

FINAL REPORT: IIU concludes investigation into injuries to woman following arrest by RCMP

On December 4, 2018, at 4:59 p.m., the Royal Canadian Mounted Police (RCMP) notified the Independent Investigation Unit of Manitoba (IIU) about a leg injury sustained by a female (later identified as the affected person (AP)) while in custody at the RCMP Dauphin detachment on November 27, 2018.

According to this notification (reproduced in part):

On November 27, 2018, at approximately 6:29 p.m., members received a call from AP, reporting that a male was threatening her. Upon arrival, members met with AP, who was intoxicated, and placed her in the back seat of the police car. Members entered the residence and spoke with several occupants who advised that AP was drinking and possibly under the influence of drugs. Members were also advised that AP was causing problems at the residence.

AP was arrested for breach of peace, at which point she became verbally abusive and spat at the members. During the transport to Dauphin, AP's aggressive behaviour escalated and the members pulled over in order to handcuff her.

On arrival at the Dauphin detachment, additional members were called to assist in lodging AP in cells. While attempting to release the handcuffs, AP positioned herself with her back against the wall, seated, and her legs up in a kicking motion.

The members tried to have AP lay on the cell floor on a mat in order to complete their search of her, however AP would not comply with their demands and resisted. While being taken down and onto the mat, AP continued to resist by kicking her legs out and one member felt AP's left leg push outwards in an awkward position. EMS was called and transported AP to hospital as she complained of pain in her knee.

On December 4, 2018, AP called the detachment to speak to the members who dealt with her the night she was arrested. AP mentioned that her leg was broken and she was in a cast.

As this matter involved a serious injury to a person as defined by IIU regulation 99/2015, IIU assumed responsibility for this mandatory investigation in accordance with section 66(2) (b) of *The Police Services Act (PSA)*. A team of IIU investigators was assigned to this investigation.

IIU investigators obtained and received:

- RCMP members' general and supplementary reports;
- CD of in-car audio recordings of AP during transport to Dauphin detachment;
- prisoner and guard logs;
- use of force report;
- cell block video of AP while in custody at Dauphin detachment;
- medical reports respecting AP.

One member of the RCMP was designated as a subject officer (SO) while three other members were designated as witness officers (WO1 - WO3). IIU investigators met with and interviewed AP, who also provided her written consent for the release of her medical information and reports. IIU investigators also met with and interviewed two civilian witnesses (CW1 - CW2).

Under 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 and reports but did not consent to be interviewed by IIU investigators.

Facts and Circumstances

On November 27 at 6:28 p.m., a call was received at the RCMP Dauphin detachment from AP, during which she reported that a male had uttered threats against her while she was at a residence on the Pine River First Nation. Two RCMP constables attended to the location and met with AP, who was believed to be under the influence of liquor. The constables spoke with witnesses and subsequently determined that AP was the cause of the disturbance at this residence. AP was arrested for breach of peace and transported to the RCMP Dauphin detachment. She was verbally abusive to the constables and kicked and spat in the back seat of the police vehicle while travelling to the Dauphin detachment. On arrival, efforts by the on-duty matron guard and RCMP constables to properly search AP were unsuccessful. When AP attempted to kick the matron, RCMP constables took AP into a cell where they attempted to force her to the ground and complete the search. AP resisted these efforts and SO attempted a leg sweep of her left leg in order to get her to the ground. AP responded by kicking her left leg outward and landed awkwardly on the ground. AP immediately stated that her knee had been hurt. Paramedics were contacted and attended to the Dauphin detachment cell area, where they transported her to hospital for treatment. It was eventually determined that AP had sustained a fracture to her left fibula.

Affected Person

AP was interviewed by IIU investigators. AP stated that police had arrested her for causing a disturbance in Pine River, but did not advise her of her right to legal counsel. AP acknowledged being agitated and kicking the police vehicle during the transport to Dauphin detachment, stating she was upset the two officers were not speaking with her. Upon arrival at the detachment building, AP said she was seated on a bench in the cell area where officers tried to remove a hair elastic and her necklace, but it hurt her when they tried. AP denied attempting to kick anyone prior to entering the cell. AP said there were three officers present in the cell and she was told to stop resisting. AP stated she repeatedly asked why she had been arrested and that she continuously spoke louder out of frustration that the police officers were not answering her.

AP stated that one of the officers placed his leg in front of her left knee and she was pushed to the ground by someone behind her. She heard a loud pop from the knee and immediately felt pain. AP said the police officers told her she was not hurt and mocked her as they departed the cell. A male police officer returned to her cell approximately 30 minutes later with the female guard. He lifted her leg roughly, causing her further pain. Ambulance personnel arrived later in the evening and took her to hospital where it was determined she had suffered a broken left fibula.

AP denied being intoxicated that evening, stating she had had only one drink approximately an hour before the police arrived. AP said she had spilled liquor on her clothes and that would explain why she smelled of alcohol when she dealt with police. AP also denied taking any drugs on November 27.

