

FINAL REPORT: IIU concludes investigation into allegation of excessive force by RCMP during arrest

On March 14, 2018, at 4:50 p.m., the Royal Canadian Mounted Police (RCMP) notified the Independent Investigation Unit (IIU) about an incident that occurred on March 13. According to this notification, members of the Thompson RCMP detachment were called to remove an intoxicated and unwanted male from a residence in that community. On arrival, members determined it was necessary to arrest and detain the male. One of the officers attempted to handcuff the male (later identified as the affected person (AP)). However, he was able to cuff only one of AP's hands, at which point AP assaulted the officer and fled from the residence. Other RCMP members present at the residence attempted to stop AP. AP swung the arm with the handcuff attached and struck another member in the head. AP was taken to the ground but continued to fight with officers. AP was finally subdued, returned to the detachment and was lodged in cells. Once in cells, AP began to complain of pain to his rib area. He was ultimately transported to Thompson General Hospital (TGH) and examined. It was determined that AP had sustained a broken rib.

As AP suffered a serious injury as defined by IIU regulation 100/2015, IIU assumed responsibility for the investigation in accordance with subsection 66 (2) (b) of *The Police Services Act (PSA)*. The primary issue for this investigation was whether members of the RCMP subjected AP to unnecessary and excessive force--from their initial interaction with him, through to arrest and detention.

It was uncertain at the outset as to which RCMP member, if any, should be designated as a subject officer and no such designation was ultimately made. The IIU civilian director designated seven RCMP members as witness officers (WO1 – 7). IIU investigators interviewed AP. IIU investigators also identified and interviewed two civilian witnesses (CW1 - 2).

IIU investigators also received and reviewed:

- complete agency file package from RCMP including witness officers' notes and reports
- prisoner logs and reports
- medical report respecting AP

Affected Person

IIU investigators attended the Provincial Remand Centre at Dauphin, Manitoba, where AP was held as a result of his arrest on March 13. AP stated that on March 13 he had been drinking rye, vodka and beer and had taken a line of cocaine that day. AP recalled being drunk and at his girlfriend's house. The only other thing he recalled was that he was hiding behind a dumpster and the police told him to come out. AP said he lost his memory at that point. He remembered

later being in the police truck and at the police station, telling police he could not breathe, and paramedics coming to treat him. He recalled being taken to hospital and being advised that he had a broken rib on his left side. AP did not know how he got a broken rib and did not recall the police doing anything to him. He said he did not remember anything else.

Civilian Witnesses

CW1 called for the police to attend to her home in Thompson on the incident date. She said that at approximately 11:30 p.m., a drunk AP turned up at her home and banged on the front door. CW1 does not like it when AP comes to her house drunk. When AP was banging on the door, CW1 ran to the door to open it so that he did not wake anyone up. AP started to argue with CW1 and she called the police, which she had also done previously because of AP's behavior. A lone male police officer, who had previously arrested AP, soon arrived. By that point, AP was upstairs in the residence, lying on a bed. CW1 took the officer upstairs. The officer told CW1 to go downstairs. CW1 then heard the sound of a big bump from upstairs. She went to check and saw AP running down the stairs. The officer came downstairs afterwards and had his Taser out. CW1 told the officer where AP had run. She stood and watched from her front door. She did not want AP back in the house.

More police arrived and she directed them toward the same area. AP ran and the officers chased him, caught him and put him on the ground. One officer was punching AP in the head and another officer was kicking him. The kicks sounded like they were landing in the area of his back. AP had a handcuff on one of his hands when he ran from the house. He did not have any shoes on when he ran. CW1 said AP had blood on his face.

CW1 thought that AP was kicked five to six times and guessed that he was punched approximately eight times. She thought the officer who she saw kicking AP was tall and had blonde hair. Three police officers came back to her house after AP was arrested to ask her what had occurred at the house.

IIU investigators conducted a neighborhood canvas and CW2 was identified as a possible eyewitness. No other witnesses were identified during the canvas.

CW2 advised that he was at home watching television when he heard a commotion in the house next door. He could hear banging and the walls were shaking, causing a picture to fall off his adjoining wall. After hearing the commotion he noticed an RCMP car outside his house. As he was looking outside his kitchen window, he saw a man suddenly run at full pace out of that residence. The man was unknown to CW2 and was not wearing a jacket or shoes. The male hid behind some garbage containers. Less than a minute later, he saw a police officer exit that residence and appear to be searching for the male. The officer made his way to the garbage containers and, as he did so, the male ran out from behind the garbage containers. The officer chased after the male who ran back in the direction of the residence. Another police car then arrived at the residence.

