

FINAL REPORT: IIU concludes investigation into deployment of “less lethal” firearm by RCMP

On March 23, 2020, the Royal Canadian Mounted Police (RCMP) notified the Independent Investigation Unit of Manitoba (IIU) of an incident where a police officer discharged a less lethal firearm, striking and injuring two suspects.

According to this notification:

On March 23rd, at approximately 10:47 a.m., RCMP received a complaint of a child abduction. During a supervised Child and Family Services (CFS) visit, parents abducted their biological children.

- *The parents were tracked via their vehicle OnStar system to a residence in Roseau River;*
- *The residence in Roseau River was that of the mother’s parents;*
- *RCMP officers attended and attempted to recover the children;*
- *The parents grabbed both children and attempted to flee to rear of the property when members attempted to make an arrest for the child abduction;*
- *Members were attacked at this time by approximately eight individuals including the parents;*
- *An officer ended up in a ground fight with one of the males at which time this male attempted to access the officer’s firearm from his duty belt;*
- *The officer deployed his Taser three times with only two rounds making full contact with the male;*
- *This male was taken into custody with the seven remaining adults returning to the residence with the two children and barricading the door;*
- *Threats were uttered from the residence that occupants were securing weapons and invited Police to come in and fight with them;*
- *The officer was kicked in the face twice during the altercation;*
- *Additionally, two other RCMP officers were kicked and shoved multiple times;*
- *All three officers received minor injuries as a result of the assaults;*
- *Additional RCMP officers, Emergency Response Team (ERT) and negotiators attended. A perimeter containment was set up. ERT and negotiators was deployed at 13:00 hrs;*
- *Negotiations with the family were attempted with negative results;*
- *At approximately 5:00 p.m., a male (later identified as affected person 1 (AP1)) came out of the residence and aggressively approached ERT responders at which time he*

- was shot once in the bicep by the 40 MM Extended Range Impact Weapon (ERIW) (a less lethal firearm);*
- *Following this incident, a second male (later identified as affected person 2 (AP2)) also approached responders and he too was shot once in the arm with the ERIW;*
 - *The two males returned to the residence and members of the ERT team attempted to get them to come out by breaking the windows to the residence;*
 - *The two males surrendered shortly after and turned themselves over to the ERT members on scene;*
 - *A robot was utilized to enter the residence;*
 - *Two females and the two children were located in the basement and eventually surrendered to ERT at which time the females were taken into custody and the children were turned over to CFS;*
 - *The two males shot with the 40 MM were medically assessed by ambulance personnel on scene;*
 - *Both suffered minor bruises as a result of the impact*

The IIU civilian director has previously determined that a less lethal shotgun is a firearm for purposes under the *Police Services Act* (PSA). Any injury resulting from its use would constitute a serious injury pursuant to IIU regulation 99/2015. Both AP1 and AP2 suffered bruising to their respective chest and arm when struck with the less lethal projectiles. Accordingly, IIU is mandated under the PSA to investigate the conduct of the RCMP officers. IIU investigators were assigned to this investigation.

Information obtained by IIU investigators included:

- occurrence details summary report
- general and supplementary reports
- bail briefs
- officer notes
- photographs of the ERIW
- photographs of AP1 and AP2
- telecom dispatch record (confirmation there was no ERT radio chatter recordings)
- RCMP vehicle footage
- medical reports for AP1 and AP2

The civilian director designated the RCMP officer who discharged the ERIW as the subject officer (SO). Additionally, the civilian director designated eight RCMP officers as witness officers (WO1-8). IIU investigators interviewed both AP1 and AP2.

IIU investigators determined that it was not necessary to request a designation nor interview the original three RCMP officers who attended the residence. IIU investigators had received and reviewed their notes and reports, and it was evident that none of the three was present when the ERIW was deployed. They were involved in a physical altercation with members of the family who had refused to hand over the children, the subjects of the abduction.