Witness Officers

On November 27, WO1 was partnered with SO. They attended the disturbance call at the residence in Pine River and met with AP. AP told WO1 that she was intoxicated, although the officer did not smell any liquor on her.

WO1 stated that SO returned to the police vehicle and informed him about information he had received from the residents. Based on the information, SO arrested AP for breach of peace. According to WO1, AP immediately became agitated, yelled at the police officers and hit the inside of the police vehicle. According to WO1, during the drive to the Dauphin detachment AP displayed extreme shifts in her mood, consistent with coming down from drug ingestion.

WO1 stated that, on arrival at the Dauphin detachment, they were met by WO2 and WO3. AP was walked to the back of the detachment and seated on a bench in the cell area. A female guard then attended and attempted to remove AP's necklace. WO1 said AP responded by pulling her legs up as if she were going to kick the female guard. WO1 stated a decision was made to move AP into a cell where the search could be completed. SO and WO1 pushed AP against the wall to control her while they tried to remove the necklace but were not successful as she was struggling. WO1 said he grabbed AP's right leg while SO put his right leg in front of her left leg in an effort to trip her. AP's left leg twisted and she fell to the ground, immediately complaining that her knee hurt.

WO2 stated he attended to the cell area of Dauphin detachment when SO and WO1 arrived with AP. According to WO2, AP was uncooperative and had raised her legs up to kick when the female guard tried to remove AP's necklace. WO2 stated that he, SO and WO1 decided to move AP into a cell. AP refused to go on the ground despite commands to do so. SO attempted a leg sweep on AP but she kept lifting her leg to prevent him from taking her to the floor of the cell. WO2 stated that SO was finally successful in tripping AP, who was then lowered onto a mat and searched. AP immediately complained about her knee being sore and was eventually taken to hospital by ambulance personnel.

WO3 walked into the cell area as SO, WO1 and WO2 were dealing with AP. WO3 said he had been alerted that something was happening there as he heard a woman yelling. WO3 stated he entered the cell area as SO, WO1 and WO2 were trying to search AP, but she was not being cooperative. WO3 stated that, at one point, AP sat down on a bench and raised her legs as if she were getting ready to kick. At this point, AP was moved into a cell in order to complete her search. WO3 said the other police officers were talking to AP and trying to calm her down without success. Once inside the cell, AP was pushing against the police officers and complaining about being arrested.

WO3 lost sight of AP and the other police officers as they took her to the ground. WO3 said that within a minute, the police officers exited the cell and had AP's necklace. When asked why it was necessary to remove AP's necklace in these circumstances, WO3 stated that, from his experience, a necklace could be turned into a weapon to harm AP or others, so it had to be

removed prior to the prisoner being lodged. WO3 was told that AP's knee had twisted around an officer's leg as she was being taken to the ground and she was complaining about being hurt. She was later taken to the hospital by ambulance.

Subject Officer

As stated earlier, SO was not interviewed by IIU investigators. However, IIU investigators did receive and review SO's use of force report which contained the following notations (identification references are the writer's):

The subject [AP] was uncooperative during lodging and would not comply with officer commands, nor would she listen to officers using de-escalation techniques. The subject continued to be abrasive, scream, shout and display threatening behaviour. She was to be searched by the cell-guard under officer supervision. When the guard moved in to search her, the subject threw herself onto the bench in the cell block and raised her legs in the air as if being ready to kick. The subject was told numerous times by officers to cooperate and yet she refused to allow jewelry to be removed from her.

The subject was then grabbed by officers and walked into a cell while handcuffed behind her back. She was positioned against the wall in the cell so that officers could remove the jewelry and elastic hairbands from her. The subject continued to push back against officers, thrashing her body and pushing her weight away from the wall. She continued to scream and swear, not allowing the danger of her items to be removed.

Officer 1 [SO] ordered the subject to go down on the ground so that the jewelry could be removed, and the subject did not comply. Officer 1 tried multiple times throughout the event to use verbal means to control the subject and have her cooperate, but she did not. She continued to thrash against officer control. Officer 1 pushed down on the subject's shoulder to facilitate her towards the ground, but the subject continued to resist, pushing upwards and lifting her legs to avoid leg sweeps. Officer 1 strengthened the pushing on her shoulder and continued to use verbal means to try and have her go to the ground, but the subject continued to resist.

Officer 1 pushed the subject's shoulder forward from behind and swept her leg to get her taken down to the ground. The subject kept kicking her legs throughout, and while moving towards the ground she kicked her left leg outwards, making the landing awkward, though officers tried to keep her from harming herself by holding onto her. She landed on the ground face-down and immediately changed her attitude. The subject stopped yelling, and started complaining of an injured knee.

Civilian Witnesses

CW1 told IIU investigators that AP had come to his residence in Pine River a couple of days before the police attendance on November 27. AP had been allowed to stay at his residence on the condition that she abstain from the consumption of liquor. On November 27, AP had returned to the residence under the influence of alcohol. CW1 could smell liquor on AP as soon as she entered his home. CW1 stated that he and AP engaged in a verbal dispute.

