

FINAL REPORT: IIU concludes investigation into allegation of excessive force and theft by Winnipeg police during arrest

On October 19, 2016, at 2:28 p.m., Winnipeg Police Service (WPS) notified the Independent Investigation Unit (IIU) about an incident that occurred on October 4. According to this notification, the affected person (AP) alleged that members of the WPS, who had arrested him on a number of *Criminal Code* matters, assaulted him while in custody by bending his hand behind his back and causing it to break. As a result, AP had surgery performed on October 12 and had four screws inserted to repair his injured hand. On October 17, AP contacted the WPS Professional Standards Unit to report the incident and injury.

As AP suffered a serious injury as defined by IIU regulation 100/2015, IIU assumed responsibility for the investigation in accordance with subsection 66 (2) (b) of the *Police Services Act* (PSA). The primary issue for this investigation was whether members of the WPS subjected AP to unnecessary and excessive force--from their initial interaction with him, through arrest and detention. Subsequent investigation and interviews conducted by IIU investigators later determined that AP also alleged that WPS officers committed a theft of his property and this allegation was included in the ongoing IIU investigation.

The IIU civilian director designated two WPS officers as the subject officers (SO1 - 2). The IIU civilian director designated seven other WPS officers as witness officers (WO1 - 7). Two civilian technicians of the WPS identification unit were also interviewed (T1 - 2). AP cooperated with IIU investigators and participated in an interview. IIU investigators also identified and interviewed seven civilian witnesses, including the surgeon who treated AP (CW1 - 7).

IIU investigators also received and reviewed:

- Complete file package from WPS Professional Standards Unit, including witness officers' notes and reports;
- Video from WPS headquarters;
- Video from Winnipeg Remand Center booking area;
- Two medical reports respecting AP;
- GPS data and recordings for WPS vehicle used to transport AP.

As outlined under the PSA, a subject officer cannot be compelled to provide his notes to IIU investigators or to attend an interview with them. In this matter, each of SO1 and SO2 agreed to provide their own notes, narrative reports and use of force reports to IIU investigators but each declined an interview.

The incident

On October 3, between 5:00 and 6:00 p.m., CW1 attended AP's apartment where they consumed liquor and marijuana throughout the evening. At one point, AP left the apartment to purchase more liquor. Upon his return, AP became upset with CW1, accusing her of hitting him. CW1 told investigators that AP kicked the closet door and punched the wall near the closet area with closed fists, hurting one of his hands in the process. CW1 recalled that AP threw his mobile phone and then accused her of taking it. AP could not recall specifically which hand AP injured but said it was swollen and puffy, particularly his middle knuckle. Before punching the wall, CW1 said AP was moving his hands around with ease, held a liquor and soft drink bottle without issue, and did not complain of any pain in his hand until after he punched the wall. CW1 wanted to leave but AP grabbed her by the shoulders and threatened to throw her out of the apartment's second floor window. CW1 managed to leave the apartment without further incident but was followed out by AP. They ended up by a bus shelter and continued to exchange words. CW2 and CW3 were walking toward the bus shelter and saw AP push CW1 to the ground. CW2 contacted WPS for assistance.

AP has denied grabbing, pushing or threatening CW1 at any time either inside or outside of his apartment building.

At 11:46 p.m., SO1 and SO2 were the first WPS officers to arrive on scene. They approached an agitated AP and, after speaking with him, determined that he should be detained under the *Intoxicated Person's Detention Act* (IPDA). SO1 and SO2 also wanted to continue their investigation in the the assault on CW1.

SO1 and SO2 handcuffed AP and escorted him to a nearby police vehicle. SO2 noted in his narrative report that as they walked, AP body checked and attempted to head-butt SO1. AP was taken to the ground so the police officers could regain control of him. SO1 and SO2 believed AP was going to spit at them so they applied a "spit sock" (a protective device that fits comfortably and easily over the head to help prevent the transfer of spit from one person to another) to AP's head. AP was placed inside the vehicle as he swore at and threatened the police.

At 11:51 p.m., WO1 and WO2 arrived at the scene and observed AP placed in the rear of SO1 and SO2's vehicle. AP was wearing a spit sock. At 11:58 p.m., WO3 and WO4 arrived at the scene and saw AP in the rear of a police vehicle.

SO1 and SO2 noted that AP was attempting to kick at the windows and door of the police vehicle. SO1, SO2, WO3 and WO4 applied a "ripp hobble tie" (a strap restraint used to restrain a handcuffed subject's knees, ankles or feet, if they continue to kick or struggle) to AP's legs to prevent him from kicking.