Affected Person 1 (AP1):

AP1 acknowledged that he was aware the RCMP had attended to the residence regarding the young children who had been taken during a supervised CFS visit that same day. AP1 also

acknowledged that police had originally attended the house to investigate the matter and that the family refused them entry. He said there had been an altercation with police that involved him and other family members. AP1 stated that he was standing on the residence's deck with AP2 when he was struck by the ERIW. No other family members were outside the front of the house with them at that time. AP1 states that he had not been antagonizing the police and that he was struck in the right rib area for no reason. AP1 states that the officer who shot him was by the garage next to the house. AP1 states that he was not holding any weapons or objects apart from his cell phone. AP1 states that AP2 was struck by the ERIW seconds later and that they both retreated into the house. He said he sought medical treatment and that he had suffered a broken rib or ribs as a result.

Affected Person 2 (AP2):

AP2 states that he was aware police had attended to his residence in respect of the young children who had been taken during a supervised CFS visit that day. AP2 states that police officers had attended the house to investigate the matter and to see the children. The police were refused entry by AP2. AP2 states that he told the police they would need a warrant to enter the house. The officers did not force entry into the house and backed off. AP2 states that there was an altercation involving the police officers and members of his family. AP2 states that *'army looking guys'* attended at the house. AP2 also said that a police negotiator was in communication with him inside the house and was trying to negotiate the children's release. AP2 states that the negotiator advised him that the police would enter the house if the children were not released. AP2 states that he refused to give the children up. AP2 states that he was standing on his deck with nothing in his hands, when he was struck with the ERIW. AP2 said that the officer who shot him was standing on top of a big army truck. AP2 states that he was about 15 to 20 feet from the officer. AP2 states that he was standing on the porch and not approaching or speaking to police. AP2 states that he was shot in the right arm. AP2 states that the police did not say anything to him before he was shot.

Medical Reports:

AP1 and AP2 each provided IIU investigators with consent for the release of medical information.

Medical records concerning AP1 documented that he had an injury to the right side of his chest described as blunt trauma with no fracture or dislocation.

Medical records concerning AP2 document that he had a four cm bruise on the right anterior arm.

The RCMP supplied photographs of both males depicting their injuries soon after the incident. Those photographs showed that AP1 had a circular bruise type injury on his right rib area and AP2 had a circular bruise to his right arm.

Witness Officers (WO)

WO1 was the ERT team leader. He was aware of an incident where RCMP officers had attempted to deal with an allegation of child abduction. ERT were deployed because a fight had occurred between police and occupants, the use of firearms had been threatened and the occupants were said to be armed and barricaded. WO1 was also aware that the Ontario Provincial Police (OPP) had previous dealings with this same family, during which an armed and barricaded situation had also occurred.

On arrival, WO1 noted that police negotiators were attempting to speak with occupants, but negotiations were unsuccessful. WO1 states that SO was assigned as the officer armed with the ERIW and would be positioned in the Tactical Armoured Vehicle (TAV). WO1 states that he did not see the ERIW deployed as he was positioned away from the house.

WO1 states that SO approached him and advised that he had deployed the ERIW at two males. SO advised that the arrest team had been approaching the house. The first male began running from the deck area towards the arrest team so he deployed the ERIW at that male. A second male did the same thing so he deployed the ERIW a second time. According to SO, both of the males went back inside the house.

WO1 describes the ERIW as a 40mm firearm, which discharges a low velocity sponge type round. It is an intervention tool option used by ERT. WO1 is trained in the use of the ERIW. WO1 was aware that larger muscled areas of the body are targeted. It was normally used on persons who were being assaultive and is a safer option than going hands on with such persons.

WO2 is a member of ERT. WO2 was aware that RCMP officers had attended the residence regarding a CFS incident. WO2 was aware that these police officers had been involved in an altercation with persons at that residence and that ERT had been called out as information suggested there might have been firearms in the house. WO2 was assigned as part of the arrest team. WO2 states he was positioned on the right side of house of the house. WO2 states that he was with other ERT officers. WO2 states he saw individuals who were approaching the officers' positions, mocking the police and were taking pictures of them. The TAV was positioned in front of the house and negotiations were ongoing with occupants in the house. WO2 did not know who was inside the TAV. WO2 states that he was aware that the ERIW was deployed at a window of the house. WO2 states that he did not see anyone be struck by the ERIW.

