

FINAL REPORT: IIU concludes investigation into injuries from “less lethal” firearm used by The Pas RCMP

On July 31, 2019, the Royal Canadian Mounted Police (RCMP) notified the Independent Investigation Unit (IIU) of a confrontation between RCMP members and an armed male (later identified as the affected person (AP)) at The Pas, Manitoba during which a low velocity Extended Range Impact Weapon (ERIW) was deployed, resulting in injuries to AP.

The notification read in part:

“On July 30th, 2019 at 5:28 am, RCMP were dispatched to an unknown situation in The Pas, where the caller said that he was going to die tonight. The 911 operator asked the man if he needed the police or an ambulance and his response was "whoever's got guns."

Members from OCN and The Pas arrived on scene at approximately 5:36 am and heard the distinct sound of a gun being racked. Containment was set up by members on the residence, while Critical Incident Command was contacted. Soon after, members observed the man later identified as 36 year old [AP], of The Pas, MB holding a long barreled gun. While members were containing the scene [AP] went in and out of the house several times holding a firearm. [AP] would not respond to police commands.

At approximately 10:15 am [AP] exited the residence and walked to the front gate. [AP] was not compliant with police commands and put his hands into his pants. At which time [subject officer (SO)] deployed the ERIW which struck the male directly in the chest. The round was ineffective in incapacitating [AP], and he returned into the residence.

[AP] later became compliant with members, exited the residence and was taken into custody without further issue.

[AP] suffered a bruise to his chest and a skin abrasion...it was about one hour between the deployment of the ERIW and when [AP] turned himself in to police. During this time [AP] took pictures of his bruise and posted them on social media.

[AP] is in custody. No significant injuries, he does have bruising and an abrasion to his chest where he was struck by the projectile...Two .22 rifles and a 12 gauge shotgun were seized at the scene.”

The IIU civilian director determined that the ERIW was a firearm for purposes under the *Police Services Act* (PSA). The ERIW is a less-lethal use of force option that fires a 40-millimeter foam-tipped projectile. Any injury resulting from its use would constitute a serious injury pursuant to IIU regulation 99/2015. According to the notification, AP suffered a bruise and abrasion to his chest because of the deployment of the ERIW. Accordingly, this was a mandatory

investigation by the IIU into the conduct of the RCMP member who discharged the ERIW. A team of IIU investigators was assigned to this matter.

The information obtained by IIU investigators included:

- all witness officers' notes and reports;
- 911 telephone communications;
- photographs of AP's injuries;
- AP's firearm license checks;
- photographs of three firearms seized from AP;
- photographs of ERIW and spent impact round;
- SO's ERIW training records;
- RCMP ERIW course training standard.

The civilian director designated the RCMP member who discharged the ERIW as the subject officer (SO) and 11 RCMP members as witness officers (WO1 – 11). Upon review of all witness officer notes and reports, it was apparent that only WO1 - 4 witnessed the actions of SO and AP at the point the ERIW was deployed; accordingly, these officers were interviewed. IIU investigators also interviewed AP by telephone.

Facts and Circumstances

During the early morning of July 30, 2019, AP telephoned 911. When he was asked if he required police or an ambulance to attend, he responded by saying "*whoever has guns.*" AP also stated that he was going to die that night. AP hung up before the 911 operator could determine his identity, location or any other information. It was believed, however, that the call originated from the proximity of a residence in The Pas, Manitoba.

At 05:36 a.m., WO1 and WO2 attended the residence and, upon arrival in the back lane, they found AP shouting at them from a second storey window. WO1 and WO2 were approaching the house when they heard what they believed was the sound of a firearm being loaded. AP continued to goad WO1 and WO2 as they immediately took cover behind their police vehicle. AP was now in possession of a long-barrelled firearm. AP came out of the house, walked towards the officers and was holding the firearm pointed at the ground. AP returned to the house and shouted at the officers, "*Let's do this*" and "*Shoot me.*"

WO3, a senior officer of the RCMP at that time, attended the scene. He arranged for WO4 to act as negotiator and for SO, trained in the use of an ERIW, to also attend the scene. An ERIW is a police intervention tool and firearm that discharges a 40mm low velocity sponge projectile round. It is intended as a less lethal use of force option. RCMP members must be trained in the use of an ERIW before they may deploy it. In this instance, SO was properly trained and qualified in the use of an ERIW.

