

# ***FINAL REPORT: IIU concludes investigation into alleged assault by police***

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On December 1, 2016, at 10:00 a.m., the Independent Investigation Unit (IIU) was notified by the Winnipeg Police Service (WPS) of an incident that occurred November 22 at approximately 2:00 p.m. in the area of McGregor Street and Magnus Avenue in Winnipeg. According to this notification, WPS officers had initiated a traffic stop. A male fled from the subject vehicle, resulting in a short foot chase. After a struggle, the male was eventually placed in handcuffs and transported to a police station, where he complained of dizziness and pain to his head. He was then taken to hospital where he was treated and released back into police custody. A portion of the struggle and arrest was captured on a third party's mobile cell phone. This 20 second video was provided by the third party to a local television outlet and posted online.

Although there were no serious injuries to the individual, the IIU civilian director determined it was in the public interest for the unit to investigate the use of force in this incident, in accordance with section 75(1) of *The Police Services Act* (PSA). The IIU civilian director designated two WPS officers as the subject officers (SO1 - 2). The injured male was identified as the affected person (AP). An additional 12 members of WPS were designated as witness officers, of which nine witness officers (WO1 - 9) were interviewed. The three others who were designated as witness officers were contacted by IIU investigators, but their interviews were unnecessary once their respective notes and narratives were reviewed. IIU investigators interviewed the third party who captured part of the event on his mobile cell phone. He was designated a civilian witness (CW). IIU investigators canvassed the neighbourhood surrounding the incident site but no further video or witnesses were located. IIU investigators also conducted interviews with two members of the Winnipeg Fire and Paramedic Service (WFPS) (PM1 - 2).

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, both SO1 and SO2 provided a copy of their respective notes, narratives and use of force reports to IIU investigators but declined to answer any questions at a formal interview.

IIU investigators also received and reviewed:

- A file package from WPS containing notes, narratives and reports
- WPS radio transmissions
- 20 second video of a portion of the incident
- Medical report concerning AP

The following facts have been determined:

On November 22, 2016 at approximately 2:09 p.m., SO1 and SO2, in an unmarked police cruiser car, initiated a traffic stop on a vehicle near the intersection of McGregor Street and Magnus Avenue, as a result of computer checks indicating that its insurance had lapsed. The subject vehicle fled in an attempt to evade police. The vehicle made a northbound turn onto McGregor Street from Magnus Avenue. As the vehicle slowed, AP exited the vehicle and ran. SO1 and SO2 then commenced to pursue AP on foot. AP was observed to drop an object, later identified as a can of bear mace, and hid underneath a car at the rear of a residence on McGregor Street. SO1 and SO2 located AP and advised him he was under arrest for possession of a prohibited weapon. They proceeded to extricate him from beneath the car. AP began to struggle and fight with SO1 and SO2. The officers were able to gain control of AP, who was placed in handcuffs and escorted into the rear of the cruiser car. However, before the cruiser car door was closed, AP pushed out and again fled on foot. He was again apprehended and again fought with police, kicking at both officers about the legs and lower body. Upon conducting a search of AP, the officers found a quantity of jewelry in his pocket. The jewelry was later found to have been stolen during a break-in at a Transcona residence earlier that day. AP was transported to 260 Hartford Avenue, District 3 station, where he complained of dizziness and pain to his head. He was transported to Seven Oaks General Hospital where he was treated and released.

### **Interviews:**

#### **AP**

AP stated that he had been a passenger in a car with two others when a police car tried to pull them over. The driver of the car did not have a license and there was an outstanding warrant for AP's arrest, so they were trying to get away from police. He jumped out at a corner and ran into a parking lot while the car continued down the street. AP said he hid under a parked car but the officers found him. One officer pointed his handgun or taser at him and ordered him not to move. AP said he was dragged out from under the car and the two officers kned him in the back of the head and punched him while they kept telling him to put his hands behind his back. He said that he tried to put his hands behind his back, but they continued to hit him so he covered his head with his hands and arms. The officers eventually put the handcuffs on him, behind his back, then picked him up and threw him in the back of the police vehicle.

AP stated he noticed the rear door had been left open while one officer was in the front seat using the computer and the other officer was standing in front of the police vehicle. AP decided to make a break, got out of the vehicle and ran south on McGregor Street. Both officers pursued and caught up to him, pushed him from behind and he fell forward onto his face with his hands still handcuffed behind his back. The officers then kicked and punched him some more. AP said he ran from the vehicle because he had outstanding warrants. He further stated that while handcuffed, the two officers assaulted him by punching him in the head and face, and kneeling him in the neck. He said the officers threatened to shoot him.

