

FINAL REPORT: IIU concludes investigation into serious injury incident in Gimli area

On July 20, 2015, the Independent Investigation Unit of Manitoba (IIU) was notified of a serious injury incident involving RCMP members, which occurred in the Gimli Detachment area on July 19, 2015.

It was reported that six RCMP members were present during the arrest of a 37-year old male, (the Affected Person (AP)), at approximately 1:00 a.m. on July 19. He was arrested within his residence for drive impaired, drive dangerous, assault police officer and resist arrest, among other charges. During the arrest AP received an injury to his left eye and was diagnosed at Health Sciences Centre (HSC) in Winnipeg with a non-displaced fractured orbital bone. On release from hospital, AP was detained at Milner Ridge Correctional Centre.

The injury sustained by AP was a serious injury as defined in IIU Regulation 99/2015 and accordingly the IIU assumed jurisdiction of the investigation regarding this matter.

As the investigation proceeded, two members of the RCMP were identified and designated as Subject Officers (referenced hereafter as S1 and S2 respectively). Additionally, four members of the RCMP were identified and designated as Witness Officers (referenced hereafter as W1, W2, W3 and W4 respectively).

Each of the Subject Officers declined to provide his notes and declined to participate in an interview. As outlined under The Police Services Act and regulations, a subject officer is not required to provide a statement or notes regarding the incident.

Each of the Witness Officers did provide the IIU investigators with copies of their respective notes and did participate in formal interviews as requested in accordance with their obligations outlined under The Police Services Act and regulations.

IIU investigators also had the opportunity to meet and interview AP. He was advised that IIU Investigators were not investigating the matters he has been charged with, that it was his choice as to whether or not he wished to speak with IIU Investigators and that he could end the interview anytime he so wished. He cooperated in this investigation.

Additionally, IIU investigators received and reviewed RCMP occurrence reports and electronic files relative to this matter and with AP consent, all medical and health information concerning the diagnosis and treatment of the AP's injury.

The IIU investigation has determined the following facts and circumstances:

On July 19, 2015, shortly after midnight W1 was driving southbound on Highway 8 between Arborg and Gimli using radar. A northbound vehicle entered the radar beam at 164kph in a 100kph zone. The vehicle started to slow down and radar was locked on at 146kph in a 100kph zone. W1 turned around to pursue with all emergency equipment activated (lights & siren). The vehicle did not stop. W1 keyed his radio and informed who he believed to be S1 that he was deactivating his emergency equipment and asked to follow at a safe distance. The dodge pickup was the only vehicle on the road. It turned off Highway 8 eastbound onto a dirt road and was swerving, turned south onto PR 222, travelled approximately two kilometers and turned into a circular drive at a private residence, then turned back onto PR 222. It drove a short distance and turned into a muddy driveway. The male driver and sole occupant, subsequently determined to be AP, exited the truck and ran towards the residence.

W1 got out of his vehicle, some 20- 25 feet away, and yelled "stop, you're under arrest for dangerous driving." AP ran into the small dwelling on the property. W1 followed and repeated to AP he was under arrest for dangerous driving. AP lunged forward and grabbed W1. AP reeked of alcohol. AP is telling W1 to get out of his house, that he has dogs that AP is urging to "get" W1. W1 then tells AP to, "Stop resisting, stop ... you're under arrest. You're under arrest for assaulting a police officer. You're making this worse than it is." AP is wrestling W1, who described his strength as "unbelievable." W1 is issuing verbal commands to stop resisting.

W1 was able to secure one of AP's wrists with a handcuff. He continued yelling at AP, who put his hand on the W1's Taser. W1 pushed AP back and then went to punch him in the face. AP turned his head down before the blow and W1 punched him on the top of his head, breaking his hand. AP reached for the Taser again and W1 attempted to Taser him with no effect. They continued to wrestle; W1 felt punches to his chest, each struggling over the Taser.