At one point, AP was observed to kneel down and point his firearm under his chin and to the side of his head. Throughout the incident, AP was seen to be in possession of three separate firearms.

WO3 advised all RCMP members that an “action line”¹ was to be the gate that separated the back lane and the back yard of the residence.

At 8:30 a.m., AP approached the gate with his hands in the air as directed by police. AP then closed the gate and put his hands in his pockets. The gate obstructed the view of AP’s waist area and where his hands were placed. Police officers shouted commands at AP to show his hands, which he ignored. Police officers believed AP might have concealed weapons on his person. As a result, SO deployed the ERIW, firing once and striking AP in the chest. AP ran back into the house.

Shortly after 10:00 a.m., AP exited the residence and was apprehended without further incident. AP was detained pursuant to the *Mental Health Act*. The RCMP seized two .22 rifles and one 12-gauge shotgun.

AP was taken to The Pas RCMP detachment and provided medical attention for his chest injury.

AP

AP stated that he was experiencing suicidal thoughts that day as his ex-spouse had left, taking their children with her. AP was at his ex-spouse’s home and had two long guns and a shotgun in his possession. AP described his interaction with RCMP as a standoff. At one point during this standoff, AP said he held the shotgun under his chin in front of the police officers. AP said that a police officer was trying to talk him out of committing suicide by saying, “*Don’t do that.*”

AP said that his intention was to get the police to shoot him. AP was telling the police to “*kill me, kill me.*” AP said he went inside the house and then came back outside without a firearm. AP stated he was still telling the police to shoot him. According to AP, the police were shouting at him to “*Show us your hands.*” AP said he was shot with something that struck him in the centre of the chest, leaving a circular bruise, and his skin was stripped off. AP said that at the time of the incident, he had not slept for days, had taken around 10 grams of cocaine over a two-day period and had been drinking, tequila, rye and beer.

IIU investigators wanted to meet with AP a second time, in person, for a continued interview. However, all attempts to locate AP proved fruitless.

AP did not provide IIU investigators with a signed medical consent form and, accordingly, AP’s medical records and reports could not be requested nor reviewed.

Witness Officers

WO1 was a member of the RCMP. WO1 and WO2 attended to the residence. As they drove down a back lane, a male was heard shouting from a second-floor window at the residence. They stopped and exited their police vehicle. WO1 stated that as they approached the back yard, he heard the sound of a shotgun being racked and loaded. WO1 stated that he and WO2 took cover behind their police vehicle and armed themselves with their firearms. AP was shouting, “*Let’s f***ing do this, f*** you guys and shoot me.*”

¹ The point or threshold where lethal intent and action of the armed suspect may be presumed and that police officers may engage with lethal force in response. In this instance, should AP cross that action line without complying with police commands, he should be dealt with accordingly.

More RCMP members soon arrived on scene. WO3 was the senior member. WO4 attended the scene to act as negotiator. WO1 saw AP with more than one firearm in his possession and observed him drinking beer. According to WO1, AP held one of the firearms to his own head.

WO1 stated that SO attended and was in possession of a 40mm ERIW, a less lethal weapon.

WO1 saw AP walk across the back yard and approach a gate to the back lane with his hands in the air. That gate was the action line as directed by WO3. AP suddenly slammed the gate shut and put his hands in his pockets. The gate obstructed the view of where his hands were. Police officers repeatedly shouted at AP to remove his hands from his pockets. AP did not comply with these directions. SO deployed the ERIW, and the projectile hit AP. AP ran back into the house and the standoff continued. After further negotiating, AP exited the house with his hands on his head and no firearms were seen. AP was detained and handcuffed without further incident.

