

# ***FINAL REPORT: IIU concludes investigation into injuries to male during arrest by RCMP***

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On June 17, 2019, the Royal Canadian Mounted Police (RCMP) notified the IIU of an incident that occurred at Sagkeeng First Nation (SFN), Manitoba. According to the notification, which read in part:

*“On June 14th, 2019, at approximately 20:06 hours, Powerview RCMP received a complaint from (a woman) advising that Affected Person (AP) was causing issues at her residence in SFN. AP was known to police to be violent and believed to be HIV and Hep “C” positive. Upon arrival, members were greeted at the door by (a man) who indicated that AP was in the back bedroom and that they wanted him removed from the residence. AP could be heard shouting...AP was told to exit the bedroom and that he was under arrest... AP exited the bedroom with his hands wrapped in a black garage bag with what appeared to be a firearm and was making “bang bang” noises...Subject Officer(SO) transitioned...to his baton and provided a single strike to AP’s forearm...AP was secured in handcuffs...AP’s arm was observed to be swollen therefore members took AP to the Pine Falls Hospital where he was assessed by a doctor and it was determined that he sustained a fracture to his left forearm and a fractured finger on his left hand... AP was transported by police to the Grace Hospital where he underwent surgery to reset the broken arm.”*

According to this notification, SO used a baton to strike AP’s left forearm, resulting in a broken arm which required surgery to set. As a fracture or break of an arm bone caused by the actions of a police officer is defined by regulation as a serious injury, IIU assumed responsibility for this matter in accordance with section 65(1) of *The Police Services Act (PSA)*. A team of IIU investigators was assigned to this investigation.

Information obtained by IIU investigators included:

- occurrence summary;
- audio recording of a 911 call;
- supplementary reports;
- use of force reports;
- witness officer notes;
- scene photographs;
- conductive energy weapon (CEW) associated to RCMP officers;
- reports from officers;
- medical reports respecting AP.

SO was the only police officer to be designated by the civilian director in this matter. IIU investigators interviewed AP and three civilian witnesses (CW1 - CW3). IIU investigators also interviewed four witness officers (WO1 - WO4).

## **Facts and Circumstances**

### **Affected Person**

AP said he was living with his grandparents, CW1 and CW2, who, according to him, were not present during the incident. AP recalled that police attended the residence and that he was wrestled and slammed on the floor. AP stated he had been drinking and doing drugs that day. AP advised that he had taken crystal meth that day and had not taken his prescribed anti-psychotic medication for a couple of days. AP also stated he had been drinking alcohol.

AP said he remembered his arm being broken and being “tasered” four times. AP thought his arm may have been broken when he was being restrained and handcuffs were being placed on him. AP thought that four “tasers” (also known as conductive energy weapons (CEW)) were used on him and that was how police got him down. AP did not recall anything more about what occurred in the residence. AP said no other persons were present. AP did not recall any conversations with the police or if he was holding anything at the time of his involvement with them. AP consented to the release of his medical records.

The medical records revealed that AP suffered a “*mid ulnar fracture*” to his left forearm which required surgery and a “*5th metacarpal bone fracture*” referred to as a “*boxer’s fracture*” on his left hand. Based on all of the information gathered (and to be discussed hereafter), it is unknown how AP sustained the injury to his hand.

### **Civilian Witnesses**

CW1 was the grandmother of AP. She advised that AP uses crystal meth. CW1 further states that when AP is under that influence, he has psychotic episodes and becomes paranoid. According to CW1, AP also suffers from mental health issues and on June 14 was acting paranoid. At the urging of CW2 (AP’s grandfather), CW1 called the police to come to her house and advised that AP had been using meth. CW1 asked that the police approach her house without using sirens and lights so as not to panic AP.

