



**IN THE MATTER OF AN ALLEGATION OF ASSAULT CAUSING BODILY HARM
INVOLVING AN OFFICER WITH THE ROYAL CANADIAN MOUNTED POLICE
ON OCTOBER 21, 2020**

**DECISION OF THE EXECUTIVE DIRECTOR OF THE ALBERTA SERIOUS
INCIDENT RESPONSE TEAM**

Executive Director:

Michael Ewenson

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2020-0063(N)

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Introduction

On October 22, 2020, pursuant to section 46.1 of the *Police Act*, ASIRT was directed to investigate an allegation of assault causing bodily harm to the affected person (AP) from an event the previous day. One RCMP officer was designated as a subject officer (SO) in ASIRT's investigation, which is now complete.

ASIRT's Investigation

ASIRT's investigation was comprehensive and thorough, conducted using current investigative protocols, and in accordance with the principles of major case management. Relevant police witnesses, including SO, and civilian witnesses, including AP were interviewed. Additionally, video evidence from SO's in-car police video was also obtained. All of this provided enough information to allow a decision to be made on whether the force used during this event was lawful.

Circumstances Surrounding the Incident

Overview

On October 21, 2020, RCMP received a call from a person on the Big Stone Cree Nation reporting that a female [AP] was out of control and was laying on the road. It was reported that AP had consumed a bottle of vodka and was possibly on methamphetamine and was causing problems. SO was aware that the previous day AP was involved in a matter that resulted in grounds existing to arrest her for public mischief. SO responded to the current complaint about AP. SO responded alone.

Upon arrival SO observed AP walking near the residence in question and attempted to arrest her for the offence from the previous day. AP ran from SO but he caught up to her and she was taken to the ground. While on the ground, AP kicked SO several times. SO was finally able to get on top of AP and handcuff her in the front. SO escorted AP to his police vehicle where she refused to enter it and began to actively resist him again. AP kicked the door to the rear of the police vehicle closed and was continuously resisting SO's attempts to get her under control. SO took AP to the ground outside the police vehicle. AP once again began kicking at SO and flailing about. SO was becoming tired but AP did not seem to be losing any energy. SO was able to kneel on AP's shoulder before being bucked off by AP. SO then pepper sprayed AP, which appeared to have no effect on her. AP continued to flail and kick. At one point a kick from AP hit SO in the

jaw. SO opened the rear door to the police vehicle. AP continued to kick up at SO. SO responded with several closed fist punches downwards towards AP's face/head. These strikes managed to stun AP somewhat which allowed SO to get beside her and to try and maintain control of her on the ground. However, AP began struggling again and was able to use her legs as leverage against the police vehicle pushing away and was able to get up for a moment and began to move away. SO reached over and grabbed AP by the hair. He still could not get her into the police vehicle as she kicked the door shut again. AP continued to struggle with SO. SO took AP to the ground again, and he was then able to sit on AP's stomach and hold onto the handcuffs that were at the front. The resistance and attempts to control AP lasted for over 25 minutes. When back-up officers arrived they were able to move the handcuffs to the rear of AP and place her in the rear of a police vehicle. At this point, AP was compliant.

AP was noted to have suffered some facial injuries (bleeding mouth and swollen face) and was complaining of a sore chest. AP was transported by an officer to the local hospital for examination. At the hospital, AP became aggressive with the doctor and other hospital staff and the doctor decided she needed to be sedated. AP had to be taken to the ground and the doctor gave her two doses of sedation to calm her down. AP was subsequently transferred to an Edmonton hospital for further treatment. AP was being treated for an orbital bone fracture, mild broken nose (left maxillary sinus), broken ribs and a 3cm left side pneumothorax (collapsed lung). On October 25, 2020, AP left the hospital on her own accord prior to all treatment being completed.

Affected Person

AP was interviewed by ASIRT and provided the following information

The way she remembered it, she was going to go for a walk to calm down because she was kind of freaking out and the police were already parked in front of the house. She told the officer she was going for a walk and the officer asked "where are you going" she told him she was going for a walk and walked around him.

He went for her wrist and she wondered why he was doing that, she did not let him cuff her for over a half hour. She did not understand why he wanted to cuff her as she told him that she just wanted to go for a walk.

