

FINAL REPORT

IIU concludes investigation into in-custody injury at Long Plain detachment

On December 6, 2016, at 11:26 a.m., the Dakota Ojibway Police Service (DOPS) notified the Independent Investigation Unit (IIU) about the arrest and subsequent injury of a 50 year-old male at the Long Plain First Nation detachment. According to this notification, at approximately 3:25 p.m. on December 3, members of DOPS responded to a call for service concerning an intoxicated and belligerent male who was causing a disturbance and punching holes into walls at a residence on Long Plain First Nation. The male, later identified as the affected person (AP), was located at this residence, arrested, and transported to the Long Plain DOPS detachment pending a bail hearing. While in custody, AP was very agitated and, on four occasions, was physical with a member of DOPS. He also continuously punched at the cell door and a window. At 11:24 p.m., AP complained of severe pain to his hand and was transported to Portage District General Hospital (PDGH) for assessment. The attending physician determined that AP had a broken bone in his right hand.

While a broken hand bone is not defined as a serious injury under regulations, the IIU civilian director determined it was in the public interest for the IIU to investigate.

The IIU civilian director designated the DOPS member who arrested AP, and was involved in the four physical altercations with AP in the cell area, as the subject officer (SO). A DOPS member present in the cell area at the relevant times was designated as a witness officer (WO). IIU investigators located and interviewed AP. Two independent civilian witnesses (CW1 – 2) were identified and interviewed by IIU investigators. IIU investigators also had the opportunity to interview the treating physician (CW3), focussing on the likely causes of AP's injury. IIU investigators also received and reviewed video surveillance footage of the holding cell area and the medical records from PDGH and Health Sciences Center (HSC).

The investigation conducted by IIU investigators included:

- attending and examining the cell block;
- canvassing for witnesses;
- reviewing video surveillance footage from the scene;
- reviewing file materials from DOPS;
- reviewing AP's medical records from PDGH and HSC;
- obtaining statements from two civilian witnesses;
- obtaining expert opinion from physician;
- obtaining statement from WO;
- regular consultations with the civilian director; and
- preparation of the final investigative report for review by civilian director.

Under the provisions of the PSA, a subject officer is not required to provide a statement or notes regarding an incident. In this case, the SO declined to be interviewed and declined to supply her notes for review.

During the course of its investigation, the IIU determined the following facts:

On December 3, 2016, at approximately 3:25 p.m., CW1 contacted DOPS to report that AP was at her residence and causing a disturbance. CW1 advised DOPS that AP was intoxicated, belligerent and wanted to fight others at her residence. A background check on AP confirmed he was at large on a recognizance, a condition of which was that he abstain from the consumption or possession of alcohol. Prior to the arrival of SO, CW1 noted that AP was punching a wall, likely with his right hand, in her residence and had made a hole in it. SO arrived at the residence at 3:35 p.m. and was allowed entry. AP was observed in the living room and according to police reports, was standing “very unbalanced.” AP was noted to be highly intoxicated and emitted a strong odor of alcohol. AP was arrested without incident and removed from the residence. He was transported by SO to the Long Plain DOPS detachment. On arrival, AP was taken to the prisoner lodging area where he became very uncooperative and belligerent. AP refused to comply with directions and repeatedly swore at SO. He was taken from the lodging area and was placed into a holding cell.

AP continued to swear at SO and repeatedly banged on the cell door. At one point, AP removed the laces from his shoes, tied them together and wrapped them around his neck. SO entered the cell to remove the shoe laces. AP pushed SO in the chest, grabbed her right arm and tried to exit the cell. SO was able to push AP back into the cell, exit and locked the door. AP became angrier and started to tear off his t-shirt. He then wrapped the torn t-shirt around his neck. SO re-entered the cell to remove the t-shirt from AP. AP resisted and again tried to exit the cell. SO, once again, was able to push AP back into the cell, exit and lock the door. Shortly afterwards, CW2, a guard at the Long Plain DOPS detachment, saw AP wrapping his jacket around his neck. SO and CW2 re-entered the cell. AP suddenly rushed at SO, grabbing at her service vest and ASP baton (a police intervention tool), attempting to remove it from its holster. Once more, SO was able to push AP back into the cell, grab his jacket, exit the cell and close the door before AP could try to get out. AP then removed his pants and wrapped them around his neck. SO and CW2 re-entered the cell once more to remove the jeans. Once again, AP rushed at SO, grabbing at her vest and arm while he used his other arm to prevent the cell door from closing. SO was able to break free from AP and pushed him to the ground and exited the cell. AP then removed his underwear and wrapped it around his neck. SO entered once again and was able to remove the underwear without incident. SO exited the cell and locked the door. AP continued to yell and swear at SO while repeatedly banging on the cell door.

At 10:40 p.m., WO advised that AP was complaining of pain to his right hand and elbow and was taken to PDGH. An ambulance was called and at 11:24 p.m., AP was taken to PDGH for assessment. WO was advised that AP had a broken bone in his right hand. A splint was applied to AP’s right hand and he was subsequently returned to custody. He was then taken and lodged at the Portage la Prairie RCMP detachment.