WO3 is a member of ERT. WO3 was inside the rear of the TAV, which was parked up in front of the house. He was aware that police officers had been involved in an altercation prior to his arrival and that an armed and barricaded situation had occurred. WO3 states that the TAV had activated its lights and sirens. A crisis negotiator was also in the TAV. The occupants of the residence were advised over a loud speaker that they were under arrest. An arrest team was stationed next to a garage. WO3 states that some younger males were outside of the house and taunting the police. The males were using binoculars to spot police in their positions. These males were getting too close to the arrest team. WO3 states that authority was given for officers to arrest these males if the opportunity did arise. The officers in the TAV got out of the rear. WO3 states that he heard a radio transmission where the Incident Commander had given the authority to use the ERIW to "*test compliance*". WO3 believes that other ERT members heard that command. According to WO3, the authority to "*test compliance*" can be used in order for police to change a situation or in order for the police to gain an advantage. If an ERIW was deployed, persons may give up, as they may believe they are being shot at. WO3 states that they were advised they were authorized to "*test compliance*". WO3 knew that SO had possession of the ERIW and that he was situated in the turret of the TAV. WO3 states that some males were now on the residence's deck. WO3 states the he heard the sound of the ERIW being deployed and he saw a male on the deck appear to have been struck. WO3 did not believe that the male was close to any police officers when he was struck. WO3 did not hear any verbal commands prior to the ERIW being deployed. According to WO3, the ERIW was deployed on the male in order to try to change his behaviour.

WO4 is a member of ERT. WO4 states he was deployed to the residence in response to the allegation that the occupants had made threats to the officers who initially attended the residence. There was a brief briefing at the scene. The TAV was also at the scene, parked in front of the residence. WO4 states he was posted to the rear of the TAV. WO4 was aware that an officer was in the front of the TAV and was negotiating with occupants of the house, using a loud hailer. SO was in the turret of the TAV and in possession of the ERIW. Occupants of the residence had been coming out of the house yelling, pointing aggressively at police and taking photos of officers. WO4 was aware that ERT officers were on the right side of the house. WO4 states that he saw a male standing on the deck of the house but moving towards the right side of the house. WO4 states he heard the negotiator commanding the persons on the deck to comply and to stop walking. WO4 heard the ERIW deployed and saw a round strike the male, who had been walking towards the *right* side of the house, on the arm. WO4 states he saw one round deployed. WO4 states that he was not aware of any instructions given out in respect of “*testing compliance*”.

WO5 was the TAV driver. The TAV is an armoured vehicle, marked with RCMP decals, and equipped with emergency lights and sirens. WO5 had been advised that parents had taken two children from a supervised CFS visit. The children were likely at the residence and he attended there with the TAV. WO6, an RCMP Crisis Negotiator, was in the front of the TAV. WO6 was using a loud hailer to give commands to the occupants. SO was in the TAV and positioned in the turret. WO5 did not know that SO was armed with the ERIW. WO5 states he saw AP1 and AP2, with other males, walking around outside of the house. According to WO5, AP1 had been taunting police to shoot him. Part of the ERT team members had been positioned by a garage next to the house. Those officers moved towards the right side of the house in order to arrest someone towards the back of the house. WO5 states that AP1 moved towards the officers’ position. WO5 states that he saw an ERT officer around the side of the house who would have been unaware that AP1 was moving towards his position. WO5 states he heard SO announce something (*though he could not recall what was said*) from the turret towards AP1. At that point, WO5 states that the ERIW was deployed. AP1 immediately grabbed his arm and went inside the residence and WO5 assumed he was struck by the ERIW. WO5 states that AP2 went towards that same side of the house. SO announced something at AP2 before the ERIW was deployed a second time. WO5 states that when the ERIW was deployed, only AP1 and AP2 were on the deck. WO5 did not hear any requests from anyone to use the ERIW nor did he hear anyone mention, “*test compliance*”.