With some questioning, AP provided investigators further information:

She was told that she ran from the officer but she does not remember that much. She thinks she might have done that to get help or something. He handcuffed her but she got away from him, she kicked away.

Her aunt and uncle told her that the officer pulled her hair. She does not remember being pulled by the hair. She remembered getting pepper sprayed. When he pepper sprayed her, she ducked so she did not get much in her face.

Her shirt was falling off because she trying to get out of his hold. She used her shirt and then kicked him and ran. When he got her back to the police car she stopped resisting.

She tangled with the officer for a good half hour. She cannot remember much about what happened. They were rolling around. She does not know how her ribs got broken.

She kicked the police officer to get away. She had never seen him before. When she was in the backseat of the police car, she was freaking out and crying, thinking they were going to hurt her more. She was in a bad state.

She was freaking out that day, she had not used drugs but had used alcohol. She does not remember exactly where everything happened. When she was in the hospital in Athabasca, she was in pain, her jaw and her legs hurt. She did not know her ribs were broken until they told her.

In Edmonton, they told her that she had a collapsed lung. They did an x ray on her jaw and her ribs and they said she had broken ribs but she does not know which one or ones. She was in the hospital in Edmonton for three or four days, then she left because they told her they were going to put a tube in her chest and she did not want that to happen.

With additional questioning AP further stated:

She came walking out and the officer asked her what she was doing, she told him she was going for a walk. She tried to walk around him and he grabbed her. She would not let him "cuff" her for the longest time. She remembered him throwing her down and she would get up. She remembered kicking him and running but she did not make it that far.

She blocked the pepper spray from getting on her face by using her shirt. Then she finally stopped.

He was a big individual and she did not deserve what happened. It was her grandmother that set this up [the interview], she really did not want to do this. She did not want to go through this because “cops” are scary. She does not trust the police.

AP's Medical Records

AP's medical records show that she had a cut to her lip and swelling in her face.

The records also stated that upon admission to the Athabasca Hospital AP admitted to resisting the police upon arrest and continued to resist at the hospital with police and hospital staff. It was necessary to sedate her for her combativeness. AP was given a chest x-ray which determined she had a left rib fracture with mild hemopneumothorax and was transported to the Royal Alexandra Hospital (RAH) for further treatment.

Upon arrival at the RAH, AP confirmed that she had resisted arrest and along with her chest trauma she had facial pain. A CT scan was done on her facial bones which showed *a mildly displaced fracture of the left lateral orbital wall and mild deformity of the anterior inferolateral walls of the left maxillary sinus, difficult to definitively age but favored to be a least partially chronic upon review of CT head from May 2016. Soft tissue swelling in this region makes superimposed mildly displaced acute fracture difficult to exclude, however there is no other convincing evidence of acute fracture. Minimally displaced left papyracea fracture also favored to be chronic with no opacification of adjacent ethmoid air cells.*

The fractured orbital socket and nose were further described as non-acute, non-operative facial fractures.

Civilian Witnesses

CW1 was interviewed by ASIRT and provided the following information

CW1 is AP's grandmother. AP had been living with her and her family. CW1 did not like that AP drank alcohol and used methamphetamine. On the day in question, AP had been drinking vodka, and she may have used meth. She was a little bit high. CW1 did not want her in the house in her condition so she asked AP to leave. She felt bad about asking AP to do so, but they have a seventeen-year-old in the house to think about too.

AP did leave the residence, but she subsequently called the police as she was concerned about AP's welfare given her condition and actions outside. CW1 said she wanted the police to take AP somewhere to be safe and supported.

The police came and AP was walking away from the residence. The officer stopped near AP and tried speaking with her. CW1 saw the police officer take AP down because she would not stop. He was a big hefty officer. He took her down and tried to place her in the car, he had his knee on her chest and she could not move. Every time she tried to get away from him, the officer was there. She did manage to get away from him once and went running toward the field between her house and her brother's house next door.

CW1 said she saw the officer put his knee on AP's chest and she was like, "what the hell." AP does not like anyone in uniform and when she has been drinking, she does not want to talk to anybody. Before the officer put his knee on her chest he had tried to talk to her, but it was not working. AP tried to walk away from him so he stopped her and she tried to fight back "I guess".

