

FINAL REPORT: IIU concludes investigation into Remand Centre fatality in Winnipeg

On October 12, 2016, at 8:56 a.m., Winnipeg Police Service (WPS) notified the Independent Investigation Unit (IIU) about a fatality that occurred earlier that morning at the Winnipeg Remand Centre (WRC). According to this notification, on October 11th, at 11:33 p.m., WPS officers were dispatched to a convenience store on Ellice Avenue in response to a call concerning a male, armed with a knife, who was demanding that police be called. On arrival, police officers located a male (later identified as the affected person (AP)) who was in possession of a knife. He was immediately arrested without incident. AP was subsequently conveyed to WPS downtown headquarters (HQ). At 4:15 a.m. on October 12, AP was conveyed to WRC. Upon arrival at the admissions area, AP was searched by WPS and WRC staff. WRC staff escorted AP to a washroom area for further processing (including a strip search and clothing change). WPS members did not accompany AP or WRC staff at that time. At 5:05 a.m., WPS officers were alerted to a physical struggle between AP and WRC staff. WPS officers immediately attended the washroom area to assist. During efforts to gain his compliance, AP suffered a medical emergency and became unresponsive. Attempts to resuscitate him were unsuccessful. AP was transported by ambulance to Health Sciences Centre (HSC), where he was pronounced deceased at 5:35 a.m.

As this matter involved the death of a person that may have resulted from the actions of a police officer, IIU assumed responsibility for this mandatory investigation in accordance with section 65(1) of *The Police Services Act* (PSA). Furthermore, as this matter concerned a fatality, in accordance with section 70(1) of the PSA, the IIU was required to seek the appointment of a civilian monitor. On October 13, 2016, the IIU requested the Manitoba Police Commission appoint a civilian monitor. The initial briefing with the civilian monitor took place on October 19, followed by regular monthly briefings thereafter.

Concurrent with the IIU investigation, WPS Homicide Unit conducted a separate investigation as it related to the involvement of WRC staff in this fatality. The respective investigations and file materials were ultimately forwarded to Manitoba Prosecutions Service for review.

The IIU civilian director designated the two WPS officers who transported AP to WRC, and were involved in the struggle between AP and WRC staff, as the subject officers (SO1 and SO2 respectively). Four additional WPS officers were designated as witness officers (WO1 – WO4).

In addition, IIU investigators interviewed seven WRC correction officers (CO1 – CO7), four civilian witnesses (CW1 - CW4) and a pathologist (PW).

Under the provisions of the PSA, a subject officer is not required to provide a statement or notes regarding an incident. In this case, both SO1 and SO2 declined to be interviewed about the incident but, through legal counsel, each supplied a self-prepared statement for review.

The investigation conducted by IIU investigators included:

- attending and examining the scene;
- reviewing the forensic examination of the scene;
- receipt and review of video recordings from convenience store and WRC;
- receipt, review and transcription of telephone calls between subject officers and duty officer;
- reviewing police radio transmissions;
- reviewing file materials from WPS;
- reviewing prison logs;
- reviewing WRC correction officers' narrative reports;
- reviewing autopsy report regarding AP;
- obtaining statements from designated witness officers;
- obtaining statements from WRC correction officers;
- obtaining statements from civilian witnesses;
- obtaining and reviewing prepared statements of subject officers;
- regular consultations and briefing sessions; and
- preparation of the final investigative report.

Civilian Witnesses

IIU investigators attended the convenience store and interviewed CW1, one of the employees. CW1 confirmed that AP had walked into the store holding a knife and asked that police be called. CW1 related that AP said he was scared and assured staff he would not harm them; he just needed the police. CW1 dialed 911 and spoke with the operator. CW1 stated that AP was arrested by police without altercation or incident.

CW2 was a prisoner conveyed from HQ to WRC with AP on October 12. CW2 said that during the drive to WRC, AP was "praying" for forgiveness, singing songs and banging his head against the wall of the police van. CW2 said that AP "was acting pretty crazy." CW2 said AP banged his head "six, 10, 15, quite a few times." According to CW2, AP asked him to beat him during the ride but there were no physical altercations between them.

