

FINAL REPORT: IIU concludes investigation into injury to suspect following impaired driving arrest

On June 16, 2017, the Royal Canadian Mounted Police (RCMP) notified the Independent Investigation Unit (IIU) about an incident that occurred on April 21 around 7:30 p.m.

According to this notification:

On June 6, 2017, the affected person (AP), a police officer with Dakota Ojibway Police Service (DOPS) made a formal complaint of assault against an on-duty RCMP member. AP stated that on April 21, 2017, she was involved in a motor vehicle collision and then arrested for impaired operation of a motor vehicle. AP stated that while she was being arrested/searched/handcuffed, an RCMP officer grabbed her arm and forcibly threw her head-first into the side of the police cruiser and the left side of her cheek hit the cruiser, resulting in swelling and bruising.

Although the injuries sustained by AP were not a serious injury as defined by IIU regulation 99/2015, based on the nature of the allegation included in this notification, the civilian director determined it was in the public interest for the IIU to investigate this complaint. IIU investigators were assigned to this investigation.

The civilian director designated an RCMP member as the subject officer (SO) and three RCMP members as witness officers (WO1 through WO3). IIU investigators also interviewed three firefighters who arrived on scene (FM1 through FM 3), two paramedics who dealt with AP (PM 1 and PM 2) and one civilian witness (CW).

AP cooperated with IIU investigators and participated in an interview.

IIU investigators also received and reviewed:

- RCMP occurrence summary;
- officers' notes and reports;
- audio copies of RCMP radio transmissions and telephone calls;
- RCMP prisoner log sheet and entries;
- cell room video;
- photographs of AP;
- medical release and medical records.

As outlined under *The Police Services Act*, a subject officer cannot be compelled to provide his notes to IIU investigators nor to attend an interview with them. In this matter, SO agreed to provide his notes to IIU investigators and participated in an interview with them.

The following facts and circumstances were determined:

On April 21, 2017, RCMP were dispatched to a single vehicle rollover on PTH #3, just east of Pilot Mound, Manitoba. Upon arrival, police located AP's vehicle on its side in a water-filled ditch. AP was identified as the lone occupant of the vehicle as she was walking away from the scene. AP was approached by police and observed to be displaying signs of impairment. Accordingly, AP was arrested for impaired operation of a motor vehicle.

As RCMP members attempted to handcuff and search AP, she became resistive. SO, WO1 and WO2 used hand control techniques in an attempt to subdue her. During this altercation, AP reportedly assaulted SO by kicking backwards and striking his knee. AP was advised that she was also under arrest for assaulting a police officer. AP continued to resist arrest, stating she was "a cop." AP was ultimately handcuffed and placed into the rear seat of a police cruiser. She was conveyed to the Manitou RCMP detachment.

SO documented that while AP was in cells at the detachment, she was observed on security camera to repeatedly cover her face with a blanket and appear to strike herself in the face. WO1 and WO2 asked AP to stop covering her face with the blanket. However, she was subsequently observed to repeat these actions. WO2 subsequently removed the blanket from AP's cell without further incident.

AP refused to provide a sample of her breath. She was subsequently released on a "Promise to Appear with an Undertaking" and left the Manitou detachment with family members at 11:37 p.m.

Affected Person

When interviewed, AP advised that on April 21, between approximately 7:30 and 7:45 p.m., she was driving on PTH #3 when she was involved in a motor vehicle collision just east of Pilot Mound. As a result of the crash, she was disoriented and was walking down a gravel road, making her way to the local arena. RCMP approached her and she recalled speaking with WO1 who wanted her to get into the police cruiser and return to the crash site and be assessed by attending paramedics. She got into the back seat of the police cruiser and was driven back to the scene. On arrival, SO entered into the front seat of the police cruiser and spoke with her. She declined to provide her name and said that, within three to four minutes, SO arrested her for impaired operation of a motor vehicle. SO told AP to exit the police cruiser as she had to be searched prior to transport to the RCMP detachment. AP said that as she exited, SO grabbed her right wrist. AP said she asked SO not to "touch her" as she "had something happen to me way back in my day." AP requested a female member deal with her and was advised there was none available. SO touched her in her groin area and pocket. AP said she "kind of pulled" her arm away and said "please don't touch me." SO then grabbed her left wrist and put her in a wrist lock, behind her back. AP stated: "That's when SO threw me against the side of the car." This caused her to strike her nose, forehead and left eye against the open door of the cruiser. WO1 had her left wrist in a wrist lock and SO had her right wrist in a wrist lock. AP said the RCMP officers were telling her not resist.