CW1 saw the officer bring AP back to his police vehicle, and he had called for other officers. All of a sudden, there was three (3) other police vehicles there. They all went and helped the first officer. One of the police vehicles was then blocking their view so they really could not see anything. They were helping him wrestle her. CW1 went outside and told AP that "they are trying to help you and listen to them", or something like that. AP did not listen to her. Eventually the officers got AP into the police car and then they all left.

CW2 was interviewed by ASIRT and provided the following information

CW2 is an aunt of AP and lives next to CW1. AP was running up towards her house and the police officer was chasing her. Once he caught her, he used force on her. When he tried to put her in the back of the police vehicle AP kept trying to kick the door shut. CW2 said that the police officer kneeed AP. (CW2 gestured that he dropped a knee on AP while she was laying on her back). CW2 said the police officer was being mean to AP. She saw the police officer use his hand as well as kneeing AP. (CW2 gestured with her hand in a closed fist punching in a downward motion.) CW2 said that AP was wild at the time.

The officer was using real force on AP trying to get her in the vehicle. He must have gotten tired chasing her around. CW2 and her husband were watching them struggle for 20 to 30 minutes.

The police officer was kneeing AP and then he was sitting on her. Her feet were somewhat loose, CW2 gestured in a kicking motion. They were laying on the ground near the police car, the door was partially open but you could still see him knee her and then sitting on her. (Gestured that AP's arms were beside her.)

CW2 saw the police officer swing his arm in a striking movement (gestured as if to elbow strike in a downward motion towards AP), but they were behind the police car door. She said that because the police officer made that motion that he must have struck her. CW2 did not indicate that she actually saw the police officer strike AP, just that he made the striking motion to where she was.

CW2 said that SO was chasing AP who did not want to go with him. She tried to fight the officer but he already had her down. She was on something, but it did not mean the officer had to use force on her.

CW2 reiterated that SO had AP on the ground on her back. He was sitting on her stomach and arms were beside her. He was trying to talk to her when he was on top but she was not listening. She managed to get one of her arms out but she did not strike SO. She was trying to fight her way out of there and that is when SO kned her in the chest. (CW2 gestured that AP was moving her arms in a sweeping motion in front of her.) CW2 said SO did not drop his knee on her. (She gestured that he knelt on her). She could not hear what was being said between SO and AP.

CW2 stated that the police were originally called because AP was high and laying on the road. CW2 thought maybe her husband, CW4, called the police. CW2 did not see AP hit or kick SO. CW2 did not like what SO did. The police officer was about 5'11" and chunky. AP is also not a small woman, she's tall.

CW3 was interviewed by ASIRT and provided the following information

CW3, who is the son of CW1 stated AP was on the road and was high. She had been drinking vodka. She was wandering all over the road and he told his mom, CW1, to call the police. The police officer [SO] who first came was heavy set with grey hair. When SO tried to get AP to go with him she refused and started to walk away. He tried to grab her and she started screaming.

CW3 stated that AP was not cooperating. She was trying to escape and they ended up on the ground. SO was holding her arm down with his knee, and then moved his knee to her chest, continuing to hold her down. She was continuing to struggle/resist and was kicking. She kicked SO. CW3 believed that he might have had her handcuffed at this time.

SO tried to get AP in the open door of his police car but AP kicked the door closed. CW3 said that AP did not want to go with the police. When the other police officers

showed up they parked in a way that then obstructed his view so he could not see them put her in the back of the police vehicle. CW3 did see her before she left and said she had a bloody face and bruises on her body.

CW4 was interviewed by ASIRT and provided the following information

CW4, who is CW1's brother called police earlier in the day because AP was sitting in the middle of the road and he was afraid she was going to be hit. CW1 called the police too.

CW4 was sitting in his chair and was looking out the window when the police arrived. AP was running away from SO towards his house and he tackled her. SO was then sitting on her giving her a knee and punching her.

SO gave AP the knee to her ribs. AP was kicking SO away because she was getting beat up. At one point SO pulled AP by her hair because she pushed his arm away. AP did not want to get into the police car. When other officers arrived, they had a hard time getting her into the police car.