WO2 said he and WO1 responded to a call to attend the residence at around 5:30 a.m. As they drove down the back lane, WO2 heard some shouting coming from the rear of the residence. WO2 stated that he and WO1 approached the rear of the house cautiously. WO2 noticed a gate to the rear yard. As they approached the gate, WO2 heard someone say, "*f*** you cops*" and then the sound of a firearm being actioned as if being loaded. WO2 looked up at a second story and saw a male (later identified as AP) in the window. Both he and WO1 backed up to behind their police car. WO2 saw that AP had a firearm. According to WO2, AP was positioned in "*an eagle's nest*" and it would have been easy for him to "*pick the officers off.*" WO2 remarked that the incident was "*high risk,*" the rifle appeared real and he believed it was loaded.

WO2 reported the situation to the detachment and requested more RCMP members attend the scene. WO2 was speaking with WO3 to update him when AP ran out the back door, across the backyard and towards the officers' positions. AP was holding a rifle but not pointing it at officers. WO2 said that both he and WO1 were shouting at AP to drop the rifle and give up. AP refused to comply with their directions. AP then went behind a shed and then ran back into the house.

WO2 was aware that someone had asked if a "*40mm less lethal option*" (ERIW) was available. WO3 then called for SO to attend the scene with that intervention tool. An "*action line*" was identified, which WO2 was aware was the backyard gate.

WO2 said WO4 was negotiating with AP in an attempt to get him to surrender. AP refused to do so at that time. SO was armed with the ERIW. AP exited the residence and walked towards the gate. He was commanded to put his hands in the air. However, as he approached the gate, he slammed it shut and put his hands in his pockets. WO2 said officers shouted at AP to remove his hands from his pockets and keep them raised. The gate was obstructing the view of his hands. AP shouted at the officers when SO discharged the ERIW, striking him in the chest. The male ran back into the house.

During the entire incident, WO2 saw AP in possession of three firearms. AP was asking the officers to shoot him. At one point, AP pointed a firearm at his own head.

WO3 was the senior officer at The Pas RCMP detachment when he was made aware of an incident involving a male in possession of a firearm and that a standoff with his officers had commenced.

He made his way to the scene and approached WO1 and WO2's position. WO3 saw AP exit the rear of the residence with a long black firearm in his hands. AP was yelling and, at one point, kneeled down and pointed the firearm under his chin. According to WO3, AP said, "*It's finally come to this*" and that he wanted to die at the hands of the police.

A less lethal force intervention option was considered and resulted in WO3 arranging for SO to attend the scene with an ERIW. WO3 advised that SO was the only officer trained and available to use the ERIW. WO3 determined that the backyard gate would be the action line and advised all officers accordingly. WO3 stated that should AP cross the action line without complying with police commands, he would be dealt with accordingly (all dependant on AP's behavior, if he was possessing a weapon and if there were any threats to officers' life or safety). WO3 reminded all officers of their obligations under Section 25 of the *Criminal Code of Canada* and the use of lethal force.

WO3 went to speak to a friend of AP when he heard a popping noise. WO3 immediately ran back to the scene and saw AP on his deck holding his chest. WO3 said that SO advised that AP had approached the gate with his hands up and when he reached it he put his hands in his pockets. SO told WO3 that he and other officers warned AP to keep his hands visible. When AP did not comply, SO discharged the ERIW.

Soon afterwards, AP gave up and was apprehended without incident. Police entered the house and recovered three firearms.

WO4 attended the scene at around 8:30 a.m. to act as Crisis Negotiator during this incident and entered into dialogue with AP. WO4 was aware that AP was in possession of firearms and that there were no other persons in the residence. AP was angry and yelling at the police, telling them to shoot him. WO4 stated that when AP approached the back gate (the action line) he shook it violently stating, *Shoot me, shoot me.*"

AP put both hands in his pockets, prompting SO, WO2 and WO4 to tell AP to keep his hands where they could be seen. AP kept saying, *"Shoot me"* and did not comply with the police commands. SO deployed the ERIW at AP. WO4 believed the less lethal round struck AP in the chest. AP eventually surrendered without further incident.

