

FINAL REPORT: IIU concludes investigation into death while in WPS custody

On February 13, 2017, at 2:36 a.m., Winnipeg Police Service (WPS) notified the Independent Investigation Unit (IIU) about an incident that occurred the previous evening at approximately 10:35 p.m. According to this notification, members of WPS responded to a call from a male, who indicated that his 20-year-old son was intoxicated and he wanted him removed from the residence. WPS officers attended the residence and made contact with the son (later identified as the affected person – AP). As time went on, AP began acting strangely and became uncooperative. AP challenged WPS officers to fight. A struggle with AP ensued, requiring the use of pepper spray by WPS officers. Winnipeg Fire and Paramedic Service (WFPS) personnel were contacted, attended and transported AP to Seven Oaks General Hospital (SOGH). AP was pronounced deceased at 1:00 a.m. on February 13.

As this matter involved a fatality, IIU assumed responsibility for the investigation in accordance with subsection 65 (1) of *The Police Services Act (PSA)*. A team of IIU investigators was deployed.

The IIU civilian director designated nine WPS officers as witness officers (WO1 through WO9). No subject officer was designated at the outset of the investigation, as the facts and circumstances that were unfolding were not sufficient to permit a reasoned decision on which, if any, WPS officer may have met the requirements to be designated a subject officer. IIU investigators also interviewed one civilian witness (CW) and five members of WFPS.

IIU investigators also received and reviewed:

- file package from WPS including witness officers' notes, reports, scene photographs and call histories
- physical evidence and seizures from the scene and AP
- audio CD of WPS radio transmissions
- audio CD of 911 emergency calls
- taser download data
- WPS policy on excited delirium
- WFPS narrative and medical reports
- SOGH medical reports
- toxicology report respecting AP
- autopsy report respecting AP

The following facts and circumstances were determined:

On February 12, 2017 at 10:35 p.m., WPS officers responded to a call from CW. CW indicated his 20-year-old son (AP) was intoxicated. CW wanted AP removed from his residence as AP was keeping him awake.

WO1 and WO2 attended the residence and met with CW. After a short conversation, the officers went to the basement to speak to AP. They found AP in bed in a basement bedroom. WO1 stated that AP was unable to communicate with the WPS officers; AP's speech was slurred and incomprehensible. Though WO1 was not close enough to AP to detect the smell of liquor, his behavior, coupled with glazed eyes and slurred speech, led him to believe AP was impaired by alcohol and possibly by drugs. It was decided that AP would be left in the bedroom and WO1 closed the door with AP still in bed.

WO1 and WO2 returned upstairs as they decided that no purpose would be served speaking further to AP in his current state. They told CW that nothing more could be done with AP at that time and it might be best for AP to "sleep it off."

Prior to leaving the residence, the officers heard sounds of AP walking around the basement. WO1 and WO2 returned to the basement to again speak with AP and attempt to get him to return to bed. AP was located in the laundry room, standing in front of a washer and dryer, wearing only a shirt and babbling incoherently. AP's eyes were glazed over and, according to WO1, he "appeared to be looking through members." AP did not reply when asked what he was doing. AP lowered himself to the basement floor and was on all fours. In WO2's opinion, AP was acting very strange and childlike. WO2 went back upstairs and advised CW that additional officers would be called to attend and assist in dealing with AP. AP was approximately 6'4" tall and weighed approximately 260 lbs.

When WO2 returned to the basement, AP was sitting on the dryer with a blanket over his legs. At one point, AP pointed to the main floor of the house yelling, "That bastard is upstairs." AP was becoming agitated, which prompted WO2 to radio to dispatch that assistance was needed. AP started to glare at WO2 and his eyes appeared larger than normal. AP then pointed at WO2, gesturing for him to come towards him. AP got off the dryer and walked towards WO2, who was standing on the right side of a doorway to the laundry room, with WO1 to his left. When AP was approximately an arm's length away, WO2 extended his arm to prevent AP from leaving the laundry room. AP stepped back and charged at the WPS officers. At this point, both WO1 and WO2 believed they were dealing with a person in "Excited delirium."