At 12:15 a.m., now October 4, AP was advised he was under arrest for assault, assaulting a police officer and uttering threats. He was read his charter rights, including his right to counsel and right to remain silent. A WPS supervisor was requested to attend the scene to view AP and facilitate a direct lockup. WO7, a patrol sergeant, attended and authorized the direct lockup. WO7 explained to IIU investigators that if a person were considered intoxicated or violent, a

patrol sergeant would attend to view the arrested person and authorize that he or she be locked up directly rather than transported to a district police station. Instead, that person would go to WPS headquarters for fingerprinting and photographs.

SO1 and SO2 attended inside AP's apartment to check for the presence of possible other injured persons, or persons requiring assistance, and to secure it. SO1 and SO2 were able to locate keys and identification for AP. The officers locked the suite and returned to AP who was still in the police vehicle.

AP initially told IIU investigators that when the officers exited his apartment building and returned to the police vehicle, SO1 said to him, in a profanity and racist-laced manner, that they had taken \$500 from him and said, "... *you're lucky I don't charge you for the weed you had up there.*" AP told IIU investigators that SO1 "got into his face," constantly swearing and repeatedly referencing AP with the "N-word." AP told IIU investigators that SO1 and SO2 called him the "N-word" some 20 to 25 times while he was seated in the police vehicle.

SO1 then punched AP in the chin and, as a result, he started bleeding. AP denied trying to head butt anyone but did admit to uttering the words, "*You're lucky I don't...head butt you.*" AP said that SO1 punched him in the chin a second time. AP later told IIU investigators that SO1 actually said "*I took your money (N-word), you're lucky I don't charge you for the weed,*" with no specific reference made to a dollar amount taken. AP told IIU investigators that, following his release from custody and return to his apartment, he noticed he was missing \$500 from his wallet.

CW4 is a neighbour of AP. She was home and awake the night of AP's arrest. She heard voices coming from AP's apartment. When she looked out her door, she saw two police officers exit from AP's apartment. She made her way outside and saw a number of police cars. She saw AP sitting in the back seat of one of the vehicles. She met up with AP a day or two later. AP told her he had a broken hand but she did not recall how he said it happened. AP also told her the police had taken his cell phone and when he returned home he found he was missing money and drugs. AP said he did not know who might have taken his stuff but assumed it was the police.

CW6 is the caretaker of this apartment block and lives with CW4. CW4 woke her up at approximately 11:45 p.m. and told her about the police in AP's apartment. CW6 made her way outside and saw a number of police cars in front of the apartment block. AP was in the back seat of one of those vehicles. CW6 never heard any police officer say anything to AP and did not hear AP say anything to any police officer. CW6 did not see any police officer ever touch or use force on AP.

In interviews IIU investigators conducted with witness officers and civilian witnesses at the scene (CW1 to CW6), not one witness heard any police officer use the "N-word" or reference AP in that manner. WO6 stated he recalled AP calling everyone the "N-word" repeatedly and that term stood out in his mind during his dealings with him. WO3 and WO4 also heard AP's continued use of the "N-word."

Furthermore, no witness told IIU investigators that they saw any WPS police officer punch or hit AP in the face while he sat in the police vehicle.

Moreover, no witness officer told IIU investigators that they entered AP's residence and took or seized any property. WO5 stated that he believed an unknown officer did enter the apartment building to secure identification for AP but he was not aware of anything else that was seized. WO4 believed that SO1 and SO2 entered the apartment building to get a key and identification and to ensure there were no other victims in the residence.

Police headquarters

At 12:36 a.m., SO1 and SO2 transport AP to the WPS headquarters for fingerprinting and photographs. WO3 and WO4 also attend WPS headquarters to assist. AP was escorted from the garage area to an elevator and then to the Central Processing Unit (CPU) area. WO3 and WO4 advised that AP was not cooperative, continued to be belligerent and, at one point, fell to the floor in the elevator, becoming dead weight for the officers to hold up. WO4 stated that when the elevator opened at CPU, AP was picked up by SO1 who carried him from the elevator into CPU.

AP told IIU investigators that SO1 and SO2 drove him around for at least "*from 20 to 30 minutes*" to "*...a half hour to 45 minutes*" until they arrived at the Winnipeg Remand Centre (WRC). According to AP, the police had been, "*driving all...wildly, just driving around, calling me (N-word) this, (N-word) that...*" AP believed he had been taken directly to WRC where he was fingerprinted.

The GPS data from SO1 and SO2's vehicle was plotted onto a map using the known coordinates. It was determined that the transport of AP, from the incident location to the WPS headquarters, took approximately four minutes. The GPS data indicated that the maximum speed of the police vehicle was 70 km/h.

Video from WPS headquarters showed SO1 and SO2 arriving there at 12:40 a.m. and WO3 and WO4 immediately following them into the WPS garage.

AP told IIU investigators that while he was in the fingerprinting area, he was talking with SO1 and other persons inside the room. AP said SO1 and "*another security guard*" picked him up and carried him 25 to 30 feet to the identification technician, without his feet touching the ground.