CW3 was also conveyed with AP and CW2 to WRC. CW3 said there was no physical altercation between AP and anyone, including the police officers, during the drive. CW3 said AP was saying prayers and singing in the van, including the phrase "Lord help me please."

CW4 was being held at WRC at the time of the struggle. Apart from hearing yelling and the words, 'Stop doing that,' CW4 had no further information to provide.

Witness Officers

WO1 and WO2 were the two WPS officers who had the initial contact with and arrested AP at the convenience store. They conveyed AP to HQ, describing him as co-operative and compliant at all times. Both WO1 and WO2 confirmed that no physical altercations occurred at any time during their interaction with AP. AP did not appear to have visible injuries and he made no complaint of feeling ill or injured. AP did mention that he had taken methamphetamine (meth) prior to his arrest.

WO3 was a supervisor at the WPS Central Processing Unit (CPU). WO3 recalled AP being brought to CPU for processing. WO3 spoke with AP and he did not disclose any illness or injury. AP did tell WO3 that he was asthmatic. WO3 described AP as co-operative and fit to be detained. He made comments referring to not being a “Skinner.” WO3 later spoke with SO2, who was at WRC, on the telephone. SO2 informed WO3 of a “medical incident” that had occurred with AP. WO3 was not advised of any altercation at WRC.

WO4 was the acting inspector and WPS duty officer on October 12. WO4 received a telephone call from SO2 who advised of a prisoner who had a medical incident in a washroom at WRC. WO4 said that SO2 gave no information about an altercation at WRC other than that a medical incident had occurred there. WO4 recalled speaking with SO2 again by telephone who asked if the 'line' was being recorded. During the conversation, SO2 advised that someone call out that they needed to get a blanket, they heard something from the shower room and when they entered saw the prisoner had “flat-lined.”

Correction Officers

CO1 was working at WRC Admissions on October 12 and was present when AP was brought in by two WPS officers. During the booking process, CO1 heard AP say “You can beat me if you want but I didn’t rape her, I forgive you already.” Once AP was processed at the admissions desk, he was taken to a change or shower room by CO5, CO6 and CO7. Shortly after AP entered the room, CO1 described hearing a commotion coming from inside. CO1 heard someone order “Get down on the ground.” CO1 entered the room and saw three correction officers and two police officers restraining AP. AP was on the ground laying on his stomach. CO1 recalled that all officers were kneeling or squatting beside AP, who was actively resisting. CO1 did not recall hearing any banging sounds. CO1 could not describe what each individual officer was doing but stated it appeared they were trying to get AP’s arm around his back. AP was not clothed.

CO2 was working at Admissions when AP was brought in by two WPS officers. CO2 was in an office processing records when the sound of loud yelling could be heard coming from the shower room. CO2 was advised an inmate had become uncooperative in that room. CO2 did not hear any banging sounds coming from the room. CO2 saw the two police officers enter the room but did not see if they were holding anything. CO2 did not witness any altercations and did not have any personal contact with AP.

CO3 entered the shower room after the altercation began. CO3 was unsure of the positions of the police officers in the room when he entered, but believed SO2 may have been standing on the right side of AP. CO3 believed SO1 was kneeling to the left of AP and was assisting in restraining his left arm. CO3 did not see either police officer strike or use force on AP (apart from the officer lightly holding the left arm).

CO4 entered the shower room following the two police officers. CO4 advised that AP was laying on the ground, on his front and was naked. AP was positioned with his head towards a back wall and his legs were closer to the door. AP was actively resisting as the officers were trying to control him. CO4 confirmed that there were two police officers in the shower room. CO4 said a police officer was positioned by AP's right leg and was using his hands to hold it down. CO4 did not see that police officer strike, punch, hit or kick AP at any time. The police officer assisted CO4 with applying shackles to AP's ankles. According to CO4, the other police officer was positioned to the left of AP and was assisting CO6 in trying to remove AP's left arm from under his body. CO4 saw this police officer with his "Taser" out. The police officer then placed it back into its holster. He did not hear either police officer ordering any of the correction officers to do anything.