Witness Officers

ASIRT investigators interviewed three witness officers (WOs) in relation to this incident.

WO1 was interviewed by ASIRT and provided the following information

WO1 was the first backup officer to arrive to assist SO. He found SO sitting on AP beside the police vehicle. AP was laying on her back with SO sitting on her hips and holding her hands. He noted SO was shaken and cold.

WO2 was interviewed by ASIRT and provided the following information

When he arrived to help SO he observed WO1 assisting SO in sitting AP up into a seated position beside the police vehicle. He assisted in readjusting the handcuffs on AP and observed as she was placed in a police vehicle. He noted that SO was clearly upset and seemed he had been through something. SO told WO2 that AP had kicked him several times. WO2 noted that AP was bleeding from her face. WO2 decided to drive AP back to the Athabasca detachment, however, based on AP's incoherent comments while in the backseat and her physical demeanour he decided first to take her to the hospital to be examined. Upon arriving at the hospital, AP indicated she did not want to see a doctor

but rather just use a phone. WO2 attempted to get AP to sit and be cooperative with the doctors for approximately 10 minutes. At one point, AP was acting in such a fashion that the doctor decided to sedate AP. WO2 assisted the doctor by holding her while the doctor administered the sedative to AP. WO2 left AP in the custody of another officer.

WO3 was interviewed by ASIRT and provided the following information

WO3 stated he was the last officer to arrive as backup for SO. He observed AP sitting beside a police vehicle with SO and WO2 there. He observed some blood on the face of AP. He assisted SO in looking for an epaulette that had been lost in his struggles with AP.

WO3 then collected statements from some of the civilian witnesses. CW3 told WO3 that AP had drank a full mickey of alcohol and had been “freaking out”. CW1 told WO3 that she observed SO speaking with AP , who began swinging her arms, kicking and pulling away from SO. SO pulled AP’s hair and tried to get her to his police vehicle.

WO3 assisted WO2 with escorting AP to the hospital. AP was cooperative at this time. He noted that AP had a fat lip and complained of sore ribs. WO3 observed AP to be uncooperative with the doctor trying to examine her. She was refusing to show the doctor her injuries and he observed as AP lunged at nurses and attempted to leave the room. He assisted in getting AP to the ground where the doctor injected her with a sedative. The doctor needed to give her a second dose to calm her down. He left AP in the care of relief officers.

Subject Officer

While not required to do so, SO participated in an interview and provided the following information.

On October 21, 2020, he received a call of an intoxicated female [AP] in Calling Lake, Alberta. The previous day, she had been the subject of a public mischief complaint. At that time, they were unable to locate her to arrest her on a public mischief charge.

SO had dealt with AP on a previous occasion and knew she was prone to mental health issues but had been cooperative with him in the past. He arrived at the location and noted AP walking south in the front yard towards the neighbour. She appeared to him to be lethargic and disorientated and did not want to make eye contact. SO formed the impression she did not want to deal with him. He did not feel that AP was dressed appropriately for the weather.

When he called AP by name she somewhat acknowledged him but began to fidget and sway. He tried to engage her in conversation however there was a distinct disconnect with reality as AP stated that she was not there. He advised her she was under arrest for public mischief (from the incident the previous day) and she again yelled that she was not there and took off running and further yelling "I'm going to go lie down."

SO went after AP who appeared to be unsteady and unbalanced with her running. She initially was running towards the back of the house, but when she saw that he was chasing her, she took off south towards the neighbour's house. She ran about 60 metres, when she turned around with clenched fists to face off with him and he tackled her to the ground. She was then on her back.

SO refused to comply with any demands or instructions or to stop resisting and appeared not to understand, including the fact that she was under arrest. She was flailing, hitting out in an effort to prevent being handcuffed. Because of this behaviour, he was unable to turn her over to get the handcuffs on to the back but did manage to get them on in the front.

AP continued to struggle and her hoody came off and became entangled in the cuffs preventing SO from having the ability to control AP with a wristlock or other soft control options. At that point all AP had on was a sports bra and was not fazed by the outside temperature. SO continued to tell AP she was under arrest and to quit resisting. This was to no avail, as her meth/alcohol induced mind frame could not be calmed.