Subject Officer

Pursuant to the provisions of the PSA, a subject officer cannot be compelled to provide his or her notes regarding an incident nor to participate in any interview with IIU investigators. In this case, SO declined to provide his notes and refused to be interviewed.

Conclusion

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

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 265 (1) (a) of the *Criminal Code of Canada* 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

A police officer is entitled to arrest anyone to prevent a breach of the public peace. A police officer is authorized to use force in the lawful execution of his or her duties and as much as is necessary for that intended purpose. Moreover, a police officer is authorized to use force to defend or protect him or herself from the use or threat of force by another person, provided it is reasonable in all of the circumstances. Where force is used that is in excess of what is necessary or reasonable in the circumstances is not justified and may constitute an assault 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 subject officer accordingly. The determination of whether reasonable grounds exist is based on a careful assessment of all the available evidence. The totality of the circumstances must be considered in the assessment of those reasonable grounds. The purpose of emphasizing the totality of the circumstances is to avoid concentrating on individual pieces of evidence in isolation. Accordingly, the consideration of the evidence cannot be piecemeal.

Moreover, determination of whether the necessary reasonable grounds exist must not be based solely on speculation. The absence of evidence on essential elements of the offence means there is an absence of the necessary reasonable grounds. Therefore, in those circumstances, there is no legal support for the laying of a criminal charge. That is how the law is to be applied.

This investigation was undertaken by IIU because AP had sustained an injury during his interaction with police. The existence of an injury alone does not presuppose that a criminal offence has occurred. The mandate of IIU does not include authorizing criminal charges in the absence of evidence to support that significant decision. It would be wholly inappropriate to authorize the laying of criminal charges in absence of the required reasonable grounds existing to support such authorization.

The laying of a charge solely for the sake of laying a charge is not in keeping with the mandate of this office. This legal analysis and process is not restricted solely to investigations related to police officer conduct but is the very cornerstone of any justice system in a free and democratic society regardless of the subject matter under consideration.

On review of this investigation, I am satisfied that:

- SO was lawfully placed and acting in his capacities as a police officer in the execution of his duties during his interaction with AP;

- SO was trained and qualified to possess and deploy an ERIW;
- AP was depressed, suicidal and under the influence of drugs and alcohol;
- AP was in possession of multiple firearms;
- AP was urging police to shoot and kill him;
- It was unknown whether AP's firearms were loaded but that was a real possibility;
- AP refused all directions and commands by police officers;
- Officers were reminded of their obligations under the Criminal Code of Canada when dealing with potentially lethal circumstances;
- Police had developed a plan where less lethal force could be utilized and where lethal force was to be a last option;
- A significant degree of restraint was demonstrated by all the police officers at the scene during their dealings with AP;
- Communication between police officers was exceptional;
- A less lethal force option was employed and was successful;
- The actions of SO and all other officers were designed to both protect police and save AP's life;
- The choice to use a less lethal force was appropriate, reasonable and not excessive. This choice was wholly within the parameters of section 25 of the Criminal Code.

In this investigation, part of the IIU mandate is to determine whether consequences should flow from the subject officer's actions in consideration of all the circumstances and information known at the time. On careful review of the available evidence and material facts obtained in this investigation, I am not satisfied there are reasonable grounds to believe that SO exceeded the ambit of justifiable force during his contact with AP. In summary, a less lethal force option deescalated a potentially lethal situation.

Accordingly, I am not satisfied that reasonable grounds exist to charge. No charges will be authorized against SO. IIU has completed its investigation and this matter is now closed.

Final report prepared by:

Zane Tessler, civilian director
Independent Investigation Unit
February 04, 2020
Ref 2019-048