CO5 was one of the original three correction officers to enter the shower room with AP. CO5 advised that AP had made some bizarre comments during his initial processing in the admissions area. CO4 was aware the police officers had now entered the room, but did not see what actions the police officers undertook. CO5 believed that CO6 was to the left side of AP and that CO7 was on the right. CO5 explained that prisoners are not "fully" within WRC custody until the strip search in the shower room is complete. It was CO5's belief that as AP's processing was not complete, he was still in WPS custody.

CO6 was one of three correction officers who entered the shower room with AP prior to the police officers' entry. CO6 did not recall any discussions with either police officer nor recall any discussions between the police officers and AP. He recalled AP was making bizarre comments in the admissions area. In the shower room, AP ended up laying naked face down on the ground. His head was toward the back wall and his feet toward the entrance door. CO6 recalled SO2 was towards AP's left side by his arm. CO6 recalls SO2 having his Taser out and could see a red dot from the laser pointed at AP's upper back area. He did not see the Taser discharged or make contact with AP's skin. CO6 said that neither police officer applied shackles, handcuffs or a spit mask to AP. CO6 recalled that SO1 stood by the entrance door and did not recall seeing him near AP or taking any action whatsoever.

CO7 was one of the three corrections officers who escorted AP to the shower room and was present before the police officers' entry. CO7 said that during the pat down search of AP at Admissions, AP made comments such as: "I didn't rape that girl." Once in the shower room and the scuffle began, CO5 was positioned on top of AP in the buttocks area and CO6 was on his right side. CO7 said that the two police officers entered the shower room and one asked if assistance was required. By this time, AP was laying on his stomach as the struggle was ongoing. CO7 recalled that one police officer was kneeling at AP's left side, trying to hold him down. CO7 believed that this police officer had a "Taser" in his hand and was pointing it at AP. The Taser was not touching AP. CO7 stated the other police officer was near AP but was

unable to describe how he was positioned and did not know what, if anything, he did in the room. CO7 stated that he heard one of the police officers make the comment, "Should I tase him?" but didn't know which police officer said it. CO7 was not certain whether the Taser was used. CO7 stated that he did not see either police officer kick, strike or punch AP.

Subject Officers

SO1 provided IIU investigators with a prepared statement. In that statement, SO1 wrote that he stood on AP's right calf for 20-30 seconds during the incident "in order to control his leg thrashing and kicking." SO1 further wrote that SO2 "stood on AP's left lower side and that he (SO2) produced and activated his conductive energy weapon (CEW). SO2 had the CEW turned on "for about 10 seconds" but did not discharge it. SO2 eventually turned the CEW off and replaced it on his duty belt. SO1 described that he heard the "sound of several punches" but could not see what was taking place due to his vantage point.

SO2 provided IIU investigators with a prepared statement. SO2 outlined his involvement beginning at 1:30 a.m. on October 12. SO2 was aware AP had consumed meth and alcohol that evening. AP was to be transferred from CPU to WRC. SO2 was aware there were three other prisoners to be conveyed to WRC. According to SO2, on arrival at Admissions at WRC, SO1 removed the prisoners' handcuffs and the prisoners were placed in a holding room. SO2 was present when AP was brought out of the holding room by SO1. SO1 searched AP. SO2 was present when AP was directed to the shower area. SO2 saw AP enter the shower room followed by three WRC correction officers. Within seconds, SO2 heard a voice say "Hey-Hey" followed by the sounds of a scuffle and a body hitting the ground. SO2 then heard someone yell, "Stop resisting, stop resisting." SO2 entered the shower room and saw AP laying prone on the floor on his stomach. The three WRC correction officers had AP pinned and they were on his back and torso. SO2 stated that he took a position alongside AP's lower left torso/hip area. SO2 advised that he was about to use his "Taser" on AP. SO2 decided against that as WRC correction officers had control of AP's arm. SO2 assisted the three WRC correction officers in handcuffing AP. SO2 wrote that he put shackles on AP's ankles.

