

FINAL REPORT: IIU concludes investigation into WPS arrest and serious injury

On July 13, 2016, the Independent Investigation Unit (IIU) was formally notified by the Winnipeg Police Service (WPS) of an incident at a residence on Ross Avenue (the residence) in Winnipeg. It concerned an arrest during which police used force to restrain and control the suspect, who was subsequently diagnosed with a serious injury as defined by Independent Investigations Regulation 99/2015.

According to this notification, shortly before 5:00 a.m. on July 13, 2016, a home-alarm monitoring company contacted WPS to advise that a break-in was detected at the residence and that an individual was inside. This resulted in the dispatch of two police vehicles to the residence. Three members of WPS, later designated as Subject Officers (SO 1, 2 and 3 respectively), arrived at the residence between 5:07 and 5:08 a.m. and noted a front window had been broken. The police officers forced their way inside through the front door and found the Affected Person (AP) inside on the ground floor. A brief struggle ensued between police and AP, during which time a Conducted Energy Weapon (CEW), commonly referred to as a “Taser,” was deployed. By 5:11 a.m., the officers on scene reported that AP was in custody and required an ambulance as he had become unresponsive. An ambulance arrived at 5:20 a.m. and transported AP to hospital, where it was determined he had suffered a laceration to his liver--a serious injury as defined in IIU Regulation 99/2015. He was hospitalized for eight days due to the injury and was discharged on July 21, 2016.

As a result of the incident, AP was charged with one count of break and enter of a residence with intent to commit an indictable offence and one count of obstruct/resist peace officer. One of those charges is still before the Provincial Court in Winnipeg.

As this notification involved 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 members of the WPS used unnecessary and excessive force on AP, from the initial interaction with him, through detention, and while in the care and custody of the police service. A team of IIU investigators was assigned and deployed.

As stated, the IIU civilian director designated each of the three officers who attended the residence as a subject officer. Additionally, two other WPS officers were designated by the IIU civilian director as witness officers (referenced as WO1 and WO2 respectively).

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, SO1 declined to participate in an interview but did voluntarily provide his notes, narrative and use of force reports to IIU investigators. SO2 did not respond to any requests to provide his notes or participate in an interview on this investigation. SO3 declined to participate in an interview but did voluntarily provide his notes.

IIU investigators also received and reviewed:

- WPS Professional Standards Unit file disclosure package and reports;
- Forensic Identification Section reports;
- Medical reports concerning AP's diagnosis and treatment;
- Call history of the dispatch to the residence;
- Audio recordings of the initial alarm report;
- Telephone call between the home owner and the WPS Operational Communication Centre;
- Radio transmissions from police officers who attended the call;
- CEW download summaries for involved police officers;
- GPS tracking documentation.

IIU investigators conducted interviews with nine individuals, including: AP, WO1 and 2, two ambulance paramedic personnel (EMS1 and EMS2 respectively), three civilian witnesses (CW1, 2 and 3 respectively), and a medical doctor.

Facts and Interviews:

Civilian Witnesses:

In the early morning hours of July 13, 2016, the owner of the residence (CW1) was sleeping when she awoke to several loud bangs downstairs at around 4:00 a.m., followed by the sound of her front window breaking. The home alarm went off and the monitoring alarm company called her. She informed them that someone was inside her home. The alarm company transferred her to the police. CW1 hid in a closet and heard crashing downstairs as well as a male voice screaming "*Somebody help me,*" and "*I need help.*"

CW1 was unaware how long it took the police to arrive, but when they did, she saw from the upstairs window that two police officers arrived first, followed by one other. They broke the front door of her home to gain entry and she heard the officers say "*Police*" but did not hear what else they said. She never saw who broke into her home and did not see the police arrest anyone.

CW2 (a neighbour) said that around 4:00 a.m. on the 13th she heard yelling outside her home. She saw a man lying on the grass, rolling back and forth on the boulevard in front of the residence. The man was yelling and swearing. She watched him for five minutes then went back to bed. At roughly 6:00 or 6:30 a.m., she looked outside again and saw a marked WPS police car parked in front of the residence.

CW3 (a neighbour) stated that at approximately 4:00 a.m. on July 13, 2016, he heard a voice outside calling, "Mom, Mom, Mom." The voice was coming from east of his home. It belonged to a male and it was not being screamed loudly. CW3 stated he left his bed to look outside but did not see anyone, but when he got up for work at 6:30 a.m. he observed a WPS cruiser car parked outside the residence, which is situated two doors to the east of his house. He did not see any interactions between the police and any civilian that night.

Affected Person

Between July 15 and August 25, 2016, IIU investigators attempted to meet with and interview AP. They attended Health Sciences Centre (HSC) on two occasions but AP declined to speak with them until he consulted with counsel. AP was released from hospital on July 21. IIU investigators contacted AP by telephone and he again declined to be interviewed, saying he was too busy at that time. On August 10, IIU investigators met briefly with AP at the offices of the Law Enforcement Review Agency (LERA), when AP attended there to make a complaint about the same incident. AP advised he was still undecided about whether or not he would provide the IIU with a statement. He did agree to sign a medical release.

