

FINAL REPORT: IIU concludes investigation into injuries sustained by Norway House man during arrest by RCMP

On October 22, 2017, at 6:22 p.m., the Royal Canadian Mounted Police (RCMP) notified the Independent Investigation Unit (IIU) about an arrest where a male suspect (later identified as the affected person (AP)) suffered serious injuries in the course of his arrest by members of the RCMP Norway House detachment. According to the notification, RCMP Norway House members were dispatched to a residence in relation to a call about an intoxicated male who was threatening a relation. Upon arrival, AP was observed running from the front of the residence and into the bush. Police pursued AP through the bush, over terrain described as rough with rocks and trees. An RCMP member caught up with AP, who had fallen, laid on top of AP until backup arrived and eventually lodged him at the detachment cells.

By the following morning, AP was having difficulty breathing and was complaining about chest pains. He was transported to the Norway House Cree Nation Hospital (NHH) for examination. It was determined that AP had sustained broken ribs and a punctured lung. He was subsequently flown to the Health Sciences Center (HSC) in Winnipeg for further treatment.

The injuries sustained by AP are serious injuries as defined by IIU regulation 100/2015. 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 RCMP member who chased and held AP down as the subject officer (SO). Three other RCMP members were designated as witness officers (WO1 – 3). IIU investigators also interviewed AP, one civilian witness (CW) and one professional witness (PW).

In the course of the investigation, IIU investigators received and reviewed:

- the RCMP agency file which included supplementary reports, notes of witness officers, cell block video and audio transmissions of radio broadcasts;
- prisoner reports that confirmed AP was not involved in any altercations at the detachment while in custody;
- photographs of AP at HSC;
- AP's medical reports from NHH and HSC.

AP

IIU investigators attended HSC to interview AP regarding this incident.

AP said that on the date of the incident, he was intoxicated from drinking and walked to his parents' residence at Norway House Cree Nation. When AP arrived, he knocked on the front door and noticed that the RCMP had also arrived there but he did not know why. AP did not recall if the police identified themselves upon their arrival. AP stated that he decided to run and find somewhere to sleep. AP said the police chased him behind his parents' home.

AP said that as he was running, he fell down and landed on his chest on a rock. The RCMP member who was chasing AP then fell on top of him. AP stated that the officer grabbed his arm, twisted it, handcuffed him, and took him to a police truck.

AP said that he fell asleep at the RCMP detachment. When he awoke sometime early in the morning, he experienced chest pains that he had not felt before. He said he did not have any chest pain prior to encountering the RCMP. AP stated that he could not identify the police officer who laid on him because it was dark.

Civilian Witness

CW is AP's mother and said she had telephoned the police to have him picked up because he was intoxicated. AP stated she noticed AP running away towards the bush when the police arrived. CW said she did not speak with the police that night. The police contacted her in the morning and advised her to see AP at the hospital.

Witness Officers

WO1 stated that he, WO2 and SO all responded, in separate vehicles, to the disturbance call. When he arrived on scene, WO1 noticed someone run from the house to where SO was located. WO1 heard SO say "he's running" then gave chase. WO1 stated that SO went to the roadside of the house to try to cut that person off.

WO1 said it was a rugged terrain around the house, with trees and rocks everywhere. WO1 said when he finally caught up with AP, he found SO lying face down on top of him.

WO1 grabbed AP's right arm and SO took hold of his left arm. WO1 said he handcuffed AP. WO1 and SO then pulled AP up to his feet. WO1 said AP did not appear to be injured. WO1 asked AP if he was okay but he could not understand the response.

Once they returned to the detachment, AP was lodged in his cell. That ended WO1's involvement with AP.

WO2 said that when he received the disturbance call, he was aware that there existed an outstanding arrest warrant for AP. When he arrived at the residence, he saw WO1 and SO exit

their vehicles and start to run. WO2 said he joined the pursuit but by the time he caught up to the other officers, AP was on the ground and handcuffed.

While on route to the detachment, WO2 said he asked AP if he had any injuries. AP did not respond either way. AP did continually request to be let out of the vehicle.