AP told IIU investigators the technician slammed his head down and elbowed him twice while down. AP said this caused him to bleed and left a mark on his forehead. AP stated his hand was then turned up and inward by SO1, causing two bones to break in the process. AP said his handcuffs were removed by SO1, who then slammed his hand down a couple of times onto the desk and he was fingerprinted. AP believed that only his left hand was fingerprinted and not his right. AP stated that he was then picked up by SO1 and thrown onto the ground in a cell where his handcuffs and shackles were removed. He said that he was stripped of his clothes and given a white vest to wear.

IIU investigators interviewed T1. She recalls that two WPS officers brought AP into the Forensic Identification Room (FIR) at CPU, where she and T2 were working. AP was wearing a spit sock

over his face and his hands were handcuffed. AP was uncooperative and refused to answer her questions. She photographed AP and T2 took his fingerprints while he was still in handcuffs. T1 noted on the booking information that AP was violent and was fingerprinted wearing handcuffs. T1 did not hear AP utter threats toward anyone but she did hear T2 say to him, “*Are you threatening me?*” She recalled AP swearing at the officers but did not hear any of the officers or T2 swear at him. She did not see anyone hit AP. T1 did not see AP’s head on the counter or table inside FIR. She did not see any injuries on AP nor recall him complaining of any injuries.

IIU investigators interviewed T2. T2 recalled that AP refused to walk from the elevator at the CPU and was carried in by two officers. He also recalled four police officers in FIR. T2 was uncertain if AP was wearing handcuffs while he fingerprinted him but stated that he usually fingerprints violent persons with handcuffs on. T2 did not recall AP being in distress or pain or suggesting he was being hurt. T2 stated there were no problems with obtaining AP’s fingerprints from both hands and that, once completed, two officers carried AP out.

T2 did not recall any police officers making any threatening comments to AP or using physical force on him while in the fingerprint room. T2 denied placing AP’s head down onto any table or flat surface within that room. T2 said AP was swearing while in the room and believed AP may have been under the influence of some kind of drugs as his behavior was not normal. T2 did not notice any physical injuries on AP.

WO3 was present in FIR, with WO4, where AP was taken on arrival at CPU. WO3 stated that AP was exhibiting erratic behavior but was somewhat compliant. He did not hear AP make any complaints of anyone hurting him during the fingerprint process or at any other time. WO3 stated he did not see anyone, including T2, take AP’s head and place it to a flat surface in the fingerprint room. He did recall AP making a threat toward T2. WO3 stated that T2 was just “*...trying to do his job.*”

WO4 told IIU investigators that upon arrival at WPS headquarters garage area, AP was escorted into the elevator, where he became dead weight, letting himself fall to the floor of the elevator. AP was uncooperative and non-compliant, as he would not stand on his own. SO1 had to carry AP into CPU, where he placed him on the floor. AP did not indicate he was injured in any way. WO4 said that FIR was well lit and he did not observe any injuries on AP nor did AP complain of any.

There are no video cameras in FIR.

Remand Centre

SO1 and SO2, with AP, departed WPS headquarters at 1:14 a.m. and arrived at WRC booking area at 1:22.a.m. The GPS data shows that SO1 and SO2’s vehicle arrived at WRC at 1:17 a.m.; this is the last GPS data showing their vehicle still moving. It appears the police vehicle waited until allowed entry to the unloading area of WRC.

AP’s arrival and booking procedure at WRC was captured on video. AP was escorted from the unloading area to the main booking area. He was placed into a small holding cell and was still

wearing a spit mask. He remained in the cell for approximately six and a half minutes, then was taken to the main booking counter. As AP walked towards a counter, a nurse, working in the area, identified herself. AP immediately uttered the words, “... *my hand...*” AP was asked several questions by the nurse. He indicated to her that he had a “*busted*” hand, he could not feel his left hand and could not stand on his feet. He also told her he had been drinking and smoking weed.

AP was handcuffed during the booking process. He was searched by a WPS officer, with correctional officers on either side of him. At one point, AP uttered, “... *this is unbelievable...110 pounds... I got 10 guys on me... unbelievable...I got...beat up in the back of the cruiser car...*”, and “...*stop grabbing my...left hand...please I'm gonna ask you nicely, you're doing that personally...*” Once the search by the WPS officer was completed, correctional officers searched AP. During this process, one of the correctional officers placed AP’s head onto the counter area while another placed her hand onto his head to hold it in place on the counter. When the second search was completed, AP was escorted away, saying, “...*ah ah ah ah, don't bend my wrist please...*”

Medical Reports

AP received medical treatment from two facilities: St. Boniface Hospital (SBH) and Health Science Center (HSC). Medical records and reports from each facility were received and reviewed by IIU investigators.