It was at that point that SO threatened to use OC spray and AP was cognizant enough to understand its effect as she pleaded not to use it. AP resisted the whole way back to the police vehicle.

Prior to opening the door to the police vehicle, he attempted to rest and placed AP on the hood of the police vehicle, however AP pushed off again and he had to readjust to gain control as AP continued to resist and was taken to the ground. The OC spray was threatened again, however at this point, it did nothing to deter AP as she continued to resist by kicking at SO repeatedly, refusing to follow any direction. AP continued to resist by kicking and flailing in an attempt to get up. It appeared that she had inexhaustible energy and was not tiring.

When he attempted to put her in the back seat of the police vehicle, she kicked the door closed and was yelling "call 911" or "emergency." AP would yell a name at a wooden figure on the deck. She continued to flail and buck in an attempt to dislodge SO.

SO had his knee inside the triangle of her hands and shoulders, AP was able to twist and buck, and managed to dislodge his hold, and again managed to half stand in an attempt to take off. At that point, he gave her a short burst of OC spray but it had absolutely no effect. At one point AP flailed again and got her legs under her, shot up dislodging SO toward the car.

During the struggle AP had twisted around to the point where she managed to use the car to push off with her legs which dislodged SO. In the struggle AP kicked him in the jaw area in an attempt to get free.

SO managed to keep AP on the ground and stood up and opened the door of the police vehicle again, AP then continued to kick and SO responded with several closed fist strikes to the head area as AP was kicking up at him as if she was riding an upside down bicycle. The strikes managed to stun AP.

At some point, AP's grandmother came out onto the porch and was yelling at AP to listen and get into the car, however she did not listen and continued to try to get up and take off.

SO was unable to restrain AP on the ground while he waited for assistance. The struggling continued with AP on her back flailing her body around until she was able to utilize her legs as leverage against the car pushing back with her legs in an attempt to dislodge SO. AP fought through any pain compliance he attempted on her. He put pressure behind her ear but she fought and again got semi free and attempted to get around the car. He was not able to get a firm hold on anything other than on AP's head and grabbed a hand full of hair and pulled her back to the car. He was still unsuccessful getting her into the police vehicle. The struggle again went to the ground and it was around that point that he was able to call for assistance, as there was no way of getting AP into the car without injury.

AP continued to yell, saying she needed to get up, but when SO told her he would let her get up if she got into the police car she stated "no." AP showed no signs of tiring, fatigue or cold, and she would move SO's girth on a whim. The resisting and non-compliance continued until SO managed to sit on AP's stomach and hold onto the cuffs, which allowed him to gain more control.

At that point, the melee had lasted over 25 minutes and he was physically and mentally exhausted. He was shaking and could barely breathe. When help arrived, they were able to move the cuffs from the front to the back. At that time, AP became compliant and was placed in the rear of the police vehicle with minimal resistance.

SO sat in a warm vehicle while others spoke to those present and obtained statements. He attempted to make some notes but could hardly write, as he was shaking and coughing. He added that he could not recall how many times he opened the car door and AP kicked it closed, it all seemed to flow together.

When asked some questions, SO provided investigators further information:

He had never had the opportunity to deal with someone that was in that mental state before. He had dealt with people with mental health, excited delirium on cocaine but he had never seen anyone in the state AP was in.

When asked about the OC spray, he said he had threatened to use it but decided against it at that initial point. The actual use of the OC spray did not occur until they were back at the car. When he did spray her, it was like throwing water, there was nothing, no reaction.

He had never been in a fight like that in his career before. He is 56 years old. He called for assistance, which had to come from Athabasca.

He acknowledged delivering punches to AP and that was when she bucked and flailed and sent him over, when he was getting up she twisted and she managed to land a blow in his jaw area and she continued to kick up at him. He reached down to grab her, he got another jolt from her, and he started to delivering blows. In that melee, he thought he delivered three or four punches. He remembers making contact with her face. After being shown the video, he knows that he threw more punches than he recalled. However, SO did not think he was hitting or connecting on every one of those punches because her feet were up and he was punching down.

Video Evidence

The police vehicle SO arrived in had a camera that recorded out of the front window and another that recorded the back seat area.