WO6 acted as a negotiator and he was positioned in the front of the TAV. He was aware that the occupants might be in possession of firearms. The TAV was facing the house and WO6 used the loud hailer to inform the occupants that they were under arrest and tell them to stay where there were positioned. He noticed five males who were in and out of the house periodically. A young male came out of the house. He was holding one of the young children, and was yelling that they would never allow the police to take the children. Moments later, WO6 saw the same male, without the child, standing on the front deck. WO6 noticed the male move towards the area where ERT officers were forming on the right side of the house. That male, later identified as AP1, was warned to move away from police. SO was in the turret of the TAV. According to WO6, he and SO verbally commanded that male to stop. WO6 states that SO deployed the ERIW striking AP1 in the arm, who then went back into the house. AP2, who also was standing on the

deck, reacted angrily and ran towards the officers. WO6 states that AP2 was struck by the ERIW after being warned to stop and stay away from the officers.

WO7 was the Critical Incident Commander in relation to this incident. WO7 was advised of the taking of the children and the altercation had occurred where officers were obstructed, ambushed and assaulted. WO7 determined that an RCMP Crisis Negotiator was to be utilized. WO7 believed that initially, telephone negotiations were going well, However further information was received that OPP had a previous and similar situation with this same family. Based on that further information, WO7 requested ERT be deployed and deal with the ongoing situation. The TAV arrived on scene and WO7 advised that it would be used to announce police presence, inform persons they were under arrest and that the incident could end if they co-operated. WO7 states that ERT were advised to have less lethal intervention options available, including an ERIW. There had been information from ERT advising that occupants were coming out of the house, filming officers and it was requested that authorization be given to use ERIW if occupants got too close to police. While WO7 states that he disagreed with the use of the ERIW on persons who were unarmed or not causing harm to police, he also states that police officers do have Section 25 (Criminal Code) as guidance. WO7 states that he declined the use of the ERIW, as it would have been detrimental to the ongoing negotiations. WO7 was unaware that the ERIW had been deployed on the two males until he was subsequently briefed. WO7 explained that “*test compliance*” was not an authority to strike occupants with the ERIW.

WO8 is a member of ERT. He was aware of the allegations that members of the family had threatened police with firearms and that was the reason ERT was deployed. The TAV was deployed and it had pulled up at the front of the house. He observed AP1 go in and out of the house. AP1 had been taunting police officers. Someone on a loud hailer in the TAV had been advising the persons they were under arrest and told to surrender. WO8 was originally stationed in the turret but he switched positions with SO, who had possession of the ERIW. If any persons got close to the arrest team, the plan was to arrest them. AP1 had been getting close to ERT officers who were behind the garage (*to the right of the house*). WO8 was aware that SO deployed the ERIW at AP1. WO8 also heard a radio transmission that the ERIW had been deployed. WO8 then saw AP2 on the deck who also moved towards the area where ERT officers were on the right side of the house. WO8 could not recall hearing any specific verbal directions but the ERIW was deployed again and struck AP2 on the right arm. WO8 never heard any command to “*test compliance*”. WO8 states that it was not normal practice to use the ERIW on a person to gauge their reaction. A practice of breaking windows to facilitate a a surrender had been used.

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 provided his notes to IIU investigators. SO did not agree to participate in an interview with IIU investigators.

In those notes, SO writes that he was aware that the police investigation was in respect of an abduction of two children. SO writes that police officers had attended the residence, but were swarmed and attacked by six to eight people. A fight ensued and a female returned to the house while threatening to get guns. SO was armed with the 40mm ERIW and was positioned in the

turret of the TAV. SO wrote that two males were standing on the front deck of the house, one was young and the other older. SO wrote that vehicles had been positioned by occupants of the residence in front of the house to act as a barricade. The TAV was used to push a vehicle out of the way and then it was positioned at the front of the house. SO noted that ERT officers were positioned on the right side of the house. SO wrote that a male, later identified as AP1, began to walk east off the deck towards the right side of the house where arrest team officers were positioned. SO wrote that he commanded AP1 to stop, but he was ignored. AP1 made his way to the steps of the deck and began to walk down the stairs. SO deployed the ERIW and struck AP1 in the right bicep area causing him to stop, turn and return to the house. SO wrote that he decided to deploy the ERIW due to a potential ambush on the arrest team if AP1 had made it to the bottom of the stairs. SO wrote that a second male, later identified as AP2, began moving east across the deck towards the right side of the residence. SO wrote that he told AP2 to stop, but that command was ignored. SO wrote that he deployed the ERIW to the right bicep area of AP2, who then stopped, turned and went inside the house.