CW2 said that AP had been acting erratically and he believed that AP had taken crystal meth. AP was pretending to shoot at cars using a stick which he pretended was a rifle. CW2 was concerned about AP’s behavior and wanted him out of his house. CW2 asked CW1 to call for the police to attend their home. CW2 was inside the house with AP when three or four RCMP cars arrived. According to CW2, approximately six uniformed police officers came to the door. CW2 heard a knock and someone announced, “*Police.*” CW2 opened the door and one police officer asked if AP was home. CW2 advised that AP was in his bedroom and allowed police to enter. CW2 then went outside his home. CW2 heard screaming from inside the house and at least seven “pops” that he believed were “tasers” being used. CW2 also heard police officers saying, “*Get down*” and “*Watch him, he’s got something in his hands.*”

CW3 is AP’s sibling and was present when police arrived at the home. CW3 recalls coming home from school and noting that AP was intoxicated and under the influence of drugs. According to CW3, AP was paranoid about the police and saying things about the police randomly coming to the house. CW3 believed there were five or six RCMP officers that arrived

at the house. CW3 stated that AP stepped out of his room and might have been holding a metal or wooden stick. CW3 stated the police told AP to get on the ground but he did not comply. According to CW3, all of the police officers had their “tasers” out.

### **Witness Officers**

On the day in question, WO1 was working with SO. WO1 had had personal dealings with AP on unrelated matters and said AP can be co-operative when he is sober but that when under the influence of drugs or alcohol, he can be violent, unpredictable and frightening. On this date, WO1 was advised and aware that AP was “...on meth,” was “freaking out” in the home, and that his grandparents called the police and wanted him removed from the house. WO1 stated that three RCMP cruisers arrived at the home in response to the call. All the vehicles approached the home without lights or sirens activated. WO1 stated that, while en route, inquiries were made as to whether AP was in possession of any weapons. WO1 could not recall whether that information was provided.

Upon arrival at the home, WO1 met with CW2 who confirmed that AP was “freaking out,” that AP was in a bedroom and that CW2 wanted him removed from the house. WO1 recalled that CW2 stated AP had been pretending to shoot people but he did not give any further details. Upon entering the house, WO1 verbally commanded that AP come out with his hands up. WO1 was armed with a CEW as a precaution. AP came running out of the bedroom shrieking and holding an object that WO1 believed was an imitation firearm in a black garbage bag and saying, “*bang, bang.*” WO1 discharged the CEW at AP. WO1 stated that SO discharged his CEW at AP at the same time but was unsure if it made contact. According to WO1, AP was wearing a huge sweater and the CEW had nil effect on him. WO1 then drew her firearm as AP was still running at her. AP was warned to drop his weapon but he ignored the commands. WO1 stated that SO alerted the police officers that the object held by AP was not a firearm but, rather, was a baseball bat. SO then struck AP across the forearm with a baton. WO1 recalled SO striking AP only one time with the baton. WO1 stated that SO chased AP into the bedroom. WO1 entered the bedroom and saw AP was fighting with SO. WO1 struck AP twice with a baton across his left thigh. The police officers were able to subdue AP and handcuff him.

On the incident date, WO2 was working when a call came over the police radio advising there was a disturbance call at AP’s home. WO2 had attended to that residence before and had found AP to be un-cooperative and violent towards police. On this occasion, WO2 was not aware if the existence of weapons was mentioned over the broadcast.

When WO2 arrived at the home, CW2 advised that AP had been pretending to shoot at people through a window and acting strangely all day. As WO2 entered the home, AP was screaming incoherently from the end of the hallway. WO2 saw AP holding a black garbage bag with something inside that resembled a firearm. AP was yelling “*bang, bang*” and was holding the bag as if it was a firearm. AP ignored commands by various police officers to drop the object. According to WO2, both WO1 and SO had their CEWs out and were each yelling commands at AP to drop the bag. WO2 had drawn her service pistol while WO3 was positioned in front of WO2. WO2 then stated that WO4, who also had drawn his service pistol, moved in between SO and WO1. WO2 stated that AP was coming towards the police officers and was thrusting the object in their direction. SO alerted the other police officers that the object was a baseball bat.

WO2 saw SO produce a baton and strike AP on the arm. She could not clearly see where the baton strike landed. WO2 could not say which of AP's arms was struck by the baton.

