

FINAL REPORT: IIU concludes investigation into injury during arrest on Long Plain First Nation

On May 25, 2016, the Independent Investigation Unit of Manitoba (IIU) was notified by Dakota Ojibway Police Service (DOPS) of an incident, which occurred on May 19, 2016, during which an affected person (AP) allegedly suffered an injury during the course of his arrest.

According to this notification, on May 19, DOPS communications center received a phone call from an individual who was telephoning from her residence located on the Long Plain First Nation, Manitoba. She reported that her son, AP, was trying to force his way into the residence and that her boyfriend was injured trying to stop him. At 6:38 p.m., two DOPS constables attended the home and located a male, later identified as AP, who was attempting to gain entry through a broken window. The window had been broken when AP had thrown a wooden 2 x 4 through it. Blood smears were observed on that window where AP had been attempting entry. AP was bleeding from lacerations to his arms and forehead.

AP was arrested, handcuffed, and placed into the rear of the police vehicle. AP was yelling and kicking the door of the police vehicle. He was transported to the Portage la Prairie Hospital. While en route, AP was smashing his head on the police vehicle's "silent partner" rear shield.

Officers and AP arrived at the hospital at 7:23 p.m. As AP was escorted inside, he began to create a disturbance. He kicked a newspaper box and a hand-sanitizer dispenser off the wall. Police brought AP to the ground and gained control of him. A physician did not see him. AP was then transported to the RCMP Portage la Prairie detachment and booked into custody. At 8:14 p.m., he was returned to the hospital to be examined by a physician. As AP complained of a sore wrist, his left wrist was examined and x-rayed, but no fracture or dislocation was identified.

On May 20, 2016, AP appeared in Provincial Court in Portage La Prairie, where he commented in open court that DOPS members "broke his wrist." This prompted the attending crown attorney to email DOPS members, advising them of AP's statements in court. DOPS subsequently notified the IIU.

As this notification involved an allegation of a serious injury, IIU assumed responsibility for the investigation in accordance with section 66(4) of *The Police Services Act* (PSA).

The primary issue for this investigation was whether, at any time, members of the DOPS subjected AP to unnecessary and excessive force--from his initial interaction with them through

detention, and while in the care and custody of the police service. A team of IIU investigators was deployed.

The IIU civilian director designated one member of DOPS who had direct contact with AP as a subject officer (SO) and the other as a witness officer (WO). Under the PSA, subject officers cannot be compelled to provide their notes to IIU investigators or to attend an interview with them. In this matter, SO declined an interview and declined to provide his notes to IIU investigators. WO did participate in an interview with IIU investigators.

In addition, the IIU investigators interviewed AP, three civilian witnesses (CW1 – 3), and two paramedics (PM 1- 2).

A number of investigative materials were provided to the IIU by the DOPS, RCMP and medical staff relating to this incident, including:

1. Witness statements taken by DOPS;
2. DOPS communications center broadcasts to and from police;
3. DOPS reports;
4. Photographs of the Long Plain residence;
5. Prosecutor's information sheet concerning AP;
6. GPS data;
7. File correspondence;
8. Cell video from Portage la Prairie RCMP detachment;
9. RCMP prisoner report;
10. Medical report concerning AP.

The following additional facts and circumstances have been determined:

Interviews:

AP:

On the incident date, AP was visiting his cousin, CW3, at his residence. The two drank vodka throughout the day. AP told DOPS officers that he consumed "two two-sixes" of vodka, meaning two twenty-six ounce bottles. AP and his cousin then walked to his mother's (CW1's) home to use a telephone to call for a ride.

CW1 and CW2 were present at their home when AP and CW3 arrived. CW1 denied them entry because AP and CW3 were intoxicated. AP became angry about not being permitted entry and he began to force his way into the home, initially through the door and then through the kitchen window on the north side of the home.