CW2 recalled that the male ran directly at a second police officer. He recalled the police officers tackling the male to the ground. He did not think the second police officer was holding anything at the time. CW2 said that the male was not co-operating and was scuffling with the police. He saw the second police officer kick the male at least three times in the upper body area in an attempt to subdue the male and to handcuff him. CW2 could not see where the kicks were landing but he thought they were in the upper body. He did not think the kicks were excessive as the male continued fighting and resisting the officers. He described the second police officer as tall and blonde. The first officer was shorter and stockier. CW2 believed three to four police cars attended the location. CW2 said he watched the whole incident, which he estimated lasted approximately 20 minutes.

Witness Officers

WO1

WO1 advised he was working a night shift with WO2 and that both officers were in full uniform. He was aware WO3 was responding to a disturbance call at a residence in Thompson. Between 11:20 p.m. and 11:25 p.m., WO3 called on the police radio and asked for assistance because of a fight. WO1 and WO2 attended directly to the residence. WO4 had arrived just before them. WO1 recalled seeing WO3 in a foot pursuit of AP. He heard WO3 tell the male to stop and get on the ground. WO3 tried to kick out the male's legs but was not successful. WO1 saw AP running from some dumpsters and could see handcuffs dangling from AP's right wrist. WO4 was standing in front of WO1 and had his Conductive Energy Weapon (CEW) out. WO1 said that WO4 told AP to get on the ground. AP ran at WO4 and tried to body check him. There was a collision between the two and the handcuff struck WO4 on the head. WO1 said he ran at AP and tackled him to the ground. WO1 said AP's left side struck the ground, which was hard packed snow. WO1 tried to secure AP's hand with the handcuff on and said he did not deliver any strikes to AP. According to WO1, AP was trying to get up numerous times in the struggle, but was being told by officers to stay down and stop resisting.

WO1 said WO2 was to his left and on top of AP's hip and legs, trying to pin him down. WO1 believed WO4 was on the left of AP and was standing the whole time. WO1 saw WO4 try to kick AP's leg, but instead struck him in his left stomach/rib area. He saw WO3 delivering punches to AP's left upper back and WO2 delivering strikes to AP's right midsection, stomach and lower-rib area. There were no strikes delivered to AP once he was fully handcuffed. AP stopped resisting physically but swore at the officers. WO1 was the blonde officer mentioned by CW1 and CW2 and said he did not kick AP at any time.

WO2

WO2 recalled receiving a radio call from WO3, saying that he was in a fight. WO2 was aware that WO3 had previously attended this residence and dealt with AP. WO2 said she had personally dealt with AP between four and six times in the past. WO2 and WO1 made their way to the residence. Upon arrival, WO2 saw AP running at full sprint and being chased by WO3. She heard WO3 shouting for AP to stop, to get on the ground and that he was under arrest. AP

was ignoring those commands. WO2 saw WO4 with his “Taser” (CEW) out and saw AP body-check WO4. WO1 tackled AP to the ground. All the officers then pinned AP face down and told him to stop resisting. WO4 warned AP to stop resisting or the Taser would be used on him. Nevertheless, AP continued to resist the officers.

WO2 began to strike AP with her fist on the right side of his lower stomach to get him to release his hands from under his body. WO2 struck AP three to four times. AP continued to resist and fight the police. AP did not see who else may have struck AP. WO1 was able to handcuff AP. WO2 heard AP say he was done and asked if he could get up. As soon as they heard AP, all officers stopped doing anything. AP continued to swear at the officers.

WO3

WO3 said he attended the residence in response to an “unwanted person type call.” When he arrived and was let in, he found AP upstairs lying on a bed. He told AP to get up and that he was under arrest. WO3 placed one cuff on AP’s right arm. As he tried to put the second cuff on AP, he pulled away and tried to punch WO3. AP then pushed WO3 into a wall in an attempt to get away. AP ran downstairs and then outside the residence, running towards some dumpsters. WO3 ran to the dumpsters and yelled numerous commands at AP to come out and get on the ground. AP did not comply and ran back towards the residence. By this time, additional police had arrived at the residence. WO3 ran after AP and attempted to tackle him, without success. WO4 also attempted to tackle AP, however he bounced off. AP hit WO4 by swinging at the right side of his head with the loose handcuff. WO1 did tackle AP to the ground. All police officers then went on top of AP to gain control of him and complete handcuffing him. All police were yelling at AP to stop resisting and to comply with their commands. Different members delivered strikes directed towards the back of AP in an attempt to control him. WO4 had his CEW out, placing it on AP’s back, telling him to stop resisting otherwise he would be “Tasered.” WO4 delivered a kick to AP’s mid-thigh. After a few minutes of fighting, AP was controlled and escorted to the police car.