SO then deployed his CEW, which was followed by a deployment by WO1. WO3 then deployed her CEW twice, followed by a deployment by WO4. AP retreated down the hallway towards a back bedroom where he was ultimately detained. The black bag and object were found underneath him. WO2 removed the object from the bag and she found it to be a wooden object with a metal piece on the end.

WO3 was working on the day of the incident and was aware of the call regarding a disturbance at AP's home. WO3 had dealt with AP on a previous occasion. WO3 stated there was no mention of whether AP was in possession of any weapons but that he is a known "*meth*" user. WO3 recalled that upon entering the home, the police officers were greeted by CW2 who stated that AP had been pretending to shoot people all day. The police officers were aware that AP was in a bedroom. SO, WO1 and WO3 each drew their CEWs in anticipation of AP exiting the bedroom. AP came running out of the bedroom carrying a black garbage bag with something inside. He was screaming and shouting "*bang, bang*" as he ran toward the police officers. WO3 stated she believed the object to be a firearm due to the way AP was holding it. SO and WO1 each deployed their CEWs at AP but they had no effect. WO3 then deployed her CEW at AP—also to no effect. WO3 stated that she re-loaded her CEW and deployed it a second time at AP, but it again had no effect. WO3 stated that SO had alerted the police officers that the object possessed by AP was a baseball bat. WO3 saw AP strike SO with the baseball bat but did not see where the blow landed. WO3 saw SO strike AP with a baton at least one time, somewhere on AP's arm. WO3 stated that WO4 shouted "*Taser, Taser, Taser*" and deployed his CEW on AP. AP ran into a bedroom, where he was detained by police officers. WO3 believed that AP was under the influence of meth and she could not understand how the various CEW deployments could have no effect on him.

WO4 was on duty on the day of the incident. WO4 stated he heard a broadcast to attend AP's home where there had been a report of a disturbance. AP was known to WO4. WO4 was aware that AP had mental health issues, could be aggressive and was also a known drug user. WO4 stated there was no mention of weapons during the broadcast call. On arrival and entry to the home, WO4 heard some incoherent screaming. WO4 was then alerted that AP was in possession of a weapon. WO4 saw AP holding a long, black object which WO4 believed to be a rifle. AP was coming toward the police officers and WO4 had his service pistol drawn and pointed at AP. As WO4 began to pull his trigger, he was alerted by SO who shouted, "*Bat.*" WO4 then transitioned to his CEW. WO4 stated that he saw SO strike AP with a baton once on the left arm. WO4 stated that AP was not affected by this strike but did back up. WO4 stated he deployed his CEW on AP, who then ran into a bedroom.

### **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 participate in any interview with IIU investigators. In this case, SO declined an in-person interview during this investigation but did supply a prepared statement and copies of his notes to IIU investigators. A review of SO's notes and prepared statement contained the following information:

SO attended AP's home after a complaint call was received from CW1. SO had personal knowledge of AP. On a previous occasion, AP had fought with SO. Furthermore, SO was aware that AP had mental health issues and was known to make weapons.

On arrival at the home, SO entered the residence with WO1. SO heard AP shouting from one of the bedrooms. SO then commanded AP to exit the bedroom with his hands up. SO and WO1 had both drawn their CEWs. AP exited the bedroom at which time SO saw that AP's hands were wrapped in a black garbage bag and he was holding what SO believed to be a firearm. SO deployed his CEW which he noted as a failed attempt. WO1 deployed her CEW which SO also noted as a failed attempt. WO3 then deployed her CEW, which SO noted as a failed attempt. SO wrote that WO4 pointed his service pistol at AP but SO saw that the object held by AP was a bat and he announced "bat."

SO wrote that he drew his baton and struck AP once on the left forearm. AP continued to hold the bat. WO4 then deployed his CEW at AP. AP then turned and struck SO across the left bicep. AP entered a bedroom and was commanded to drop the weapon and show his hands. AP did not comply with either demand. WO1 struck AP twice across the thigh with no visible effect. WO4 shouted, "taser" and deployed his CEW a second time. This caused AP to fall to the floor. AP, however, continued to fight with the officers. SO then shouted out "taser" and placed his CEW on AP's back area, delivering one cycle of energy to AP which was successful in disabling him and enabled police officers to handcuff him. A wooden object and a black garbage bag was recovered next to AP.