AP said the officers again put him into a police vehicle and drove him to the station on Hartford Street where they paraded him before a superintendent, who told the arresting officers to take AP to a room and to “go ahead, do what you want to do.”

AP stated that once he was placed in the interrogation room, the two arresting officers punched him and gave him “soccer kicks” to the face. AP then states he was assaulted in the holding room by four to five unknown officers with "soccer kicks" to the head.

This continued for about two minutes while they asked him for the name of the driver. After some time had passed, a different pair of officers checked on AP and called for an ambulance to come to the station. Two paramedics arrived and checked him over; AP felt dizzy and wanted to pass out, so the paramedics took him away on a stretcher.

AP stated he was taken by ambulance to the hospital where he was treated for approximately eight hours. The two new officers stayed with him and, when he was released from hospital, took him to the Transcona police station where they turned him over to detectives. The detectives treated him well but questioned him further.

### **Civilian Witness and Video Review**

CW was a passenger in a vehicle stopped at a red light on Burrows Avenue at McGregor Street and observed a portion of the arrest. CW stated his attention was drawn to a police officer across the street, but he could see only the officer’s upper body because of a car obstructing his view. He noticed the officer seemed to be raising and lowering one leg, as if he was stomping on something. CW described the officer as “man-handling” the male, who was limp and wearing handcuffs. After two or three minutes of watching, and when he saw the officer lift an arm and appear to punch downward, CW decided to record the incident with his mobile cell phone camera.

The 20 second video depicts one officer kneeling over a prone person, cocking an arm back in a striking motion, then picking up a handcuffed male and dragging or pushing him toward an unmarked police vehicle. A marked police vehicle is seen arriving from the north. Two uniformed officers then exit and walk toward the unmarked police vehicle.

### **WFPS Paramedics**

PM1 stated that he and PM2 were called to District 3 station to treat a prisoner. He recalled seeing AP hunched over in a cell at the police station. The police told PM1 and his partner that AP had escaped custody twice and they restrained him both times. PM1 did not know these officers and could not remember their names. One of the officers said that AP was running away in handcuffs and the officer caught up and pushed AP. AP fell to the ground face first. The officers also said they had done "knee strikes" but PM1 does not know where such strikes were made upon AP nor the reason for the knee strikes. AP had some bumps, bruises and swelling on his face and complained of general aches and pains everywhere. AP told PM1 that "the police did this to me." PM1 and PM2 transported AP to Seven Oaks General Hospital. According to PM1, AP was stable and did not need to go to the trauma centre.

PM2 stated that he and his partner, PM1, had been dispatched to the District 3 police station. A police officer, who PM2 believes was one of the arresting officers, led them to a back holding cell. AP was seated in the holding cell, handcuffed, wearing a white jumpsuit. AP complained of general pain all over his body and back of his head. He answered yes-or-no questions, but he wasn't very forthcoming with information. AP said he drank alcohol and smoked "meth" the night before. His vital signs were fairly normal and he was alert and aware. Police told them, in the presence of AP, that he ran from a traffic stop and, when they caught up to him, AP was ready to fight. Police said they got into a physical confrontation and handcuffed him but he got free and carried on fighting. Police said they had to do knee strikes on AP to keep him from running away again. PM2 did not notice any bruises or marks on AP nor any swelling.

### **Witness Officers**

WO1 - He arrived on scene after AP had been arrested and recaptured following his brief escape. WO1 stated that AP was handcuffed in the back, and since the unmarked car was not equipped with a prisoner shield, WO1 suggested that AP be transported in his car (which was so equipped). WO1 stated that AP had some scrapes on his face, which WO1 described as "road rash" but the scrapes were not bleeding. AP did not say anything except curse words during the five-minute drive to the District 3 station. AP did not complain of injury nor did he appear to be suffering from any injury other than the scrapes on his face. WO1 departed the station while AP was being paraded before WO9.

WO2 – He and WO3 were partners and responded to assist the subject officers. They are seen in the video arriving in a marked car as SO1 arrives at his vehicle with AP. WO2 stated that he did not observe any use of force by the subject officers and did not notice any injuries on AP. WO2 did not speak to AP and did not hear either subject officer mention anything about use of force. WO2 and WO3 left moments later to look for the subject vehicle, which had still not been located.

WO3 – He and WO2 responded to assist the subject officers. He saw SO1 escorting a male from the back lane, but did not pay attention to them. WO3 spoke to SO2 about the outstanding stolen vehicle, and a few seconds later he departed. He stated that he did not see the male (AP) placed into the police vehicle, did not notice any injury on the male, did not see any use of force and did not speak to or hear the male speak.