Video Recordings:

Five separate discs of good quality recordings from a RCMP vehicle were received and reviewed by IIU investigators. However, nothing on the videos showed or recorded what occurred when the ERIW was deployed.

Conclusion:

Sections 25(1), 26 and 265(1) (a) of the Criminal Code of Canada state:

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.

(3) Subject to subsections (4) and (5), a person is not justified for the purposes of subsection (1) in using force that is intended or is likely to cause death or grievous bodily harm, unless the person believes on reasonable grounds that it is necessary for the self preservation of the person or the preservation of any one under that person's protection from death or grievous bodily harm.

(4) A peace officer, and every person lawfully assisting the peace officer, is justified in using force that is intended or is likely to cause death or grievous bodily harm to a person to be arrested, if

- (a) the peace officer is proceeding lawfully to arrest, with or without warrant, the person to be arrested;*

(b) the offence for which the person is to be arrested is one for which that person may be arrested without warrant;

(c) the person to be arrested takes flight to avoid arrest;

(d) the peace officer or other person using the force believes on reasonable grounds that the force is necessary for the purpose of protecting the peace officer, the person lawfully assisting the peace officer or any other person from imminent or future death or grievous bodily harm; and

(e) the flight cannot be prevented by reasonable means in a less violent manner.

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.

265 (1) (a): 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 also 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 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. If the force used is in excess of what is necessary or reasonable in the circumstances, such force is not justified and the acts 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 to support a charge is based on a careful assessment of all the available evidence. The totality of the circumstances must be considered in assessing these grounds. The purpose of emphasizing the totality of the circumstances is to avoid concentrating on individual pieces of evidence. Accordingly, 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 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 AP1 and AP2 each sustained an injury from the use by police of a firearm (in this matter a less lethal shotgun, ERIW, that discharges a low velocity sponge type round) during their involvement with police. The existence of or the presence of a resulting injury does not presuppose that a criminal offence has occurred. The mandate of IIU does not include authorizing criminal charges in the absence of the necessary evidence to support that decision.

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 lawful execution of his duties during his interactions with AP1 and AP2;

- Police had responded to a potential armed and barricaded residence where two young children may have been abducted and where the presence of weapons was possible;
- The occupants had been involved in a similar situation in Ontario;
- A team of police officers had been swarmed and attacked when they attended the residence initially to remove the children;
- AP1 and AP2 continuously and repeatedly refused to comply with police directions and demands;
- It was unknown as to the extent of AP1 or AP2's access to weapons;
- The potential for ambush on a team of ERT officers was real and possible when both AP1 and AP2 moved quickly towards that position;
- The less lethal force option of the ERIW was employed one time only on each of AP1 and AP2 and were successful in forcing each away from a confrontation with the arrest team;
- The less lethal force uses were constrained to once for each and not required again for either AP1 or AP2;
- It was a tactical choice between the order of use of the less lethal ERIW

In this investigation, part of the IIU mandate is to determine whether consequences should flow from the SO'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 either AP1 or AP2. It is my view that the force used by SO was necessary and in compliance with section 25 of the Criminal Code of Canada.

Accordingly, I am not satisfied that reasonable grounds exist to charge SO with any offence and accordingly no charges will be authorized against him.

Notwithstanding the conclusion that no criminal code charges will be authorized against SO, there are aspects of operational communication, training and interview preparedness of the ERT members that arose during the IIU investigation that will be brought to the attention of the senior management of the RCMP for review. Though these issues do not give rise to any suggestion of Criminal Code or other statutory offences, it is hoped that these concerns will be considered and addressed by senior management.

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

Final report prepared by:

Zane Tessler, civilian director
Independent Investigation Unit
November 17, 2020

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