

FINAL REPORT

IIU concludes investigation into serious injury during arrest in Beausejour

On April 30, 2017, at 4:43 p.m., the Royal Canadian Mounted Police (RCMP) notified the Independent Investigation Unit (IIU) about the arrest and serious injury that morning in Beausejour, Manitoba of a 64 year-old female. According to this notification, a member of the RCMP (later designated as the subject officer – SO) became involved with the affected person (AP) when he responded to a call for service to deal with a female who was acting erratically and appeared to be under the influence of alcohol while she walked and stood on a public street. Following his initial contact with AP, SO believed that she was intoxicated in public and advised her she was under arrest pursuant to the *Intoxicated Persons Detention Act (IPDA)*. AP approached SO and grabbed him by the vest just under his chin. SO attempted to handcuff AP but she pulled her arms away. SO applied an arm bar (a wrestling technique) on AP in an attempt to take her to the ground to gain control. While taking her to the ground, SO felt a pop from her right elbow area as he handcuffed her.

AP was taken to the RCMP Beausejour detachment and placed in a cell. After she was examined by attending EMS personnel, she was taken to Beausejour Health Centre with a suspected dislocated elbow. At hospital, medical staff confirmed that AP had a broken right arm above the elbow. The attending physician also committed AP under the *Mental Health Act*.

The broken arm sustained by AP is a serious injury as defined by IIU regulation 99/2015. Accordingly, IIU assumed responsibility for the investigation in accordance with subsection 65 (1) of the *Police Services Act (PSA)*.

The IIU civilian director designated the arresting officer as the subject officer (SO). Another RCMP member who attended the scene and assisted SO was designated as a witness officer (WO). AP and four independent civilian witnesses (CW1 – 4) were interviewed by IIU investigators. IIU investigators also received and reviewed the emergency treatment records from the Beausejour Health Center and a detailed report prepared by the treating physician (CW5).

The investigation conducted by IIU investigators included:

- attending and examining the scene;
- canvassing the area for witnesses and surveillance video;
- reviewing the cell phone video and photographs from the scene;
- reviewing police radio transmissions;
- reviewing file materials from RCMP;
- reviewing AP's medical records from the Beausejour Health Center;
- reviewing medical report prepared by attending physician;
- obtaining statement from AP;

- obtaining statements from the designated witness officer;
- obtaining statements from four civilian witnesses;
- regular consultations with the civilian director; and
- preparation of the final investigative report for review by civilian director.

Under the provisions of the PSA, a subject officer is not required to provide a statement or notes regarding an incident. In this case, the SO declined to be interviewed about the shooting but, through legal counsel, supplied his previously prepared notes and reports for review. Additionally, SO agreed to answer a number of clarifying questions by IIU investigators.

The incident

On April 30, 2017, at approximately 7:35 a.m., SO received a radio dispatch concerning an intoxicated female who had attended a local gas station in Beausejour, was acting erratically and was walking onto a public street. SO arrived on scene at 8:05 a.m. and came upon AP. AP was not making any sense when she spoke and was observed rubbing mud all over her face. In the opinion of SO, AP appeared intoxicated and he advised her she was under arrest pursuant to the IPDA. AP then approached SO and grabbed him by his vest, just under his chin. As SO attempted to handcuff AP, she pulled her arms away. SO applied an arm bar on AP in an attempt to take her to the ground in order to gain control. As she was taken to the ground, SO felt a “pop” from AP’s right elbow area.

Civilian witnesses 1-4

CW1, a senior civic official with the local rural municipality, was at a convenience store in Beausejour at approximately 7:25 a.m. that morning. AP had walked across the road and entered the store a few minutes later. CW1 used his cell phone to video and take photographs of AP as she pounded on a counter, threw items around the store and behaved in a bizarre manner. CW2, the store owner, contacted the police for assistance. By 7:38 a.m., CW1 noted that AP had left the store, gone outside and had lain down on the roadway out front. She had smeared mud on her face.

CW1 tried to talk to AP when she was outside the store. She did not make a lot of sense, was noted to have “foam around her mouth” and was waving her arms around as if she was “placing a hex” on people. CW1 saw the RCMP pull up in a marked cruiser car. The sole officer in the vehicle, later identified as SO, exited his vehicle and attempted to speak with AP in a “gentle” tone. CW1 says AP “went at” SO. SO was able to sidestep AP and “...gently put her down” according to CW1. CW1 recalls SO stating: “...you don’t attack a police officer. You’re under arrest.” CW1 observed SO handcuff AP and he assisted the police officer in placing AP into the police vehicle. Once in the back of the car, AP began to sing a nursery rhyme.

CW1 states that SO was concerned because he “heard something pop in AP’s arm” and that she may have been injured. CW1 did not record the arrest of AP with his cell phone. CW1, however, wanted to commend SO for a “real class act” in his dealings with AP.