WPS Prisoner Logs

WPS prisoner logs documented that AP remained in the WPS CPU at HQ until 4:15 a.m. During that time, WO3, SO1 and SO2 had dealings with AP. No incidents or altercations with AP were recorded on the prisoner log. While AP was at HQ, he spoke with his lawyer. It was noted on the log that AP was observed either sitting or laying in the holding room. At 04:15 a.m., it was documented on the prisoner log that SO1 and SO2 had custody of AP in order to transport him to WRC.

Video Recordings

Convenience Store:

The convenience store's closed circuit television system (CCTV) recorded at 11:14 p.m. that AP enters, approaches the counter and places a knife on it. AP appears to speak with a clerk who is on the telephone and then passes the receiver to AP. AP does not take the receiver and is walking around in the area between the entrance doors and the front counter. AP is waving his arms about while apparently talking to the clerks. At 11:22 p.m., uniformed police officers come into view and are observed walking toward the front of the convenience store. A uniformed police officer enters the store as AP takes himself to his knees. The police officer walks up behind AP and places handcuffs onto his wrists. A second uniformed police officer then enters the convenience store. AP is helped up to his feet and is escorted out of the store. There is no struggle between AP and either of the police officers.

WRC CCTV:

The WRC CCTV captures audio as well as video. The CCTV video recorded SO1, SO2, AP, CW2 and CW3 arriving at WRC at 4:23 a.m. All five people are seen to enter the admissions area of WRC. AP and CW2 are placed into a holding room. CW3 is placed in a different holding room. CCTV coverage shows a majority of the admissions area; the shower room is not covered and, as such, no altercations between AP, WRC corrections officers and the police officers are recorded.

AP is escorted by SO1 to the admissions desk. SO1 is observed searching AP over his outer clothing. AP is heard saying:

“I'm not a rapist.”

“Just f'n do it up in the washroom man.”

“I'm not a skinner.”

“I forgive you guys.”

“I already forgive you.”

“I don't care what you guys think, I'm not a rapist, I've got two kids.”

At 4:43 a.m., AP is observed walking into the shower room. CO5, CO6 and CO7 follow him in. AP is heard being instructed to remove his clothing. Moments later, the sounds of a disturbance is heard together with a loud bang. A male voice says, “Put your hands behind your back.” SO2 then enters the room followed by SO1. A male voice is then heard to say, “What the f***'s your problem, man.” The sounds of a struggle, yelling, banging and screaming continue to be heard. At 4:44 a.m., AP is heard to say: “I forgive you” followed by a male voice shouting, “Don't resist me.” The sound of strikes is then heard. At 4:45 a.m., the last scream was heard on the

audio. SO2 exits the room at 4:48 a.m. and SO1 is right behind. SO1 and SO2 are heard discussing whether the Taser was used.

At 5:23 a.m., a male WRC correction officer approaches SO1 and advises that AP was still in the custody of the police and they would have to accompany him to hospital. SO1 is heard to respond:

“It wasn’t our use of force that brought him to this, though.”

SO1 then says to SO2:

“He’s saying that we gotta go with him. I said it wasn’t our use of force that brought him to this. Wasn’t our use of force that brought him to this, but he’s saying we’ve got to bring him to the hospital.”

Telephone Recordings

At 5:19 a.m., SO2 called WO4 where he explained that an “issue” had occurred at the WRC where a prisoner had gone into the washroom and had a “medical incident” and “cardiac arrest.” He added that the prisoner was being taken to hospital. SO2 explained that AP was in WPS custody at the time he went into a room to change his clothes and “that’s where the medical incident happened.” SO2 stated that the prisoner may have had a heart attack.

At 5:23 a.m., another telephone conversation between SO2 and WO4 was recorded. WO4 asked if there were any issues while AP was in CPU. SO2 advised that AP had taken some meth and alcohol but was compliant. SO2 described the processing of AP at WRC. SO2 said that AP went into the shower room accompanied by two WRC correction officers and collapsed. There was no mention of any altercation. SO2 and WO4 discussed whether AP was in WRC or WPS custody at the time. SO2 advised WO4 that AP was handcuffed and shackled for everyone’s safety. SO2 advised that AP was flailing around a bit and that he (AP) did not make it to the shower but collapsed while undressing.

