two to three police officers pointing guns at him. It is known that ERT officers WO3 and WO4 entered the bedroom almost immediately after the shooting occurred.

IIU investigators reviewed AP's medical records from Pine Falls Hospital. AP received 20 stitches to his hand. An x-ray of his hand found no fractures. The records stated: "There is a 1.9 cm rhomboid shaped radiopaque foreign body volar to the fourth proximal phalanx in the region of the distal shaft (an object lodged in ring finger of the right hand). No definite fractures are identified." No other injuries were noted in the records and no information existed suggesting how he received the injury to his hand.

D1 told investigators that he treated AP for his right hand injury. He did not know what caused the injury but thought a sharp object may have caused the laceration. He was not aware of any other injuries to AP and treated only the hand injury. X-rays of AP's right hand showed an object imbedded in the ring finger. D1 said that AP's hand was stitched first and the x-ray was completed after. He did not remove the object.

IIU investigators obtained medical records in relation to AP's subsequent treatment at Health Sciences Center in Winnipeg. A triangular piece of metal was lodged in his right ring finger. The records detailed that AP opted to have his finger amputated at the "metacarpophalangeal" joint.

D2, who performed the surgery, advised that he removed a metal triangular-shaped object from AP's right ring finger.

A tip was missing from one of the blades on the medieval battle-axe seized from the bedroom. Medical records detailed that the item removed from the finger was metal, bladed and curved. D2 said it was the same colour and shape as the blades on the axe. It was his opinion that it was consistent with the missing part of the blade on the axe found where AP had lain on the bed. He confirmed that AP requested to keep the metal object removed from his finger and was reluctant to discuss how the object got into his finger.

D2 said that the axe, rather than the beanbag sock round, most likely caused the laceration. Upon his inspection of the beanbag sock round he said it would be hard to imagine it caused the hand injury. D2 was shown photographs of AP's abdomen injury, which he described as an abrasion or a "road rash" injury, and said it was more consistent with being struck with the beanbag round.

IIU investigators seized the RCMP-issued Remington 12 gauge beanbag shotgun. The single spent “Safariland Drag Stabilized 12-Gauge Bean Bag round” and the beanbag sock from that same cartridge were also seized by IIU investigators. All seizures are presently in the possession of the IIU.

No forensic or ballistic work was requested as SO had clearly documented that he discharged his police-issue firearm once at AP. There was no evidence to suggest he discharged this shotgun again and there was no evidence that any one else at the residence discharged a firearm.

A ‘less lethal’ firearm is a firearm intended to be less likely to kill a living target than a ‘conventional weapons’ firearm. Generally, less lethal weapons are used to limit the escalation of conflict where employment of lethal force is undesirable and to minimize the risk of loss of life. In this matter, the RCMP-issued Remington 12 gauge beanbag shotgun was a working shotgun modified to fire the beanbag rounds. It meets the definition of “firearm” under the Criminal Code.

The Safariland 12-Gauge Drag Stabilized round is described by the manufacturer as comprised of a translucent 12-gauge shell loaded with a 40 gram, tear-shaped bag made of cotton and ballistic material blend and filled with #9 shot. It has four stabilizing tails and is intended to be direct fired at a subject, while significantly minimizing serious or life-threatening injuries.

ISSUES AND CONCLUSIONS

This investigation considered whether the actions of SO to fire upon AP were justified at law.

The facts of this matter required the police to be ready for all possibilities when executing the warrants at AP’s residence. This included the likelihood that weapons and firearms might be present and thereby pose a risk to the safety of police and others. In that regard, it made sense for the officers to be armed and prepared when they attended the home. It was also appropriate that officers trained specifically for high-risk entries, such as ERT members, were used in this case.

Sections 25 (1), (3), (4) and Section 26 are relevant to this analysis:

25 (1) Every one 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, or*
- (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; and*
- (e) the flight cannot be prevented by reasonable means in a less violent manner.*

26 *Every one 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.*

Effectively, the question is whether the actions of SO to fire at AP were reasonable in the circumstances.

SO was part of a team of police who were executing drug and firearm warrants at a residence. The likelihood of the presence of weapons at the residence was high. All officers were assigned specific duties.

SO was armed with a 'less lethal' firearm in the event that a confrontation was to arise. The officers were lawfully entitled to enter the residence in accordance with the authority of the search warrants. SO announced his presence when he observed AP running into the bedroom and ordered AP to stop. AP did not comply with this order and ran towards a closet. SO's fear that AP may arm himself was genuine and reasonable under the circumstances. The less lethal option of a beanbag shotgun was employed by SO. He discharged it one time and a single beanbag cartridge struck AP in the abdomen. It was designed to incapacitate AP and accomplished that.

AP did suffer a significant injury to his hand when he leapt on the bed, from a large knife and/or battle-axe. The laceration to his hand was unrelated to the use of the beanbag shotgun. It would not be foreseeable that the laceration injury would have resulted from the discharge of the beanbag shotgun. The incident did end quickly and there was no loss of life.

When faced with such a situation in circumstances like this, it would be unreasonable for SO to wait before acting. Any delay could have been lethal.

Therefore, following a thorough review of the facts and circumstances and with due consideration of the law and, in particular, the provisions of sections 25 and 26 of the *Criminal Code*, in my view the action of the subject officer was justified and reasonable.

There will be no charges recommended against the subject officer and the IIU file is now closed.

Final report prepared by:
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