CW2 was the owner/manager of the convenience store. He was at his store from 7:00 a.m. onwards, on April 30, 2017. He first saw AP when he noted a female outside who was acting strangely, walking and waving her hands and then lying down in the middle of the roadway. AP then stood up, knocked on his door, entered the store and began throwing items at CW2. She then exited the store and was followed out by CW1, while CW2 telephoned 911 for assistance.

CW2 observed CW1 directing traffic away from AP as she again lay down on the roadway. This went on for approximately 20 minutes, until an RCMP officer arrived. CW2 observed SO approach AP, saying she was under arrest and to not push him. Ultimately, she was "...put down on the ground." CW2 says that he and CW1 assisted SO to get AP back on her feet and into the police vehicle. CW2 heard SO say "...be careful, I heard something pop in her arm." CW2 did not hear AP complain of any pain or injury.

CW3 is a resident of Beausejour who saw AP in the vicinity of the convenience store. CW3 noted that AP was behaving oddly in the neighbourhood the morning of April 30, 2017. CW3 observed AP walking through yards, flinging her hands around, and appearing to be doing some sort of ritual as she lay on the ground. CW3, concerned for the safety and well-being of AP, called the RCMP to report her observations. CW3 was not aware that police had attended and dealt with AP until reading about this matter in a local newspaper.

CW4 is a close relation of AP. CW4 had been very concerned for AP's mental health for months and believed AP was in need of mental health assistance.

Witness Officer

WO attended the convenience store as a back-up to SO. When he arrived, AP was handcuffed and in the rear seat of SO's police vehicle. AP had no socks or shoes on, was lying on her back with her toes curled around the protective bars on the windows of the police vehicle. WO said SO told him that AP had tried to scratch his face and he used an arm bar to take her to the ground. SO told WO that, as he did this, he heard a pop from AP's right arm.

WO attended the Beausejour detachment with SO and AP. AP refused to exit the police vehicle and both officers had to pull and push her out. WO noted that AP had mud and foam on her face and the smell of liquor on her breath. AP had very long, sharp toenails and she tried to kick WO several times. SO requested paramedics attend the detachment to examine AP. Paramedics subsequently determined that AP had an injury to her right arm and should be taken to the hospital. SO and WO transported AP to the Beausejour Health Centre where she was examined and it was confirmed that her right arm was broken.

Affected Person

AP provided a statement to IIU investigators when they attended her residence. AP had no recollection of how or when her right arm was injured. She did recall walking to the convenience store and deciding to direct traffic to allow people to pass by while she was on the road. AP recalls being arrested for "...something" but that it was hard for her to remember. AP talked

about having Corona beer and said alcohol goes right through her system because she can't eat very well. She does remember someone calling for the RCMP. She states that "...they picked me up and took me to the station there. I just lay there and let them carry me...next thing I know, I was at the hospital."

Subject Officer

As indicated earlier, SO declined to be interviewed on the incident but did attend IIU offices with counsel and supplied his notes and reports. In addition, SO agreed to answer some clarifying questions by IIU investigators. According to these notes and reports, SO was called-out from home at 7:12 a.m. on April 30, regarding this dispatch call. SO arrived in front of the convenience store at 8:05 a.m. to find AP standing on the road and talking to herself. AP was not making any sense, had mud all over face and appeared to be intoxicated.

When SO exited his police vehicle, AP approached him. SO told AP that due to her level of intoxication, she was under arrest. AP grabbed SO by his police vest, just under his chin. SO moved his head to prevent AP from striking him and he took hold of her right wrist in front of her body in an attempt to handcuff her. AP resisted by pulling her arm away from SO, making it impossible to handcuff her. SO told AP he was going to put her on the ground to keep her from hitting him.

SO placed AP's right arm and wrist in an arm bar and brought AP to the ground "...in a controlled manner." SO felt a pop come from AP's right elbow and believed that he may have unintentionally broke or dislocated her arm. SO's report states that he used "...the least amount of force as possible" and further, "...at no time did (he) mean to hurt or cause injury to AP."

AP did not cry out in pain but continued to make no sense while speaking. SO handcuffed AP and escorted her to the police vehicle with the assistance of CW1. AP tried kicking SO as he escorted her. Another male, believed by SO to be CW2, was also present during the incident.

SO, with the assistance of WO, conveyed AP to the Beausejour detachment and then the Beausejour Health Centre, where it was confirmed she had sustained a broken arm.

Medical Records and Report

AP was brought to the Beausejour Health Center by RCMP at 8:45 a.m. on April 30. AP was treated by a physician and was diagnosed with "...a supracondylar fracture of her [right] elbow" and will require surgery. A "supracondylar fracture" is a fracture of the distal humerus just above the elbow. A "distal humerus fracture" describe a type of elbow fracture where the lower end of the upper arm bone (humerus) has been broken. AP was to have "bed rest with restraints" while at the hospital. In addition to AP's physical injury, she was also admitted for a mental health assessment.