IIU investigators telephoned AP on August 17 at which time AP stated he had contacted a lawyer and would communicate his decision to the IIU by August 19. No response was received from him by that date. IIU investigators left a voice message for him, explaining that if he did not contact IIU by August 31 it would be presumed he did not wish to provide a statement on the matter. AP called back on August 24, stating he was willing to be interviewed.

On August 25, AP attended the IIU offices for an interview, stating, on advice of counsel, he would only read his LERA complaint into the record. AP was asked several clarification questions and provided the following information:

- He was unable to remember clearly what happened prior to entering the residence.
- He did not think he was injured prior to entering the residence.
- He did not recall how long he was inside the residence prior to the arrival of police.
- AP was asked about the voice heard on the 911 call, that someone had tried to kill him, and confirmed the male voice was his.
- He stated he could not remember who had tried to kill him as he was under the influence of unspecified intoxicants at the time.
- He did not know which officer used the CEW on him and did not know how it was used on him.
- He was unable to remember suffering any injuries to his torso during the altercation with officers.

Medical Information

EMS1 was one of the paramedics who attended the residence on July 13 and provided medical treatment, with the assistance of his partner, EMS2, to AP. EMS1 found AP lying on the ground

in handcuffs in the front yard of the residence, surrounded by three WPS officers. While being treated, AP told EMS1 he had been trying to get away from some people who were trying to kill him. EMS1 recalled AP admitted to taking cocaine and his pupils confirmed the ingestion of a stimulant. AP had contusions and small cuts on his arms but no obvious serious injuries. EMS1 did not find evidence of a lacerated liver at the scene, and it was not until a CT scan was done at hospital that this was discovered.

EMS1 was told that a CEW was used on AP but the probes were not in his skin at the time he was examined.

EMS2 did not have access to notes during his interview. He believed he and his partner arrived at the residence at 6:30 a.m. on July 13. He observed a male laying on the ground, on his right side, and handcuffed behind his back. He had “taser” darts in his torso, at his right shoulder and left upper abdomen. The “taser” dart in his shoulder was in very loosely and fell out, while the abdomen dart had to be pulled out. EMS2 said the male subject was uncommunicative and did not respond to questions posed by the paramedics, but rather would “... *just kinda stare around.*” EMS2 believed the male was under the influence of a drug or drugs, but did not know if drug use was the reason the male did not communicate, or if he was simply being uncooperative. EMS2 did not recall the male having any signs of obvious trauma during his examination at the scene.

AP was transported from the scene to Seven Oaks Hospital for an initial assessment at 6:17 a.m. on July 13. Subsequent testing suggested he had a liver laceration, resulting in his transfer from Seven Oaks to HSC at 11:28 a.m. AP remained in hospital for observation until July 21, at which time he was discharged as it was determined there was no significant internal bleeding ongoing. AP did not require surgical intervention to address the liver laceration.

The treating physician offered the following opinion:

“AP’s injury to his liver was...extensive and substantial, and most people would deteriorate rapidly after such an injury. However, it is possible that it was initially contained and then began bleeding in a delayed fashion either spontaneously or exacerbated from another assault and so cannot say with a 100% certainty that it could not be pre-existing from an injury earlier in the evening.”

Witness Officers:

WO1 was partnered with WO2, who was driving their police cruiser on July 13. They were dispatched to a “break and enter” call at the residence at 5:10 a.m., arriving on scene at 5:14 a.m. WO1 remembered hearing on the police radio that a CEW had been used.

Upon arrival, WO1 observed a male on the ground, in handcuffs, surrounded by three other officers. WO1 was unable to recall how the male was lying or what he was wearing. The handcuffed male did not say anything, nor did he have any visible injuries.

WO1 had no discussion with the other officers about how the male subject came to be lying there. He was instructed by SO3 to obtain a statement from CW1 inside the residence. He and WO2 went inside the house. He did not see anyone use physical force on the handcuffed male.

WO2 said he was working a night shift with WO1 on July12 through July13. He was driving their police vehicle. They were dispatched to a “break and enter” call at the residence. On arrival, he saw a male on the ground in handcuffs, lying on his side outside the residence, surrounded by three other officers. The male did not say anything and did not have any visible injuries. He did not see anyone use force on the male prisoner in his presence.

WO2 had no discussion with any of the subject officers about how the male subject came to be lying there but remembered the officers appeared to be out of breath. He obtained a statement from CW1 inside the residence and believed an ambulance arrived on site shortly after that.