AP said that when DOPS members arrived, he put his hands up to surrender to officers. He said the police put him against the truck and, as he was handcuffed, the officer kept pushing his wrist up and twisting it. He told the officer, "You're going to break my wrist." The officer continued to bend his wrist and then AP felt his wrist break. AP stated that he did not resist the officer during

the arrest. He stated that he had no pain in his wrist prior to the police showing up. He admitted to “freaking out” in the back of the police unit and banging his head against the window. He stated he was upset that officers had broken his wrist and wanted to be taken to the hospital. AP said he told the attending doctor that the police had broken his wrist and he was sent for an X-ray. He said he was told he had a broken wrist and had a cast applied. He was returned to the RCMP detachment where he was lodged until court.

Witness Interviews

CW1:

CW1 indicated she was home with her boyfriend, CW2, when AP and CW3 showed up. Both were drunk and brought a 26 ounce of vodka with them. She advised that AP is unpredictable when he is drunk. CW1 retreated into her house when AP and CW3 began fighting with each other.

AP attempted to force entry into her home by kicking and pushing at the door. AP threw a piece of wood through the window and threatened CW1 and CW2. She called police and ambulance.

Two uniformed DOPS officers arrived in a marked police vehicle. AP was holding a board but dropped it when ordered by the officers. She recalled that one officer handcuffed AP. She believes AP may have been resisting while being handcuffed. She heard AP yell at the officers that they were hurting his arm.

CW2:

CW2 was at the residence he shares with his partner, CW1. CW1’s son, AP, and her nephew, CW3, came to the house asking to use the phone. As they were drunk, the couple did not want to let them into the home. AP became enraged and began kicking and shouldering the kitchen door in an attempt to gain entry. AP smashed the kitchen window and began throwing boards into the house. AP attempted to climb through the broken window and CW2 pushed him out. As a result, CW2 sustained several lacerations to both arms. CW1 called 911 as AP was threatening to kill both CW1 and CW2.

DOPS officers showed up at the residence. CW2 observed the officers approach AP and tell him to drop the board he was carrying, to which he complied. CW2 did not see AP handcuffed or taken into custody. He did hear AP say that the handcuffs were too tight.

CW3:

CW3 advised that AP arrived at his residence and brought a 40-ounce bottle of vodka with him. After a few drinks, the two decided to walk to CW1's residence to use her telephone to call for a ride. He did not see what AP was doing at the residence but, a short time later, DOPS officers arrived. He saw the police exit their vehicle, walk toward the side of the house, and then saw them return with AP in handcuffs. He did not see any interaction between the police and AP and did not hear any yelling, screaming or commands given. AP was already in handcuffs and was walking to the police vehicle with the officers behind him holding his arms and wrist area.

PM1:

PM1 was the driver of the ambulance that attended to AP while in custody of the DOPS members at the RCMP Portage la Prairie detachment. She recalled the patient declined to be conveyed by ambulance to hospital.

PM2:

PM2 recalled very little about the matter. She was called to the Portage RCMP detachment where she assessed AP. His injuries were not severe and he declined to be transported to hospital by ambulance.

Officer Interview

WO:

WO was partnered with SO when a call came to DOPS communication center from CW1, who complained that AP was trying to break into her home and her partner, CW2, had been injured. Upon arrival, WO recognized AP, as he had dealt with him on previous occasions. AP was covered in blood from his wrists, forearms, and forehead. There were broken glass fragments on the ground directly below the window where AP was attempting entry to the kitchen. CW2 was on the inside of the house pushing AP to prevent entry.

SO advised AP that he was under arrest for break, enter and mischief. AP's hands were placed behind his back and handcuffs were applied. He was escorted to the police vehicle and placed in the rear, on the driver's side. He started yelling at officers while in the police vehicle. While dealing with others at the residence, WO heard some banging from the police vehicle and could see AP lying down, with his feet toward the driver's side rear door, kicking at the door. He told AP to stop kicking and that he would help him sit up as soon as he stopped kicking.

The officers decided to take AP directly to hospital to get his injuries examined. En route, AP smashed his head into the "silent partner" twice. At the hospital, AP was uncooperative with admitting staff and he did not see a physician at that time.