Issues, Assessment and Conclusions

The relevant issue in this matter is whether, at any time, the subject officer applied excessive or unnecessary force to AP, whether at the time of her arrest or while in the care and custody of the police service.

Applicable Law

The following legislation is relevant to this analysis:

Sections 2 and 3 of *The Intoxicated Persons Detention Act (Manitoba)*:

2(1) Where a peace officer finds in a place to which the public has access a person who is intoxicated, he may take that person into custody.

2(2) Where a peace officer takes a person into custody under subsection (1), if there is a detoxication centre in the community, the peace officer may take the person to the detoxication centre and deliver him into the custody of the person in charge of the detoxication centre.

3(1) Where a person is taken into custody under section 2, the person having custody of him shall release him (a) on his recovering sufficient capacity to remove himself without danger to himself or others and without causing a nuisance; or (b) if an application is made sooner by a member of the person's family or by a person who appears to be suitable and capable of taking charge of the person, into the charge of that applicant; but in any case before the expiry of 24 hours after the person was taken into custody.

3(2) Where a person taken into custody under section 2 is in the custody of the person in charge of a detoxication centre, the person in custody may be allowed to remain in, and, with his consent, be cared for in the detoxication centre after the expiry of 24 hours after he was taken into custody.

Sections 25(1) and 26 of the Criminal Code of Canada:

25 (1) Everyone who is required or authorized by law to do anything in the administration or enforcement of the law

- (a) as a private person,*
- (b) as a peace officer or public officer,*
- (c) in aid of a peace officer or public officer, 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.

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.

Section 34 of the Criminal Code of Canada:

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

- (a) they believe on reasonable grounds that force is being used against them or another person or that a threat of force is being made against them or another person;*
- (b) the act that constitutes the offence is committed for the purpose of defending or protecting themselves or the other person from that use or threat of force; and*
- (c) the act committed is reasonable in the circumstances.*

(2) In determining whether the act committed is reasonable in the circumstances, the court shall consider the relevant circumstances of the person, the other parties and the act, including, but not limited to, the following factors:

- (a) the nature of the force or threat;*
- (b) the extent to which the use of force was imminent and whether there were other means available to respond to the potential use of force;*
- (c) the person's role in the incident;*
- (d) whether any party to the incident used or threatened to use a weapon;*
- (e) the size, age, gender and physical capabilities of the parties to the incident;*
- (f) the nature, duration and history of any relationship between the parties to the incident, including any prior use or threat of force and the nature of that force or threat;*
 - (f.1) any history of interaction or communication between the parties to the incident;*
- (g) the nature and proportionality of the person's response to the use or threat of force; and*
- (h) whether the act committed was in response to a use or threat of force that the person knew was lawful.*

Section 265 (1)(a) of the Criminal Code of Canada:

A person commits an assault when...

- (a) without the consent of another person, he applies force intentionally to that other person, directly or indirectly*

A police officer is entitled to arrest a person he finds committing, or has reasonable grounds to believe has committed, an indictable offence.

Police can also arrest anyone to prevent a breach of the public peace.

Furthermore, in Manitoba, under the provisions of the IPDA, where a police officer finds a person who is intoxicated in a public place, he may take that person into custody and process him or her in accordance with legislation.

A police officer is authorized to use force in the lawful execution of his duties and as much as is necessary for that intended purpose. Moreover, a police officer is authorized to use force to defend or protect himself from the use or threat of force by another person, provided it is reasonable in all of the circumstances.

Force used that is in excess of what is necessary or reasonable under the circumstances is not justified and may constitute an assault under the Criminal Code of Canada.

AP's injuries would constitute bodily harm under the Criminal Code of Canada.

Where it is determined that reasonable grounds exist to believe a criminal offence has been committed, the IIU civilian director may charge the SO accordingly. The determination whether reasonable and probable grounds exists is based on a careful assessment of all the available evidence.

On review of this investigation, I am satisfied that SO was lawfully placed and was acting in his capacity as a police officer in the execution of his duties during his interaction with AP. Furthermore, I am satisfied that an unfortunate series of events lead to AP suffering a serious injury in her interaction with SO. It is my view that SO, through his actions to arrest and restrain AP, lacked the intent to injure or use excessive force on AP. Reasonableness of an officer's use of force must be assessed in regards to the circumstances as they existed at the time the force was used, particularly when considered in light of the work engaged in and the expectation to react quickly as circumstances change. The presence of independent civilian witnesses significantly aided me in reaching this conclusion.

In this investigation, the IIU mandate was to determine whether consequences should flow from the actions of SO, in consideration of all the circumstances and information known to him at the time.

On careful review of the available evidence and material facts obtained in this investigation, together with consideration of the applicable law, I am not satisfied that there are reasonable grounds to believe the SO exceeded the ambit of justifiable force in the circumstances.

Accordingly, no charges will issue against SO.

IIU has completed its investigation and this matter is now closed.

Final report prepared by:

Zane Tessler, civilian director
Independent Investigation Unit
September 06, 2017

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