The forward facing camera shows SO driving at apparently normal speeds to the dispatched called at Calling Lake. It shows as he pulls into CW1's yard AP starting to walk away from the residence towards an open grassy space. SO seemingly drives up beside AP, as his vehicle comes to a stop, and nothing is seen to the front of the police vehicle for approximately a minute and ten seconds. AP can then be seen running through the open space with SO chasing her. As SO gets close to AP, she takes a swinging right hand punch at him. Her arm is about head high, but she misses striking

SO. AP takes another less aggressive swing at SO but once again misses. SO then pushes AP who appears off balance and she falls to the ground. AP spins herself to be on her back and immediately starts to kick at SO as he stands over her. SO tries to reposition himself around AP and every time he does she extends her legs as if to throw a kick at him and rotates her body such that her feet are always in SO's direction.



AP kicking at SO

After approximately 25 seconds of AP kicking at SO as he appears to be trying to find a place to move in to take control of AP. SO removes something from his duty belt [believed to be OC spray]. He is seen moving his hand in a twirling motion appearing to be telling AP to turn over onto her stomach. AP turns and gets onto a knee and starts to stand up. SO moves in and takes a hold of the back of the hoodie that AP is wearing and pulls her to the ground. In doing so, the hoodie rose above AP's head and appears to be almost off with just her arms still in it. AP rolls a bit and ends up on her back. SO is still wrestling with AP and seems to lose his balance and falls to the right side of AP. SO is

then kneeling to AP's right side and appears to be wrestling to control AP's arms. SO removes something from the rear of his duty belt [believed to be handcuffs] with his left hand. He moves this hand to the front of his body where AP's hands are and he pulls his left hand out to the side before moving it back to the centre of his body. It appears that SO was repositioning to better attempt to get the handcuffs on SO. Once the handcuffs are placed on SO to the front AP pulls her up to a standing position. SO appears to be resisting a bit by pulling away from SO. SO can be seen to be holding onto the cuffs with his left hand while he points to the police car with his right hand. SO and AP then are seen walking in the direction of the driver's side of the police car before going out of sight.



SO wrestling with AP as she continues to resist

As previously noted, SO's police vehicle also had a rear facing camera. This camera captured what was occurring in the rear seat of the police car. As the vehicle was equipped with a safety shield separating the front and back portions of the vehicle this shield also acted as a reflecting object. This resulted in some aspects of what was occurring outside the vehicle being observed as a reflection on this camera. In reviewing the recording from this camera the following observations were noted. As SO drives into the CW1's yard, AP is seen walking through the yard. This is a reflection from the safety shield. SO stops the police vehicle and presumably is speaking with AP. Not too

long after this, SO can be seen to exit the vehicle. Approximately 25 seconds later the reflection shows AP running with SO in pursuit. Both are then out of view for a period of time before the reflection shows a portion of the interaction between SO and AP previously described above from the forward facing camera. The reflection then shows SO escorting AP back towards the police vehicle. It appears in the reflection that AP is struggling with SO as they near the police vehicle. The reflection then shows AP's head/upper portion of her body on top of the front hood of the police vehicle. SO is seen to push AP downwards on the hood using his hand/forearm. Shortly thereafter, the rear driver's side door is opened. Given the sun, the view through the open back door is largely obscured. From time to time movement is seen about the open door.

Approximately two minutes after being opened, a portion of AP's body appears in the back seat area, but then AP quickly moves out of the doorway. About 10 seconds later, the rear door is closed with what appears to be significant force given the way the police vehicle shakes. About 20 seconds later, the rear door is once again opened. Approximately 1 minute and 40 seconds later intermittent movement is observed outside the open rear door of the police vehicle. Movement can also be seen in the back window of the police vehicle. However, due to the position of the sun, what exactly is occurring can not be determined. At one point it appears that the SO is dragging AP by her hoodie towards the rear door. Very shortly thereafter, the rear door is once again closed. Approximately six minutes later the rear door is again opened. Approximately 15 seconds after being opened, while still somewhat distorted by the sunlight, SO can be seen to be punching downwards towards the ground [presumably where AP is]. SO throws six punches in quick succession, followed approximately five seconds later by another single punch downwards. For the next approximately 2.5 minutes there is intermittent movement outside the door. Again, given the sun, it is difficult to determine what exactly is happening, though it appears that SO is still struggling or otherwise engaging in some wrestling or other resistance with someone. The picture then shows sunlight again out the open door for the last few minutes of the video.