W1 was able to get AP off of him, re-holstered the Taser and AP backed off and ran back to his dwelling. W1 retreated to his car, voiced his situation, location and waited for backup. Approximately 5- 10 minutes later S1, S2, W2, W3 and W4 arrived to provide assistance. A police service dog (PSD) was also brought to this scene.

W2 heard conversation on his portable radio at approximately 12:30 a.m. on the between W1 and somebody else that a vehicle had come through his radar beam over 150kmh. There was further conversation he could not recall. At 12:40 a.m. he heard some of the struggle, loud voices, and people fighting over a radio that was keyed intermittently. W2 assumed it was W1. W2 and W3 (who was with him) headed north in a police vehicle with emergency equipment activated to W1's location. During that time W1 advised what had happened at the AP property.

W2 heard that S1 and S2 were also heading north to assist. W2 and W3 arrived at approximately 1:00 a.m. S1, S2 and W4 were already at the property with W1. W2 and W3 were outside the dwelling around the side of the dwelling, when S1, S2 and W4 forced entry. When W2 had the door forced he entered the dwelling and saw S1, S2 and the PSD up in a small loft struggling with AP who was under some covers. W2 described AP as flailing his hands, fighting back and resisting the police. He could see AP's arm with one handcuff flailing around. Both police officers in the loft were yelling at AP "stop resisting; you're under arrest for assault police officer ... put your hands behind your back." W2 saw both S1 and S2 each strike AP in the face with a closed fist. AP then complied, was handcuffed and brought down the ladder from the loft to the main floor. AP was belligerent, yelling and screaming.

W3 described the situation much the same as W2 but heard S2 yell police before the door was kicked in and saw only S1 strike AP twice with a closed fist. Both police in the loft were yelling "Stop ... you're under arrest... stop ... give me your hands."

W4 was at the Gimli RCMP detachment with S1 and S2 when he overheard W1 talking on the radio to S1. He headed north in a RCMP pickup truck. S2 travelled with S1 in the dog handler's SUV. During his travels north he heard W1 saying "stop it...just stop it." He then heard that W1 is safe, AP had run into his house, W1 would back his police car into the road and wait for back up. W4 arrived and observed that W1 had mud on his face, his uniform blouse was untucked, and had mud all over his pants and boots. He was holding his injured hand. S1, S2, W2 and W3 were now all on scene.

W1 briefs all of them as to what happened. A decision is made to enter the house. It was dark, 3-4 dogs in kennels were barking. W4 thought that they were pitbulls. He noticed 8 - 10 marijuana plants in front of the house. S2 was first in line followed by S1 with his PSD and W4. S2 yelled "Police. You are under arrest" and kicked the door open. W4 entered third. There were no lights found. Flashlights had to be used. There were kenneled dogs in the house (1 - 2) banging on their cages. It was approximately 20x15 with a loft approximately 8 feet off the ground, perhaps 8x10. S2 went up the ladder then S1 with the PSD. S2 yelled "He's up there ... you're under arrest for assault ... stop what you're doing." S2 then mounted AP to gain control. The dog was grabbing blankets in its mouth and was shaking them around. W4 could see AP pulling his arms away from S1. He described AP as fighting vigorously. S1 struck AP in the head, neck or face and yelled "stop resisting". S1 struck him again, perhaps a third time. S1 was able to get control of AP and cuff his wrists behind his back. He was yelling random nonsense as he was escorted out. Once in the police car he began to scream and kick the doors. On the way to the hospital from the scene AP stated "I beat that cop up ... it took this many guys to take me ... I beat up that one cop." AP cursed and swore and acted erratically for approximately 90 minutes at the hospital before he calmed down and went to sleep. He suffered a "*Fracture to Orbital Bone – Not displaced*". A hospital admission not required.

AP stated that he went to a free concert in Gimli, Manitoba in the early evening of Saturday, July 18, 2015. At approximately 10:00 p.m., the same evening, he went to his Mother's residence on highway #229, near Winnipeg Beach and watched a movie with her. He drove there alone. At approximately midnight AP was on his way home.