WO4 – He and WO5 were working together, heard radio calls about a stolen vehicle and heard SO1 and SO2 call in a foot pursuit. As WO4 arrived on scene, SO1 and SO2 were walking a male north on the east sidewalk of McGregor Street, toward their police vehicle. The male was handcuffed behind his back. Both officers seemed out of breath. WO4 stated that WO1 arrived in his own marked police vehicle and the male was placed in that vehicle because it had a plexi-glass prisoner shield. WO4 did not speak to AP but did hold his arm as SO1 and SO2 caught their breath. WO4 noticed that AP was out of breath as well but did not recall seeing any injuries on his face. He recalled that AP was yelling and screaming. He did not notice AP limping, detected no odor of liquor on his breath and there was no mention of drug ingestion. WO4 and WO5 left the scene to look for the stolen vehicle.

WO5 – He was working with WO4. WO5 did notice an abrasion on AP’s face. He described the abrasion as “road rash” or a “rug burn.” It was not bleeding, according to WO5.

WO6 – He was working with WO7. They attended the scene at McGregor Street and Magnus Avenue. AP had already been re-arrested by the time they arrived. WO6 and WO7 stopped in the alley and did not get out of their vehicle. SO2 walked over and spoke to them through their open window. SO2 told them that “...things were under control” but that the stolen vehicle had not been located. WO6 and WO7 drove away to look for the stolen vehicle.

WO7 – He was partnered with WO6. WO7 recalled that they had been assigned to the call to assist in searching for the stolen vehicle. They heard SO1 and SO2 on the radio reporting their prisoner “bolting from the police car,” and they stopped and parked in the back alley. They did not exit their police car, but spoke to SO2 through their open car window. SO2 told them the prisoner had been apprehended and was in custody again. SO2 advised them to continue the search for the stolen vehicle. WO7 stated that he did not see AP at the scene,

WO8 – He was working an evening shift at District 3 on November 22 and was in a station briefing when SO2 entered and requested a volunteer to escort a prisoner to Seven Oaks General Hospital. WO8 volunteered and went to the holding cell, where he saw WFPS personnel placing AP on a stretcher. SO1 and SO2 advised WO8 that AP was an “escape risk” and that he would be detained in custody when released from medical treatment. WO8 rode in the back of the ambulance while his partner followed in a police vehicle. WO8 had limited conversation with AP relating to his escape attempt. AP did not say anything to WO8 about how he had been injured. After AP was released from hospital, WO8 drove AP to District 4 station in Transcona and turned him over to detectives.

WO9 – WO9 was the District 3 desk sergeant on November 22. AP was “paraded” before him by the arresting officers. WO9 asked AP the same four questions he asks every prisoner:

- “Do you know why you are here today?”
- "Are you currently suicidal?"
- "Do you need to see a doctor or medical professional for any reason?"
- "Have you been taking any street drugs or alcohol?"

WO9 recalled that AP was belligerent and swore at him throughout this procedure. AP did answer the four questions and stated that he did not require medical assistance. SO1 and SO2 escorted AP to the holding cell. About 20 – 30 minutes later, SO2 requested WO9 to have AP taken to hospital for medical treatment. WO9 authorized this request but did not ask the reason. WO9 had not noticed any injuries on AP when he was first brought in and paraded. WO9 stated that the holding cell area is 30-40 feet from his desk. There is no video inside this station. He did not hear any noises from the cell area while AP was there.

**Subject Officers:**

**SO1**

SO1, in his “Use of Force” report, recorded that he observed AP throw a large black bottle of bear mace to the ground while fleeing from him. SO1 observed AP hiding under a parked vehicle with his hands tucked beneath him. SO1 drew his service pistol to the “low ready” position, ordered AP to show his hands and told him he was under arrest. AP did show his hands but appeared to get ready to flee again. SO1 holstered his service pistol. His report continued: “AP began kicking and punching at the officers’ lower bodies.” SO2 received a kick to the shin and AP punched SO1 “more than once in the legs and body.” SO1 delivered more than one knee strike to AP’s upper leg to gain compliance. AP was restrained and his hands were handcuffed behind his back while SO2 went to retrieve the bear mace.

SO1 further noted in his report:

“Once SO2 removed himself from AP’s back, AP saw an opportunity to get away and began to grab and claw at SO1’s inner thigh causing sharp pain. AP continued grabbing at SO1’s groin and duty belt. SO1’s verbal directions were ineffective and he resorted to delivering at least two elbow strikes to the scapula of AP. The strikes were effective and resulted in AP’s grip loosening to the point of SO1 being able to get up while holding AP’s shoulder and dragging him to the cruiser car.”

SO1 then described AP going limp and SO1 supporting his entire weight. AP then began “...resisting officers again by pushing off the car and throwing his weight around along with swearing and yelling. SO2 administered two knee strikes to AP’s right thigh which allowed the officers to gain control.”