Analysis

The subject officer was lawfully placed and acting in the execution of his duties, having responded to a trouble with person complaint involving AP. AP's family member was concerned about her wellbeing and reported that the AP was a danger to herself due to intoxication and laying in a roadway. SO had a duty to respond and bring AP into custody. Furthermore, grounds to arrest AP based on the public mischief complaint from the preceding day were also present.

The Use of Force

Under s. 25 of the *Criminal Code*, police officers are permitted to use as much force as is necessary for the execution of their duties.

A police officer's use of force, in law, is not to be assessed on a standard of perfection nor using the benefit of hindsight and the opportunity to consider alternatives with the luxury of time, recognizing the exigencies of the circumstances and the decisions and reactions that must occur in split seconds.

With the benefit of hindsight, time for detached reflection and knowledge of the ultimate outcome, it is easy to speculate about how things could have been done differently. That is not the standard, however, against which an officer's conduct is measured. The question is, applying principles of proportionality, necessity, and reasonableness, whether the force used falls into a range of possible reasonable responses.

Proportionate Response

Proportionality requires balancing a use of force with the action to which it responds. SO indicated, and the civilian witnesses confirmed that AP resisted SO's attempts to take her into custody. AP acknowledged this herself. The video shows that AP kicked at SO numerous times, and that she resisted efforts at handcuffing her. AP acknowledged that she did not want to go with SO in his police car. At the police car, while not completely observable in the videos, there is no doubt some level of resistance was continuing by AP. SO indicated to responding officers, and during his interview with investigators that AP kicked him. SO indicated that he had been struggling with AP for a lengthy period of time and was getting tired. At this time, SO delivered a number of punches towards AP's head in an attempt to stop her from kicking at him. Protecting himself from kicks towards his head by delivering punches towards AP's head in a hope to stop her resistance was proportionate. While directed towards the head, it is unknown how many punches actually struck AP. It is clear some must have as she ended up with some facial injuries.

Reasonably Necessary

AP was actively resisting SO's efforts to arrest her. As previously noted, SO had attempted to place AP in the back seat of the police car after being handcuffed to the front. However, back at the police car, AP refused to enter and once again began her resistive efforts. While on the ground, she continued kicking at SO. SO attempted to control AP with the use of OC spray, but this was ineffective. Having tried other use of force options, SO resorted to physical control techniques. Some of the civilian witnesses described SO

kneeing AP during this event. While not observed on the videos, it appears reasonable to conclude that SO did knee AP at some point while trying to gain control of her. Knees to the chest area are designed to help control an active resister. The same can be said about the punches. The use of OC spray and both uses of physical force (knees and punches) were reasonably necessary to first protect SO from AP, and then to gain control of AP. It should be remembered that SO had already been actively attempting to control AP for an extended period of time (well over 20 minutes) and he was a lengthy distance away from any back-up. SO's use of force against AP was reasonably necessary to gain control over her until back-up could arrive to assist him.

Again, a police officer's use of force, in law, is not to be assessed on a standard of perfection nor using the benefit of hindsight and the opportunity to consider alternatives with the luxury of time, recognizing the exigencies of the circumstances and the decisions and reactions that must occur in split seconds.

Conclusion

Under s. 25 of the *Criminal Code* a police officer is justified in doing what he or she is authorized to do and to use as much force as is reasonably necessary where he or she has reasonable grounds to do so.

After a thorough, independent, and objective investigation into the conduct of SO, it is my opinion he was lawfully placed and acting properly in the execution of his duties. There is no evidence to support any belief that he engaged in any unlawful or unreasonable conduct that would give rise to an offence. While the use of force did result in AP suffering a broken orbital socket, nose, ribs and a punctured lung these were unfortunate consequences to a lawful use of force. The use of force by SO was proportionate, necessary, and reasonable in all of the circumstances.

ASIRT's investigation having been completed and our mandate fulfilled, I have concluded our file.

Original signed

Michael Ewenson
Executive Director

January 12, 2024

Date of Release