Subject Officers:

SO1 declined to participate in an interview but did voluntarily provide his notes, narrative and use of force reports to IIU investigators. SO2 did not respond to any queries regarding his interest in providing his notes or participating in an interview on this investigation. SO3 declined to participate in an interview but did voluntarily provide his notes. The notes and reports received are summarized as follows:

- On July 13, at 5:02 a.m., while working general patrol, SO1 and SO2 were dispatched to a priority 2 break and enter call located at the residence on Ross Avenue.
- An unknown male had broken into the residence and the sole resident was hiding in the closet.
- SO1 and SO2 arrived on scene at 5:07 a.m., just as SO3 pulled up. The front windows of the home were smashed and they could hear a male yelling from inside the home.
- SO2 banged on the door several times and announced “Winnipeg police.” They heard a male yelling but no one came to the door.
- A decision was made to breach the front door to gain entry into the home to ensure the safety and well being of the caller.
- SO2 breached the front door.
- SO1 observed a male (later identified as AP) standing in the front hallway.
- This area was very confined, with approximately six feet separating everyone.
- AP was standing with both fists clenched.
- AP was ordered to “get on the ground” several times, but he ignored the commands.
- SO2 grabbed hold of AP’s torso and SO1 grabbed AP’s right arm, forcing him to the ground and repeatedly stating “give me your hands.”
- AP began to swing his arms around violently in an attempt to resist control and not allow handcuffs to be applied.

- AP was ordered to “stop resisting” and “give me your hands” which he ignored, continuing to swing his arms and flex his muscles to resist attempts to subdue him.
- In an attempt to control AP and keep him on the ground, SO2 placed his left shin on top of AP’s chest area while SO1 grabbed his right arm.
- AP was ordered to “give us your hands,” which he ignored and continued to yell and ramble incoherently.
- As lower levels of force were ineffective and due to the confined space, SO1 and SO2 delivered several closed fist punches to AP’s head/face area to gain control of him, which were unsuccessful.
- AP was displaying signs of excited delirium and exhibiting extreme strength.
- SO3 attended to the front door, entered and went to AP’s left side, beside SO2.
- AP continued to resist police attempts to subdue and handcuff him. SO3 drew his CEW and ordered AP “give us your arm or you will be tased.”
- AP refused to comply so SO3 deployed the CEW to temporarily incapacitate him and allow police to gain control of his arms and apply the handcuffs.
- The first deployment was unsuccessful.
- SO3 applied the CEW several times on AP’s left leg.
- This deployment was also ineffective in temporarily incapacitating AP, as he kept resisting and struggling with police.
- Police struggled with AP as he continued to swing his arms wildly, flexing his muscles and locked his arms, resisting all attempts to gain control of his arms. SO1 was eventually able to gain control of AP’s right arm, SO2 was able to gain control of AP’s left arm and SO3 applied handcuffs as AP was turned onto his stomach.
- AP was carried out of the residence and placed on the grass.
- AP was incoherent, delusional, and displayed extreme strength in resisting. Multiple CEW deployments were ineffective; he was sweating profusely and breathing abnormally. AP lost consciousness and an ambulance was requested.
- Paramedics treated AP on scene but, due to his medical condition, he was transported to Seven Oaks Hospital for further treatment where it was learned he had a possible lacerated liver.

The CEW download information indicated that SO2 and SO3 were each carrying a CEW when they responded to the call at the residence. SO2’s CEW was not activated during the incident but SO3’s CEW was deployed three times. There is no evidence of any of the subject officers striking his torso.

Issues, Assessment and Conclusions:

The primary issue for this investigation was whether members of the WPS used unnecessary and excessive force on AP, from the 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: 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.

The application of force is not justified if it is in excess of what is necessary in the circumstances and thereby may constitute an assault in law.

Section 265 (1) (a) of the *Criminal Code of Canada*, 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, particularly the lacerated liver, constitute bodily harm under the Criminal Code of Canada.

I am satisfied that the subject officers, dispatched to a call of an active break and enter into a residence while the homeowner was present, hiding and in distress, had the right and obligation to enter the residence and to take AP into custody, pursuant to the powers conferred on them.

I am satisfied that the subject officers employed necessary force to minimize and eliminate potential risks and harm to AP and to themselves while at the residence and carrying out the arrest. I am satisfied that AP's acts of non-compliance and resistance justified the subject officers' decisions to escalate the force used to subdue and arrest AP.

There is a dearth of evidence available to ascertain how AP suffered the laceration to his liver. In fact, it is a possibility this injury occurred earlier that morning through an altercation with another individual, prior to and unrelated to any contact with police at the residence. The medical opinion does not assist in resolving this issue.

Following this review and on consideration of all of the evidence gathered and applicable law, I am satisfied that the force used in effecting AP's arrest was reasonable in all of the circumstances. There are no grounds to justify any charges against any of the subject officers.

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

Final report prepared by:
Zane Tessler, civilian director
Independent Investigation Unit
January 05, 2017