"Excited delirium" is a state of medical emergency often caused or associated with drug abuse, intoxication, psychiatric illness or a combination of these factors. Persons in this state may be less responsive to use of force control and may demonstrate a diminished reaction to pain. Persons in a state of excited delirium are also at risk of sudden death at any moment. Persons in this state may struggle violently when restrained. Persons in this state may suffer a cardiac arrest at any time during or after a struggle. Excited delirium is associated with symptoms of aggression, bizarre behaviors, paranoia, violence, fever, shouting, and uncanny levels of physical

strength. Those who exhibit excited delirium are considered violent, intoxicated, and require police restraint.

WO1 and WO2 took AP down to the floor. WO2 commanded AP, "Give me your hands." AP refused and pulled his hands inward. WO1 and WO2 continued to try and get AP's hands and put them behind his back. WO1 was able to get one handcuff on AP. The struggle continued as AP flung the WPS officers around like "rag dolls," according to WO1. WO2 applied two knee strikes to AP's left side, near the rib cage. WO2 yelled, "Let me see your hands - give them to me." Due to his close proximity to AP, WO2 could not use his Taser. WO2 discharged pepper spray into AP's face. AP put his hands towards his face and WO1 was able to secure the second handcuff.

A short time later, six WPS officers arrived and attempted to take AP upstairs and then to a cruiser car. AP would not cooperate or walk on his own. A decision was made to contact WFPS and request a mega mover transport tarp¹. AP was held down on the basement floor near the stairs leading to the main floor. Due to AP's combative behavior, together with spitting and kicking, a spit sock was placed over his head and two straps were placed around his legs to restrict his motion.

When WFPS personnel arrived, they assessed AP. According to WO1, AP had vomited and continued to display great strength while officers held him down. AP did not seem to tire.

It was decided by WFPS that AP would be sedated prior to transporting him up the stairs. AP was injected twice with a sedative to reduce the excited delirium. Following the second injection, AP settled down.

The five Fire and Paramedic personnel who arrived on scene were interviewed by IIU investigators. All advised that AP was restrained with handcuffs and straps around his legs. He was wearing a spit sock when they arrived in the basement. They all stated the police officers were holding AP down and they did not observe any WPS officers strike AP in their presence. AP continued to struggle until he was administered a second sedative. When AP was sedated, his vitals were taken and he was carried upstairs on a Mega Mover. Once outside the residence, when his vitals were again taken, it was determined AP was in cardiac arrest. CPR was commenced and AP was transported to Seven Oaks Hospital where he was subsequently pronounced deceased.

Toxicology Report

AP's blood was found to contain 259 milligrams of ethyl alcohol in 100 millilitres of specimen blood (259 mg %). The urine was found to contain 335 milligrams of ethyl alcohol in 100 millilitres of specimen urine (335 mg %). The vitreous fluid was found to contain 286 milligrams

¹ A specially constructed tarp with which AP could be fully restrained and carried upstairs. It has six handles attached to facilitate the carrying. This method was employed to significantly minimize the aggressive and uncooperative behaviour

of ethyl alcohol in 100 millilitres of specimen fluid (286 mg %). Both the blood and urine samples were found to be negative for drugs.

Post Mortem/Autopsy Results

The report revealed the immediate cause of AP's death to be atherosclerotic cardiovascular disease (plaque buildup inside arteries) referencing that three of AP's heart arteries were almost completely blocked. There was heart disease present. Other significant conditions contributing to the death were noted to be chronic alcoholism, cardiomegaly (an enlarged heart) and physiological stress due to a struggle with law enforcement personnel.

Issues, Assessment and Conclusions

Does the investigation disclose any causal link between the actions of the subject officers and the affected person's death? If so, was the force used by the WPS officers reasonable or excessive under the circumstances?