AP said she told the officers they were hurting her due to the wrist locks and that she had a back injury. She stated that it seemed like "the officer got rougher and rougher." AP said she was getting up on her feet and telling officers that she was in excruciating pain. She stated one officer "had his knee up" against her and that she was "trying to loosen the grip and stuff." AP said she kicked her leg back, striking the RCMP officer on his left foot. AP said she was then arrested for assaulting a peace officer. She stated she was not resisting the police officers. AP added that prior to being placed into the police vehicle, a third officer assisted the first two officers. The officers were having difficulty handcuffing her because she was wearing thumb-sleeves on her shirt. AP believed the third officer was WO2. She was "thrown into the back of the car" and taken to the Manitou RCMP detachment. On arrival at the detachment, SO again tried to search her and again she asked him not to touch her. AP stated she was assaulted and intimidated by SO.

AP stated that while she was placed in the RCMP cells, she was crying, her back was "killing" her, and her wrists were sore. Furthermore, AP stated her pants were wet and she was cold. She covered herself with a blanket. AP stated that WO1 and WO2 entered the cell and asked her to remove the blanket. AP said she complied but got cold again. Once again, AP said she covered herself with the blanket. The RCMP members re-entered the cell area and removed the blanket from her. AP stated that she covered her face and head with her shirt because she did not want police watching or staring at her on video.

AP provided IIU investigators with 13 photographs of her face and right wrist which she stated she had taken with her cell phone between April 22 and 23. Six of the photographs showed AP's face. When AP showed these photographs to IIU investigators, she stated that they depicted bruising to her right eye. However, throughout her statement, AP stated that she suffered an injury to her left eye. The photographs of AP's face depict possible bruising and swelling below her right eye and not her left eye, contrary to her statement.

Medical Reports

AP consented to the release of her medical diagnosis and treatment records. These medical records were received and reviewed.

According to notes from an appointment on April 25, AP:

"injured her back April 19, while reaching down her tub. She was provided with medication. On May 21, she had incident with police officers; she allegedly was roughed up by the officers; pushed and injured her Lt wrist (AP is left handed) and reinjured her lower back; No other deficits; Her back is the major issue; She was given time off her duties; Lumbar spine with tenderness; Lt wrist tender (sic), no deformities; No other deficits; Possibly muscle strain."

It would appear the reference to May 21 was in error as the appointment was on April 25.

An appointment on June 27 noted:

"continued back pain – is seeing physiotherapy and using Aleve now; back hurts depending on activities of the day; seeing therapist for events surrounding sore back and arrest;

Reference is made to a diagnostic imaging report from April 25 which states:

“Lumbosacral Spine: straightening of lumbar lordosis on lateral view and the upper lumbar spine is tilted slightly to the right on the frontal view; Left Wrist: no recent fracture, dislocation or other significant abnormality is recognized; Impression: minor spinal malalignments ...no convincing evidence of recent bony injury or other acute process”

There are no notes or references to any visible injuries to AP’s head, face or eye area.

Witness Officers

WO1 was working with SO on April 21. When they arrived on the scene of the accident, AP was walking away from it. WO1 approached AP to see if she was okay. AP claimed not to be the driver of the involved vehicle and said she was a police officer. She agreed to return to the scene to be looked at by paramedics. WO1 subsequently determined that AP had been the sole occupant of the crashed vehicle and placed her in his police cruiser. SO told AP she was under arrest for impaired driving.

AP became argumentative and claimed that police had “no grounds.” SO attempted to place handcuffs on AP and when he put his hands on her shoulder and arm, she started to resist by pulling away. According to WO1, SO told her to “stop resisting the arrest, you are under arrest.” AP raised her leg and kicked SO in the knee. AP was then advised she was under arrest for assaulting a police officer.

WO1 put AP in a wrist lock as WO2 assisted placing AP in handcuffs and back into the police cruiser. Once at the detachment, WO1 said AP was placed into a holding cell where she covered herself with a blanket and appeared to be hitting her own face. The blanket was taken away from AP.

WO2 said he attended the crash scene on April 21. SO directed him to photograph the scene. At some point, he saw SO and WO1 trying to handcuff AP. WO2 saw AP kick SO while shouting that she was “a cop.” WO2 assisted WO1 in handcuffing AP and then placing her into the police cruiser. WO2 said AP was resisting her arrest, was calling the police names, and was rude until she was secured in the police cruiser. WO2 stated that AP remained standing against the police cruiser throughout his interaction with her. He did not see her person or head strike the police cruiser.

WO2 stated that when they returned to the detachment and while AP was placed in a holding cell, she covered her face with a blanket. He was concerned she may be harming herself and the blanket was subsequently removed from her.

WO3 was called back to work in order to conduct a breathalyzer test of AP, however she refused any samples. WO3 did not see any injuries on AP, particularly on her arms or face. WO3 said AP did not mention any injuries to him nor did she complain to him about her treatment by any of the police officers.

Firefighters, Paramedics and Civilian Witness

FM1 arrived on the scene of the crash on April 21. On his arrival, FM1 saw a female in the rear of a police cruiser. While FM1 thought she had been arrested, he did not know whether she was in handcuffs. He did not observe any physical altercation between the female and the police officers.