A summary of the records and reports are as follows:

AP was assessed at SBH on October 5, 2016 at 7:40 a.m. There was swelling and bruising to his left hand. AP said he had an altercation with police and his hand was injured. He also complained of numbness, tingling, dizziness and had issues walking. An x-ray disclosed an “oblique fracture to his left 4th metacarpal.” His hand was placed in a splint cast.

AP had surgery on his left hand on October 12, 2016 at HSC to repair and fix a 4th metacarpal fracture. Two screws were placed along the fracture to aid in the repair and stability of the fracture. The surgeon was CW7.

IIU investigators met with CW7 to obtain his opinion on the possible cause of the bone fracture in AP’s left hand. CW7 said AP suffered a fracture of the fourth metacarpal on his left hand ring finger, known as a “spiral oblique fracture” which means the bone was split into two equal parts. CW7 noted that many things could cause this type of fracture. For example, it could have been from something that twisted AP’s finger or twisted his hand or may have resulted from direct impact. When CW7 was advised that CW1 observed AP’s hand after he had hit the wall, causing it to swell and become tender to touch, he stated that if AP hit a wall then this type of action could have caused the injury. CW7 said, “*100 percent that this could happen*” by punching a wall.

CW7 was presented with AP’s version that his hand was twisted up and inward until he felt a pop or snap, to which the doctor responded that the twisting would have to be “pretty hard and intentional” in his opinion. He said that the ring finger would need to be twisted, in addition to

the twisting of the hand. CW7 stated that if a person punched a wall with a lot of force, that action would more likely cause this injury than the twisting of the hand. If only the hand was twisted, the pressure would not transfer to the bone that was broken, but would transfer more to the wrist area.

CW7 said that if AP's hand was broken before he dealt with police and was placed in handcuffs, any movement of his hand would have hurt. He did say that it is possible that the bone could have already been broken and that any movement of it afterward would make it pop back and forth.

CW7 recalled that at hospital, AP implied that police were overly aggressive and had caused the injury. He stated that AP never mentioned anything about hitting or punching a wall.

Issues, Assessment and Conclusions:

The relevant issues in this matter are whether, at any time, SO1 and/or SO2 committed any or all of the following *Criminal Code* (CC) offences:

- theft (section 322 CC) (monies from AP's apartment);
- assault (section 266 CC) (punching AP while seated in the police vehicle);
- assault causing bodily harm (section 267(b) CC) (twisting AP's hand until a bone broke);
- aggravated assault (section 268 CC) (twisting AP's hand until a bone broke).

A peace officer is authorized to use force in the lawful execution of his duties and as much as necessary for that intended purpose. Moreover, a peace officer is authorized to use force to defend or protect himself from the use or threat of force by another person, provided it is reasonable in all of the circumstances (section 25 CC).

Where it is determined that reasonable and probable grounds exist to believe a criminal offence has been committed, the IIU civilian director may charge SO1 and/or SO2 accordingly. The determination whether reasonable and probable grounds exists is based on a careful assessment of all the available evidence.

Dealing with the allegation of theft, I am not satisfied that reasonable and probable grounds exist to justify a *Criminal Code* charge of theft of monies. I am not satisfied there is sufficient evidence to conclude, even on the low standard of reasonable and probable grounds, that there were any monies, let alone \$500, in the possession of AP at the time of his arrest and missing by the time of his return to his apartment.

I arrive at the same conclusion as to the existence of reasonable and probable grounds to believe that AP was assaulted by SO1 and/or SO2 while seated in the rear of the police vehicle. There is a lack of credible and sufficient evidence in this regard to conclude otherwise.

Additionally, the existence of GPS data, video at WPS headquarters and video from WRC booking, compounded by AP'S intoxicated state, calls into significant question his recollections from that evening. Very little weight or consideration will be given to his evidence.

The final two matters (assault causing bodily harm and aggravated assault) are in reference to the broken bone in AP's left hand, for which he required surgical repair. There is no doubt that AP suffered this injury to his left hand. The issue, however, is whether he suffered this injury due to the application of excessive force by SO1 and/or SO2. The medical opinion of the surgeon who treated AP has significant weight in this regard, particularly in light of the recollections and statement of CW1 who stated categorically that AP punched a wall, prior to police interactions, causing pain and swelling to his hand. That scenario is entirely consistent with the opinion of the surgeon as to the cause of the broken bone. The manipulation of AP's hand when handcuffed and fingerprinted was within the lawful execution of the police officers' powers and the applicability of section 25 of the *Criminal Code*.

Therefore, on careful review of the available evidence and material facts obtained in this investigation, in consideration of the discrepancies in and recollections of AP, and in consideration of the medical opinion provided, I am not satisfied that the requisite reasonable and probable grounds exist to justify the laying of any *Criminal Code* or other offence against either SO1 or SO2.

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

Final report prepared by:
Zane Tessler, civilian director
Independent Investigation Unit
July 13, 2017

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