CW2 is a female guard employed by the RCMP at the Dauphin detachment. CW2 was working in the cell block at Dauphin on November 27 when three officers--SO, WO1 and WO2--brought AP into the detachment. CW2 stated that AP was brought to the cell area and sat down on a bench. CW2 stated that AP was uncooperative with the police officers. CW2 said she did not smell liquor on AP's person but believed AP was on some sort of substance as her eyes were very large and intimidating. CW2 stated she did a pat down search of AP and noticed she was wearing a necklace which had been overlooked. The police officers told AP the necklace had to be removed. AP responded that they were not going to take it off of her. CW2 said she offered to remove the necklace and AP agreed. However, as CW2 tried to remove the necklace, AP screamed, turned sideways, and pulled her legs up as if she was ready to kick CW2. At this point, the police officers took AP into a cell. CW2 stated she was writing in her logs and did not see what happened between AP and the police officers, though she did hear AP yelling. When the three police officers exited the cell, AP began to complain that her knee was injured. CW2 did not recall any of the police officers mocking AP as they exited the cell, as AP had claimed. CW2 did not see any police officer drop AP's leg.

Cell Video Analysis

Cell block video of the incident was supplied by the RCMP, which showed that AP arrived at the Dauphin detachment at approximately 8:21 p.m., engaged in a struggle with three officers at 8:29 p.m. and was removed from the cell by ambulance personnel at 9:45 p.m.

The cell block video did not have sound but did show AP resisting efforts by the police officers and female guard to search her, and raising her leg as though preparing to kick. Unfortunately, the video footage from the cell into which AP was taken by the three police officers was affected by a frame speed of one frame per second. Inquiries with the RCMP has failed to remedy that issue.

The cell video recording showed three police officers struggling with AP for approximately 30 seconds before a police officer placed his leg in front of AP's left leg while another police officer held on to her right leg. There were no blows, punches or kicks apparent or visible as AP was taken to the ground and onto her stomach, at which point the police officers appear to search her, then depart the cell. Two police officers did return to the cell at a later time, apparently to assess AP's leg injury, but neither police officer lifted or handled her leg as alleged by AP.

Medical Records and Reports

AP's medical records from Dauphin Health Centre were subsequently obtained and confirmed that AP had suffered a broken left fibula. In addition, the records note:

"At 2030 taken down by RCMP and injured left leg. Patient heard and felt a pop. Patient smells of ETOH [alcohol]. Patient admits to 1.5 drinks at 1800 and "one hoot"¹ of meth at 1500"

As well, it was also noted that AP's blood was found to contain a blood/alcohol concentration of 98 mgs%. While an expert opinion on blood alcohol analysis was not sought, I am satisfied that these readings confirm that AP consumed in excess of one alcoholic drink and ingested drugs prior to attending to the Dauphin detachment.

¹ A "hoot" is a single inhale of methamphetamine

Issues and conclusion

The relevant issue in this matter is whether, at any time, did SO subject AP to unnecessary and excessive force during the course of searching her.

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

A person commits an assault when...without the consent of another person, he applies force intentionally to that other person, directly or indirectly.

Section 25 (1) of the *Criminal Code* 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 that is in excess of that which is reasonable and necessary in the circumstances is not justified and may constitute an assault in law.

Where it is determined that reasonable and probable 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 and probable grounds exist is based on a careful assessment of all the available evidence. The totality of the circumstances must be considered in the assessment of 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 and probable 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 the necessary reasonable and probable 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 AP had sustained a serious injury during her interaction with police. The fact that AP sustained a serious injury as a consequence of the actions of SO is not on its own determinative whether the force used was reasonable and necessary or excessive in the circumstances. The existence of an injury does not presuppose that a criminal offence has occurred.

The mandate of IIU does not include authorizing criminal charges in the absence of evidence to support that decision. It would be wholly inappropriate to authorize the laying of criminal charges in absence of the required reasonable and probable grounds.

Following a thorough review of this file, a number of conclusions are reached:

- SO was in the lawful execution of his duty as a police officer on November 27 when he and other police officers dealt with AP at Pine River and at the Dauphin detachment.
- There were reasonable and probable grounds to arrest AP on an allegation of breach of the peace.
- While travelling to, at the arrival at, and while in the cell area at the Dauphin detachment, AP was uncooperative with officers.
- AP resisted attempts to search her person and, in particular, remove a necklace for safety reasons.
- Due to the level of resistance by AP and her refusal to comply with orders and directions, police officers made a decision to take her to the ground in order to complete the search.
- Cell block video confirms the interactions between police officers and AP (despite the effect of minimal frame rate playback).

In the circumstances, I am not satisfied that any reasonable or probable grounds exist to believe SO subjected AP to any unreasonable conduct or excessive force during any of his dealings with her. Accordingly, no criminal charges will be authorized against SO.

This investigation is complete and the IIU will close its file.

Final report prepared by:

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Independent Investigation Unit
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