Interview of Affected Person

AP recalled being arrested by SO and her using force on him while in cells when he was uncooperative. He did not recall wrapping various clothing items around his neck but acknowledged he may have acted in such a fashion as he was intoxicated that evening. AP believed that his right hand was injured when SO pushed him into the cell and he fell against a wall.

Cell Video

IIU investigators were provided with video surveillance of the prisoner lodging area and cell where AP was placed, between 3:40 p.m. and 10:01 p.m. on December 3.

The first physical contact between SO and AP was noted at 3:40 p.m. AP was seen actively resisting and pushing SO as she tried to place him into the cell. She was the lone officer at the time and video showed her pushing AP into the cell at 3:43 p.m. AP was unsteady on his feet and was observed falling against a wall, bench and fell on the floor numerous times. At 3:49 p.m., AP was observed stumbling and falling over a toilet, landing on his right side onto the floor. He was lying on the floor holding his right elbow. At 3:58 p.m., AP was falling again, hitting a wall with his right side and head. He was able to lie down on a bench but, at 4:06 p.m., he rolled off and fell face-first onto the floor. He made his way to the cell door, banging it with his left hand as his right hand hung limply by his side. For the next 50 minutes, AP was moving around the cell but avoiding any use of his right arm.

Between 5:03 and 5:35 p.m., SO entered the cell, alone, on three occasions to remove various clothing items from AP. Additionally, between 5:24 and 5:30 p.m. SO entered the cell, with a male guard, on three occasions to remove additional clothing from AP. Physical confrontations between AP and SO were noted at 5:10 p.m., 5:24 p.m. and 5:30 p.m. There was no observation or recording of SO using any excessive or unnecessary force on AP.

Medical Information and Opinion

AP signed a medical consent release form for IIU investigators.

On December 3, 2016, AP was examined at PDGH and diagnosed with a broken bone in his right hand. AP was scheduled for a follow-up appointment with a specialist at HSC, in Winnipeg, for December 6, 2016. According to HSC records, AP had fractures at the base of the fourth and fifth metacarpals of his right hand.

IIU investigators determined that in light of the allegations raised by AP during his interview, a more detailed opinion as to likely causes of his injury should be sought from the specialist who treated him.

The specialist, CW3, who diagnosed and treated AP for his injury, met with IIU investigators on August 4, 2017. CW3 reviewed the video surveillance of the cell and, in particular, the various

physical confrontations between AP and SO. According to CW3, he did not observe anything in the video that would have been a likely cause of the injury sustained by AP. When advised that AP punched holes into walls at a residence prior to his contact with and subsequent arrest by SO, CW3 stated that the injury to AP's right hand was consistent with a person punching a very hard object. CW3 referred to this as a "front-loading" on the front of fist. CW3 added that this type of injury would likely not be caused if the hand were struck by an object or if the back of the hand struck an object. The injury is not consistent with falling and striking the hand.

Issues, Assessment and Conclusions

The relevant issue in this matter is whether, at any time, the subject officer applied excessive or unnecessary force to AP, whether at the time of his arrest or while in the care and custody of the police service. The secondary issue is, if the subject officer applied force, whether this force caused the injury to AP.

Applicable Law

The following legislation is relevant to this analysis:

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

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 34 of the Criminal Code of Canada:

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.*

(2) In determining whether the act committed is reasonable in the circumstances, the court shall consider the relevant circumstances of the person, the other parties and the act, including, but not limited to, the following factors:

- (a) the nature of the force or threat;*
- (b) the extent to which the use of force was imminent and whether there were other means available to respond to the potential use of force;*
- (c) the person's role in the incident;*
- (d) whether any party to the incident used or threatened to use a weapon;*
- (e) the size, age, gender and physical capabilities of the parties to the incident;*
- (f) the nature, duration and history of any relationship between the parties to the incident, including any prior use or threat of force and the nature of that force or threat;*
- (f.1) any history of interaction or communication between the parties to the incident;*
- (g) the nature and proportionality of the person's response to the use or threat of force; and*
- (h) whether the act committed was in response to a use or threat of force that the person knew was lawful.*

Section 265 (1)(a) of the Criminal Code of Canada:

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 a person he finds committing, or has reasonable grounds to believe has committed, an indictable offence.

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

On review of this investigation, I am satisfied that SO was lawfully placed and acting in the execution of her duties during her interactions with AP. There is no evidence of the use or employ of excessive or unnecessary force by SO on AP during any of their contacts. To the contrary, I am satisfied that SO's conduct was reasonable, necessary and justified in the circumstances.

Furthermore, I have been significantly aided in this determination by the existence and review of the video surveillance of the cell during the relevant times, and the expert opinion of the specialist physician. Based on the whole of the investigation in this matter, I am satisfied that AP's injuries resulted from a self-inflicted act on his part.

In this investigation, the IIU mandate was to determine whether consequences should flow from the actions of SO in consideration of all the circumstances. In this matter, I have no hesitation whatsoever to conclude that SO's actions should not and will not attract any consequences. AP's own conduct is solely responsible for his injuries, which are unrelated to anything done or force used by SO.

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

Final report prepared by:

Zane Tessler, civilian director
Independent Investigation Unit
September 01, 2017

Ref 2016-041