FM2 was among the first emergency responders to arrive at the crash scene. He observed a vehicle in a water-filled ditch and two men and a woman talking at the roadside. The female immediately told FM2 that she was a police officer, that there was no need for anyone to have called 911 and that she was fine but almost seemed "disgruntled" that the emergency number had been called. Shortly thereafter, he saw this female walking away from the scene. When police arrived, FM2 pointed out the female and advised that she had been the lone occupant of the vehicle in the ditch. When police were dealing with her, he stated she was yelling and throwing her arms in the air. Afterwards, he saw that this female was in the police cruiser. FM2 did not see any physical altercation take place between the female and the attending police. He did not see her placed into the police cruiser.

FM3 recalled attending the crash scene and approaching a police cruiser where a female was seated in the back seat. He wanted the police to inquire of the female whether there had been any other occupants in her vehicle as it was partly submerged in water and he wanted to determine whether to commence a search for possible casualties. He advised that the female was not cooperative, that she appeared to be on something, was yelling and did not seem normal. As FM3 carried on with his duties he heard a disturbance and looked to where the police cruiser was located. He saw police officers outside a police car and around the female. There was a struggle. The female was screaming, with her arms flailing around and it looked like she tried to kick one of the police officers. FM3 stated he did not see any force used by the police officers or see anything that he felt was abusive or excessive by police. The female was not cooperating with police and she was yelling and screaming.

PM1 and PM2 attended this crash scene on April 21. PM1 recalled that the female driver, later identified as AP, declined treatment and that he had no dealings with her. PM2 spoke with AP through the window of the police cruiser. AP told PM2 that she did not want or need their assistance. There were no visible injuries on AP that PM2 could see. PM2 did not see any struggle between AP and police.

CW saw the accident and called 911. He said a car crashed into the ditch, a woman got out of it right away and the first thing she said was, "I'm a police officer." Shortly afterwards, he noticed that this female had "disappeared" but then saw her walking away from the scene. He next saw

the female sitting in the police cruiser with her head in her hands. CW stated, "I didn't see police mishandle anybody."

Subject Officer

SO provided his reports and notes to IIU investigators and was interviewed by them.

SO said he attended the crash scene with WO1. A female, later identified as AP, was walking away from the scene as witnesses pointed her out. WO1 spoke with her and returned to the scene with AP in the police cruiser.

SO said when he entered the police cruiser, he noted an over-powering smell of liquor and AP's speech was slurred. He immediately placed her under arrest. SO advised her that she would be transported to the detachment and would have to be searched. AP was removed from the police cruiser at which time SO placed his right hand on her wrist. AP started to resist, becoming violent and trying to pull away. As SO tried to place her arm behind her back and handcuff her, AP kicked backward and struck his knee. WO1 and WO2 assisted SO and they were able to place the handcuffs on AP. She was returned to the rear of the police cruiser.

SO stated that he did not try to hit AP's head on the police cruiser. He tried to maintain control of AP to prevent any additional assaults by her and possible injuries to others.

Cell Video Footage

The video footage of AP during her time in custody in the holding cell at the Manitou RCMP detachment was reviewed. Following her arrival and search at the detachment, AP is seen being placed into Cell 1 and left alone. On several occasions, AP is observed covering her face with a pillow or blanket. From time to time, her hands are seen under the blanket. It is difficult to determine what AP is doing with her hands under the blanket. On two occasions, a police officer enters the cell area and appears to speak with AP. When the officer leaves, AP's head and body are beneath the blanket. WO1 and WO2 are observed to enter the cell, remove the blankets from AP, and exit without incident. A while later, a police officer escorts AP from the cell down a hallway and out of camera view.

Issue and Review

The relevant issue in this matter is whether, at any time, did SO subject AP to unnecessary and excessive force during the course of apprehending and arresting her.

Section 25 (1) of the Criminal Code of Canada provides that:

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.

Any force that is in excess of that which is necessary in the circumstances is not justified and may constitute an assault in law.

Section 265 (1) (a) states:

A person commits an assault when (a) without the consent of another person, he applies force intentionally to that other person, directly or indirectly

Following a thorough review of this file, a number of conclusions are reached:

- SO was in the lawful execution of his duty as a police officer on April 21 when he and other police officers attended the crash scene and dealt with AP;
- Based on everything known to him at the time, SO had reasonable and probable grounds to arrest AP on an allegation of operating a motor vehicle while impaired by alcohol;
- As he was preparing to transport AP to the RCMP detachment for further processing, AP became combative and resisted all reasonable attempts to be handcuffed and searched;
- AP struck SO with a back kick to his leg;
- The means used to restrain AP were reasonable in the circumstances;
- The video recording corroborates the evidence of SO and the witness officers as to AP's actions while in the holding cells;
- The medical reports and diagnosis of AP are inconsistent with her recollections.

In the circumstances, I am not satisfied that any reasonable or probable grounds exist that SO subjected AP to any unreasonable conduct or excessive force during any of his dealings with her. Accordingly, no charges will be authorized against him.

This investigation is complete and the IIU will close its file.

Final report prepared by:

Zane Tessler, civilian director
Independent Investigation Unit
March 26, 2018

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