SO1 noted that AP was placed in the back seat of the police vehicle. SO2 sat in the front while he bent over to pick up the bear mace which had been dropped by SO2. AP then got out of the back seat and ran south on McGregor street. SO1 caught up to AP and attempted to grab him by the back of the shirt, however AP tumbled over and landed face first. Both officers then walked AP back to the vehicle and placed him into the back seat of WO1’s police vehicle for transport to District 3.

At District 3 police station, SO1 and SO2 escorted AP to holding room number 4. However, AP “threw his body weight at SO1 and SO2.” SO2 delivered two knee strikes to the large muscle groups of AP’s thigh. Officers called paramedics as AP was complaining of being light headed and dizzy and also advised he was high on “methamphetamine.”

**SO2**

SO2, in his narrative report, recorded that AP was found hiding beneath a parked car. SO2 was on the east side of the car while SO1 commanded AP to come out, saying: “You’re under arrest.” As they tried to pull AP out, SO2 received a kick in the left shin. SO2 observed AP punch SO1 in the left leg. They managed to drag AP out from under the car and applied handcuffs. AP was

“dragged” to their police vehicle but “wouldn’t stand up and slumped to the ground.” SO2 pulled AP up off the ground but he “...resisted again with his weight.” SO2 pinned AP against the vehicle and applied two knee strikes to his right thigh. AP, still resisting, was placed in the back seat of the police vehicle. SO2 moved to the front seat and SO1 was near the rear door. AP exited the vehicle through the rear door and ran southbound down the street with his hands still handcuffed behind him. Both officers pursued on foot with SO1 grabbing AP by the back of his jacket and causing him to fall face first to the ground. AP was brought back to the police vehicle. WO1 arrived in a marked vehicle equipped with a prisoner shield, and AP was placed into that car to be transported to District 3 station.

SO1 and SO2 followed WO1 to District 3 station and retook custody of AP from WO1’s vehicle upon arrival. AP was “paraded” before the duty sergeant, WO9, and then brought to room 4.

SO2 further noted in his narrative:

“AP, while still in handcuffs, flailed his body weight against us. I applied two knee strikes to his right large muscle mass on his thigh, prompting him to become compliant.”

While completing the prisoner log sheet, SO2 observed that AP was noticeably calmed down, and that he appeared to labor with consciousness and appeared “dopey.” AP said that he felt dizzy and light headed. SO2 then requested that Winnipeg Ambulance Service attend to check AP medically. AP was transported to Seven Oaks General Hospital by ambulance, escorted by WO8.

### **Medical Records:**

AP’s medical records show that he was brought to Seven Oaks Emergency at 3:52 p.m. and discharged the same day at 11:00 p.m. His “Level of Consciousness” (LOC) at first seemed “obtunded” (mentally clouded or dulled) and his speech was “a bit mumbled.” AP denied significant headache or neuro symptoms and stated “I’m just lazy.” He admitted to drinking alcohol and smoking “meth.” Visual examination showed soft tissue abrasions and contusions to his face, the right side more than the left. A mark was seen at the base of his neck. There was no bruising or open wounds on his chest, no sign of trauma to his back. His left thigh was tender to palpitation but had no gross open wounds or obvious deformities.

AP was sent for a CT scan of his face which found no fractures, just soft tissue swelling and some “maxillary sinusitis” (inflammation of the sinus region) and some blood. When AP was discharged his LOC had improved and he was walking without difficulty. He was told to request further medical care if he experienced increasing symptoms.

**Issue and Review:**

The relevant issue in this matter is whether, at any time, SO1 and SO2 subjected AP to unnecessary and excessive force in the course of apprehending and arresting him.

Section 25 (1) of the Criminal Code of Canada provides that:

*Everyone who is required or authorized by law to do anything in the administration or enforcement of the law*

- (a) as a private person,*
- (b) as a peace officer or public officer,*
- (c) in aid of a peace officer or public officer, or*
- (d) by virtue of his office,*

*is, if he acts on reasonable grounds, justified in doing what he is required or authorized to do and in using as much force as is necessary for that purpose.*

Any force that is in excess of that which is necessary in the circumstances is not justified and 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*

The completed IIU investigation file was sent to Manitoba Prosecution Services requesting a review and advice on this matter and the identified issue.

Following a thorough review of this file, Manitoba Prosecution Services provided advice to the Independent Investigation Unit that there would be no reasonable likelihood of a conviction. Accordingly, and based on this advice, neither SO1 nor SO2 will face any criminal code charges arising from this matter.

Accordingly, this investigation is complete and the IIU will close its file.

**Final report prepared by:**

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