### **CEW Reports**

These reports confirmed the order in which the CEWs were deployed, the timing of each deployment and the duration of each deployment. On review of the reports, it was determined that the order of the CEW deployments were:

1. WO3
2. WO1
3. SO
4. WO3
5. WO4
6. WO4
7. SO

### **Conclusion**

Sections 25 (1), Section 26 and Section 34(1) of the Criminal Code of Canada are applicable 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.*

*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.*

*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.*

Effectively, the question is whether the decision of the subject officer to deploy his CEW at AP and strike AP on his forearm was reasonable in the given circumstances.

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 it is considered in light of the dangerous and demanding work engaged in by police and the expectation that they react quickly to all emergencies. The police officer's actions must be assessed in light of these exigencies.

The allowable degree of force to be used remains constrained by the principles of 'proportionality, necessity and reasonableness' (see *R. v. Nasogaluak*, [2010] 1 S.C.R. 206). In that decision, the Supreme Court noted, at para. 35:

*"Police actions should not be judged against a standard of perfection. It must be remembered that the police engage in dangerous and demanding work and often have to react quickly to emergencies. Their actions should be judged in light of these exigent circumstances."*

Also see *R. v. Power*, 476 Sask. R. 91 (CA), where at para. 35, the court notes:

*"On the basis of the foregoing, a determination of whether force is reasonable in all the circumstances involves consideration of three factors. First, a court must focus on an accused's subjective perception of the degree of violence of the assault or the threatened assault against him or her. Second, a court must assess whether the accused's belief is reasonable on the basis of the situation as he or she perceives it. Third, the accused's response of force must be no more than necessary in the circumstances. This needs to be assessed using an objective test only, i.e. was the force reasonable given the nature and quality of the threat, the force used in response to it, and the characteristics of the parties involved in terms of size, strength, gender, age and other immutable characteristics."*

This investigation has determined:

- SO was lawfully placed and acting in the execution of his duties as a police officer at all material times;

- SO, with other police officers, responded to a call for service regarding an identified individual who was causing a disturbance;
- SO, with the other police officers, had previous interactions with AP and was aware of his mental health issues, predisposition to drug use, and predisposition to violent outbursts towards police;
- SO was made aware of AP's consumption of drugs and pretending to shoot people;
- When police officers entered the home, AP became agitated and exited a bedroom screaming at them;
- AP shouted "bang, bang" and was in possession of an object that all police officers, including SO, reasonably believed to be a firearm;
- Police officers attempted to control AP initially through four CEW deployments, each of which proved ineffective;
- Although two police officers drew their service pistols, neither discharged these weapons at AP;
- SO, recognizing the object held by AP was a bat, alerted the other officers and then struck AP once on the left forearm with a baton in an effort to disarm and disable AP;
- Once AP was subdued, his weapon was seized and was determined to be a wooden stick with a metal end;
- The single blow on AP's left forearm by SO with his baton was the likely cause of the injury.

Was it reasonable, in these circumstances, for the subject officer to strike AP with a baton and deploy a CEW to prevent injury or death to himself, the other police officers or AP? I am satisfied that all the evidence gathered supports the singular conclusion that, pursuant to both Sections 25 and 34 of *The Criminal Code of Canada*, SO's use of force in this matter was both reasonable and justified in these circumstances.

In conclusion, there are no grounds to justify any charges against the subject officer.

There are Criminal Code charges pending in court against AP arising from the circumstances of this incident. I will direct that this investigative file be forwarded to Manitoba Prosecution Service to be incorporated into the prosecution materials on request.

This report will be released publicly once that prosecution has been completed.

The IIU investigation is now complete and this file is closed.

**Final report prepared by:**

Zane Tessler, civilian director  
Independent Investigation Unit  
November 27, 2019  
*Ref 2019-037*