WO4

WO4 was aware of a call to the residence and that WO3 was attending. He then heard a call over the radio made by WO3 stating, “He’s fighting.” WO4 attended to the location immediately, with WO1 and WO2 arriving right after him. WO4 heard WO3 say, “Get down on the ground.” He saw WO3 chasing AP, who ran directly towards WO4. WO4 thought he was going to stop and fight so he drew out his CEW. AP launched himself at WO4 and swung his right arm at WO4’s head. WO4 felt a metal object hit him on the right side of his head behind the ear. WO1 tackled AP to the ground, which was compacted snow and ice. All officers present ended up on top of AP who was lying on his front with his arms under his body. AP was able to lift up the officers who were now on his back and WO4 could not gain control of his left arm. WO2 was on AP’s right side and WO3 was at AP’s head. WO2 delivered three to four punches to AP’s right side, below the shoulder blade, in the right rib area, with no effect. WO3 delivered three to four punches to AP’s upper back with no effect. WO5, who arrived later, was attempting to control AP’s legs. WO4 had his CEW out and pressed towards AP’s left flank. WO4 was yelling at AP to stop resisting and threatened a CEW deployment if AP did not stop resisting. WO4 said he

decided against using his CEW as he could not get a clear shot without risk of hitting another officer. WO4 decided to kick AP in the left thigh area. WO4 estimated he kicked with a “70% effort” with his right foot striking AP’s left thigh but there was no change to his behavior. He tried to kick a second time but he missed the left thigh and struck AP on his left side, above the belt line.

WO5

WO5 said he did not hear the initial call for service that WO3 responded to but did hear the later police radio call from WO3 saying that he required assistance. When WO5 arrived on scene, he observed other officers dealing with AP, who was lying on the ground outside the residence and struggling. All officers present, except for WO4, were on top of AP. WO4 was standing beside them with his CEW out. The CEW had not been deployed. WO5 could not remember who was where in relation to the male on the ground. WO5 did not see any strikes by any of the other officers to AP. WO5 stated he did not deliver any strikes to the male and he went over and assisted in gaining control of the male's left arm. He heard another officer, unknown to him, say "Stop moving, stop resisting."

WO6 and WO7 were not involved in the struggle with AP at the residence but were the two officers who were directed to transport him to TGH for assessment and treatment.

IIU investigators described the interviews, specifically with WO1 through WO5, as candid, thorough and consistent with each other. All interviews were conducted within three weeks of the incident.

Medical Reports

AP’s medical records were received and reviewed by IIU investigators, which detailed that he had an un-displaced fracture of the anterior aspect of the left eighth rib. The report was silent on the likely cause of the fracture.

Issues, Assessment and Conclusions

The relevant issue in this matter is whether, at any time, any police officer used excessive or unnecessary force on AP during the course of their struggle with him and his arrest.

A peace officer is authorized to use force in the lawful execution of his duties and as much as necessary for that intended purpose. Moreover, a peace 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 (section 25 *Criminal Code*).

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

What is clear in this incident is that AP was unwilling to be arrested, detained and handcuffed. AP was bent on escaping from the situation and using force to avoid arrest.

The following facts are critical to the final analysis:

1. All the police officers were lawfully placed in and outside the residence and at all times were in the lawful execution of their duties.
2. AP refused to be handcuffed.
3. There is ample evidence to support the fact that WO3 had grounds to arrest AP.
4. AP was willing to and did employ excessive force on the police officers, particularly WO4 who he knocked over and struck on the head with the loose end of the handcuffs.
5. AP was unwilling to comply with any officer's direction or order to comply with their demands or surrender.
6. AP was resisting and combative with police.
7. Once AP advised police that he was no longer resisting, police ceased all use of force.

Therefore, on careful review of the available evidence and material facts obtained in this investigation, and in consideration of the discrepancies in and recollections of AP, I am satisfied that the use of force employed by the police officers was justified under section 25 *Criminal Code*. I am not satisfied that sufficient evidence exists to determine which officer may have inflicted the blow or blows that caused the injury. I am not satisfied that sufficient grounds exist to designate any officer as a subject officer. I am not satisfied that the requisite reasonable and probable grounds exist to justify the laying of any *Criminal Code* or other offence against any involved police officer.

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

Final report prepared by:
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Independent Investigation Unit
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