The officers then attended the RCMP detachment with AP. Once RCMP officers showed up, AP calmed down and they were able to have a conversation with him. AP apologized to the officers for his earlier actions. The handcuffs were removed from him and Emergency Medical Services attended to examine him. Paramedics determined there were a couple of cuts on AP's forehead,

the top of his head and his wrists that may require stitches and possibly a tetanus shot. The officers returned AP to the hospital for treatment.

AP was examined by a physician and there was one cut on his wrist that required stitches. AP complained that his wrist was hurting so the doctor looked at it and scheduled him to go to the x-ray room. The two officers and a nurse escorted him to the x-ray room.

WO stated that neither officer had struck AP during their interactions with him. WO thinks SO may have applied a wristlock to AP but is not completely certain.

Medical Report

The report was authored by the attending physician of the hospital where AP was x-rayed and examined. The report states, in part:

"This will confirm that I was the physician in attendance to (AP) on May 19 2016. I attended a 31-year-old male who I noted to be in the custody of the RCMP. The patient was noted to be somewhat uncooperative and verbally abusive. He stated that he had slipped indicating that he had struck his left wrist...The patient complained of pain on examination of his wrist. As a result, I arranged an x-ray noting no evidence of any fracture however, the area of tenderness was possibly over the scaphoid bone. He was treated with a thumb splint with repair of the superficial lacerations to his left thumb prior to the application of the splint..." (Emphasis added)

A radiologist's report from the hospital's diagnostic imaging department concerning AP was attached to the medical report. The narrative portion reads, in part, as follows:

"PAIN FOLLOWING ALTERCATION - LEFT WRIST (INCLUDING SCAPHOID VIEW)

There is some degree of soft tissue swelling about the carpus but no convincing underlying recent fracture or dislocation is identified. The known un-united scaphoid fracture is again noted and the current appearances raise the possibility of some degree of fragmentation of the proximal fragment of bone since the June 2014 examination.

No other new abnormality is recognized in the displayed regions." (Emphasis added)

These comments suggest that AP had no "new fractures" to his wrist. It notes that AP had a previous fracture diagnosed in June 2014. That fracture did not appear to have healed properly but was unrelated to the current examination.

Issues and Conclusions:

The relevant issue in this matter is whether, at any time, members of the DOPS subjected the affected person (AP) to unnecessary and excessive force--from their initial interaction with him, through detention, and while in the care and custody of the police service.

Section 25 (1) of the *Criminal Code of Canada*, provides that:

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.

Any force in excess of what is necessary in the circumstances, is not justified, and can constitute an assault. Section 265 (1) (a) states:

A person commits an assault when

- (a) without the consent of another person, he applies force intentionally to that other person, directly or indirectly*

AP's injuries would constitute bodily harm under the *Criminal Code of Canada*.

Based on the medical and x-ray reports received, I am satisfied that AP did not suffer any fractured bones to his left wrist or arm and accordingly did not suffer a serious injury as defined by IIU Regulation 99/2015.

I am also satisfied that the DOPS officers were lawfully placed as peace officers at the Long Plain First Nation residence when they arrived. I am satisfied that AP was attempting to enter the residence against the wishes of the lawful occupants. I am satisfied that the DOPS officers had a clear duty under the Criminal Code and common law to take all necessary steps to apprehend AP as soon as possible to prevent that entry and any other subsequent criminal activity. I am further satisfied the DOPS officers were in the lawful execution of their duties when AP was arrested and detained. I am satisfied that force was used on the person of AP but, in all of the circumstances, there is no evidence that SO, specifically, used excessive force, intentionally or otherwise, when in control of AP. In my opinion, the evidence would tend to suggest that AP injured his left wrist during his attempt to enter the residence, prior to police arrival. The medical evidence is consistent with that conclusion.

Following due consideration of this matter and a careful, thorough review of all evidence and material facts obtained in this investigation, I am satisfied that the subject officer acted in accordance with the powers conferred on him during the time he was engaged with AP and that the force used was reasonable in the circumstances.

There are no grounds to justify any charges against the subject officer.

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

Final report prepared by:
Zane Tessler, civilian director
Independent Investigation Unit
January 17, 2017