At 5:38 a.m., SO1 and WO4 had a telephone conversation where they discussed whether AP was in WPS or WRC custody at the time. There was no discussion about the incident in the shower room.

At 6:23 a.m., WO4 telephoned SO2 and asked if AP went into cardiac arrest. WO4 asked how to describe the incident. SO2 mentioned:

“...some sort of physical altercation occurred between him and the guards. If I’m gonna go on record, I’m gonna say that. SO1 is gonna say that. Like I say, I don’t know if he attacked them or they...you know.”

SO2 went on to reference that a medical event occurred.

At 6:49 a.m., WO4 telephoned SO2 and asked who his partner at WRC was. SO2 advised that it was SO1.

AP was pronounced deceased at 5:35 a.m.

Pathologist and Autopsy Report

PW, the pathologist, met with IIU investigators on the initial understanding that his own investigation into the death of AP was ongoing and further tests had not been completed. The full autopsy report would be supplied to IIU once it is complete. PW carried out the post mortem of AP and said it was a blunt force type injury to the torso (right lower back and flank), that resulted in internal bleeding from damage to the liver and which was the cause of death. Evidence of overlying soft tissue bruising and bleeding in the area above the liver, close to the surface of the skin, was found. PW was of the opinion that a focused application of force to the area is the chief cause of this type of injury. It was more likely to be a blow rather than a sustained application of compression. PW advised that the body would not necessarily have to be braced for this injury to occur. PW could not determine the position of the body at the time the blow was struck. AP did not have any pre-existing medical conditions that would have made him more susceptible to injury. PW said that further microscopic tests would be performed which might assist in determining the length of time at which death may occur following this injury. PW was also awaiting toxicology. PW found no evidence that a CEW was used on AP.

The completed autopsy report was subsequently received by IIU investigators, which stated, in part:

Immediate cause of death

- a) Cardiac arrhythmia (abnormal heart rhythm);
- b) Methamphetamine toxicity

Other Significant Conditions that may have contributed to death

- a) Borderline cardiomegaly (enlarged heart)
- b) Physiologic stress and injuries resulting from being restrained

PW wrote that in his opinion:

“AP died as a result of fatal heart rhythm (i.e. cardiac arrhythmia) that was “potentiated” (magnified) by the toxic effects of methamphetamine in his bloodstream. He suffered from a slightly enlarged heart (i.e. borderline cardiomegaly) which put him at an increased risk for developing a cardiac arrhythmia. Lastly, additional physiologic stress and injuries he incurred from being involved in a physical altercation and restrained likely had a detrimental effect on the regular function of his heart and predisposed him to dying suddenly.”

The toxicology report determined the presence of methamphetamine (a potent central nervous system stimulant), amphetamine (a central nervous system stimulant), fluoxetine (a sedative), trazodone (an anti-depressant), norfluoxetine (a sedative), Carboxy-THC glucuronide (a metabolite of THC) and acetaminophen (pain medication) in AP's system. No alcohol was detected in AP's system. The levels of methamphetamine and amphetamine present may be associated with recent high dose meth use. Toxic effects would be expected.

Issue and Assessment

In this investigation, the IIU mandate was to determine whether consequences should flow from the actions of subject officers only, with due consideration of all the circumstances and information known to them at the time.

The completed IIU investigation file was forwarded to Manitoba Prosecution Services requesting that it be reviewed and advice be provided respecting the identified issue. Manitoba Prosecution Services also received the completed WPS file concerning its concurrent investigation into this incident.

Following a thorough review of the IIU file, Manitoba Prosecution Services advised this office that there is no reasonable likelihood of a conviction in respect to either SO1 or SO2. Accordingly, and based on this advice, neither SO1 nor SO2 will face any *Criminal Code* charges arising from this matter.

The chief medical examiner for Manitoba has called for an inquest with respect to AP's death pursuant to *The Fatality Inquiries Act*. Other issues from this incident will be considered in those proceedings.

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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