WO3 was in the cell area at the detachment, shortly after 8:00 a.m., when AP asked to speak with him. AP said that his chest was sore and he was having a hard time breathing. WO3 said he could see that AP was in pain and was having difficulty breathing. WO3 requested that emergency medical staff attend to the detachment to assess AP. WO3 said paramedics arrived at the detachment around 8:30 a.m. to assess AP and subsequently advised that he would be taken to hospital and assessed.

Subject Officer

Under the provisions of the PSA, a Subject Officer is not required to provide his notes, nor can he be compelled to be interviewed by IIU investigators in respect to an incident. In this investigation, SO agreed to meet with and be interviewed by IIU investigators.

SO stated that he had previous dealings with AP. SO was aware of the existence of an outstanding arrest warrant for AP. SO said that he, WO1 and WO2 arrived at the residence within five minutes of the disturbance call. When SO drove up the residence's driveway, he immediately noticed AP standing by the front door.

SO said that as he exited his police vehicle, AP ran away. SO yelled, "Stop, police, you're under arrest." SO radioed to the other officers that AP was running and pursued him on foot. He described the area over which AP was running as "difficult." Although there was no snow, the ground was wet and there were a lot of rocks, shrubs, trees, and fallen trees.

SO said as AP was running, he fell and ended up lying on the ground, on his stomach. To prevent AP from getting up and running away, SO dropped to the ground and placed one knee between AP's legs. SO said he lowered himself on AP and laid on top of him. SO said he did not try to handcuff him at that time and waited for other officers to arrive. SO said WO1 applied the handcuffs to AP. SO said the officers pulled AP off the ground. AP did not say anything and appeared to be intoxicated.

SO said when they were back at the detachment he asked AP if he was injured. AP shook his head "no" in response. He said he lifted AP's shirt and checked his back. There were no marks and he could not see any injuries.

SO said he was advised by WO3 the following day that AP reported injuries and was taken to the hospital.

Medical Reports

IIU investigators received and reviewed AP's personal health information from NHH. The findings confirmed multiple left side rib fractures involving the eighth, ninth and tenth ribs.

IIU investigators also received and reviewed AP's personal health information from HSC. The report revealed there was a displaced fracture involving the left posterior seventh, eighth and ninth ribs. A bone fragment was identified within the posterior pleural space. There was a near complete collapse of the left lung.

IIU investigators met with PW--the physician who diagnosed AP at HSC, PW confirmed the evidence collected in this file is consistent with AP's injuries but could not confirm if the injuries were caused by the use of excessive force. The injuries could have occurred from the manner in which AP fell and landed onto the rough terrain. The injuries could have been aggravated by the police officer falling and lying on top of AP.

Issue, Assessment and Conclusion

The relevant issue in this matter is whether SO used unnecessary and/or excessive force on AP at any time during their interaction.

A peace officer is authorized to use force in the lawful execution of his duties and as much as necessary for that intended purpose. Moreover, a peace 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 (section 25 *Criminal Code*).

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

There is no doubt that AP suffered a serious injury to his ribs and lung. The issue, however, is whether he suffered this injury due to the application of unnecessary and/or excessive force by SO. SO was in the lawful execution of his duties at the time he responded to the disturbance call; was aware of an outstanding warrant concerning AP; and saw AP run from the residence as soon as police arrived and attempt to flee on foot, refusing to comply with directions to stop and surrender. SO's action of lying on AP after he had fallen on the ground, and pinning AP while awaiting the attendance of other officers to arrest and detain him, is all within the lawful execution of the police officers' powers and the applicability of section 25 of the *Criminal Code*. There is no evidence respecting any physical act by SO onto the person of AP that could be construed as an excessive and/or unnecessary use of force. AP did fall onto rough and rocky terrain on his own accord. The physician consulted confirmed that a fall onto the rough terrain could have caused the injuries to AP. No evidence exists that any officer, and in particular SO, punched, kicked or otherwise applied excessive force to AP. The mere existence of the serious injury on its own does not determine whether excessive force was applied. AP's level of intoxication does account for a delay in reporting pain and injury.

Therefore, on careful review of the available evidence and material facts obtained in this investigation, I am not satisfied that the requisite reasonable and probable grounds exist to justify any *Criminal Code* or other charge against SO.

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

Final report prepared by:
Zane Tessler, civilian director
Independent Investigation Unit
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