Reasonableness of an officer's use of force must be assessed in regards to the circumstances as they existed at the time the force was used, particularly when considered in light of the dangerous and demanding work and the expectation the officer will react quickly to emergencies.

Sections 25 (1), (3), (4) and Section 34 of the Criminal Code of Canada are relevant to this analysis:

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.

(3) Subject to subsections (4) and (5), a person is not justified for the purposes of subsection (1) in using force that is intended or is likely to cause death or grievous bodily harm unless the person believes on reasonable grounds that it is necessary for the self-preservation of the person or the preservation of any one under that person's protection from death or grievous bodily harm.

(4) A peace officer, and every person lawfully assisting the peace officer, is justified in using force that is intended or is likely to cause death or grievous bodily harm to a person to be arrested, if

- (a) *the peace officer is proceeding lawfully to arrest, with or without warrant, the person to be arrested;*
- (b) *the offence for which the person is to be arrested is one for which that person may be arrested without warrant;*
- (c) *the person to be arrested takes flight to avoid arrest;*
- (d) *the peace officer or other person using the force believes on reasonable grounds that the force is necessary for the purpose of protecting the peace officer, the person lawfully assisting the peace officer or any other person from imminent or future death or grievous bodily harm; and*
- (e) *the flight cannot be prevented by reasonable means in a less violent manner.*

In addition, police officers are entitled to rely on the self-defence provisions of the Criminal Code of Canada under section 34:

34 (1) A person is not guilty of an offence if:

- (a) *they believe on reasonable grounds that force is being used against them or another person or that a threat of force is being made against them or another person;*
- (b) *the act that constitutes the offence is committed for the purpose of defending or protecting themselves or the other person from that use or threat of force; and*
- (c) *the act committed is reasonable in the circumstances.*

(2) In determining whether the act committed is reasonable in the circumstances, the court shall consider the relevant circumstances of the person, the other parties and the act, including, but not limited to, the following factors:

- (a) *the nature of the force or threat;*
- (b) *the extent to which the use of force was imminent and whether there were other means available to respond to the potential use of force;*
- (c) *the person's role in the incident;*
- (d) *whether any party to the incident used or threatened to use a weapon;*
- (e) *the size, age, gender and physical capabilities of the parties to the incident;*
- (f) *the nature, duration and history of any relationship between the parties to the incident, including any prior use or threat of force and the nature of that force or threat;*
- (f.1) *any history of interaction or communication between the parties to the incident;*
- (g) *the nature and proportionality of the person's response to the use or threat of force; and*
- (h) *whether the act committed was in response to a use or threat of force that the person knew was lawful.*

Following a detailed review of the investigative file materials, I am satisfied that the WPS officers were lawfully placed and in lawful execution of their duties when they dealt with AP. I am satisfied that AP's physical signs, aggressive nature and bizarre behaviour, coupled with the extremely high levels of alcohol in his system, supports the conclusion that he was in excited delirium at the time he was combative with WPS officers. I am satisfied there is no evidence that any WPS officer used force on AP that would be found to be excessive and unnecessary in these circumstances. The primary cause of death was significant plaque buildup inside AP's arteries. As well, AP's pre-existing heart condition, poor health, chronic alcoholism and stress from struggle contributed to his death.

In this investigation, the IIU mandate was to determine whether consequences should flow from the actions of any, some or all of the WPS officers, in consideration of all the circumstances and information known to them at the time. Therefore, following a thorough review of these facts and circumstances, and giving due consideration to the law and the provisions of subsections 25 and 34 of the Criminal Code, in my view there is no evidence that the WPS officers were responsible for AP's death due to what they did or failed to do. There does not exist any reasonable and probable grounds to support the laying of any Criminal Code charges against any WPS officer.

The chief medical examiner for Manitoba has called for an inquest with respect to this 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:

Zane Tessler, civilian director
Independent Investigation Unit
March 22, 2018

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