He stated he was speeding, travelling approximately 125-130 kph, northbound on highway #8, approximately one-mile from his residence. A police car approached and passed him in the opposite direction and immediately pulled a U-turn, activated emergency lights and began to close on his truck. AP said he did not stop, but instead continued to drive at a high speed to his residence on highway #8. He was still quite a ways ahead of the police car at the time and that he drove to his property off highway #9.

Once on his property AP stated he parked the truck and walked quickly toward his house. He stated he heard the police officer “screaming” at him, identifying himself as a police officer and telling him that he was under arrest several times. AP stated he did not turn around but continued walking toward his house and ignored him. He then states he was tackled by the officer and they struggled into his house where the officer was able to get the handcuffs onto his left wrist only. AP stated the officer told him “you’re under arrest”.

AP stated he and the police officer were on the ground, outside, struggling near the chicken coop. He recalled the police officer commenting/complaining that he hurt his hand during the altercation. He stated he was not fighting with the police officer but he was being very difficult, that he broke free from the police officer and that he was moving around and trying to get away and that he did not strike the police officer.

While the officer was lying on his back on the ground he deployed a Taser on the AP. AP stated it did not affect him but that he felt a “serious jolt”. AP stated he laughed at the officer after being struck by the Taser. AP stated that he did not want to go to jail that evening and that he “weaseled away” from the police officer. AP stated that he is “a tough farm boy” and that he “wouldn’t give up” during the altercation. He stated he still had the handcuffs attached to his left wrist and he was planning to remove it in the morning with a grinder.

AP says he had a mickey bottle of whiskey hidden in his tomato garden and that he retrieved it after the police officer left the property. He said he took this bottle into his house and consumed the entire remnants. After drinking the whiskey, he went up to the small loft in his residence and went to sleep. No one else was in the house save for two of his dogs, which were in crates.

AP stated that he awoke to being struck in the face and body several times, hearing more than two voices and believes he was struck by more than one person. He thought that someone was holding his legs down on the mattress and remembers seeing flashlights and stated there were no other lights on inside the house. He believes that a police dog was near his feet in the loft but that the police dog did not bite him. He stated he was not fighting with police while in the loft.

At no material times were the attending RCMP officers in possession of or had applied for an entry/arrest warrant (commonly referred as a “Feeney rule”, requiring police be granted a warrant to affect an arrest in an accused's residence).

AP’s injuries constitute bodily harm under the criminal code.

The police entered AP's residence without a warrant. If the police entry was prohibited, entry was not lawful nor was the arrest.

If the arrest was not lawful, the force used to effect the arrest was not authorized at law (s. 25 Criminal Code).

*25. (1) **Protection of persons acting under authority**- 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 is required or authorized to do and in using as much force as is necessary for that purpose.

Further, AP is allowed in law to resist an unlawful arrest.

The exception to the Feeney rule is found in common law as "hot pursuit" (continuous pursuit conducted with reasonable diligence, so that pursuit and capture along with the commission of the offence may be considered as forming part of a single transaction).

If the entry is lawful, the officers are entitled to use force to effect the arrest, providing that the degree of force used was necessary for that purpose. If the force used was excessive then it will also not be authorized by s. 25.

Therefore, two issues are to be considered:

- 1) Were the RCMP officers involved in hot pursuit of AP and therefore acting lawfully in entering AP's dwelling without a warrant?
- 2) If so, was the force used in effecting the arrest excessive and not saved by s.25 of the Criminal Code.

On completion of the investigation, on January 29, 2016, the file material was forwarded to Manitoba Prosecution Services to conduct a review.

Following the conclusion of that review and on consideration of all of the evidence gathered and applicable law, I am satisfied that:

- 1) The RCMP officers were in hot pursuit and therefore acting lawfully when entering AP's residence without a warrant;
- 2) The force used in effecting the arrest was reasonable in all of the circumstances.

Therefore, no charges will be authorized against any of the officers involved and this matter is now concluded.

Final report prepared by:
Zane Tessler, civilian director
Independent Investigation Unit
June 10, 2016