

FINAL REPORT: IIU concludes investigation into allegation of assault by WPS officer

On June 15, 2017 at 3:30 p.m., Winnipeg Police Service (WPS) notified the Independent Investigation Unit (IIU) about an incident that occurred on May 17. According to this notification, the affected person (AP) alleged that a member of the WPS assaulted him while in an interview room at the downtown police headquarters (HQ). AP stated that following his interview into a criminal allegation against him, he was processed by the WPS identification unit and returned to a holding room pending his release. AP alleged a male officer entered the room, immediately kned him directly on the nose and followed with two punches to his right eye. AP was left in the room for 15 minutes, then escorted through the HQ basement to a door leading out to the street. AP was picked up by friends and driven to St. Boniface Hospital. He said he was seen by a doctor who advised that his nose was broken and he would should make an appointment to have it re-broken and set at a later date. On May 19, AP contacted the WPS Professional Standards Unit (PSU) to report the incident and injury.

AP did not suffer a serious injury as defined in *The Police Services Act (PSA)* regulation 99/2015. However, this notification concerned a complaint that a police officer had engaged in conduct that may contravene the Criminal Code (Canada) or other federal or provincial law. IIU assumed jurisdiction over this investigation as the civilian director determined it to be in the public interest for an independent investigation to commence and to determine whether a member of WPS subjected AP to unnecessary and excessive force. A team of IIU investigators was assigned to this matter.

The IIU civilian director designated one WPS officer as the subject officer (SO) and two WPS officers as witness officers (WO1 and WO2). AP cooperated with IIU investigators and participated in an interview. IIU investigators also interviewed a civilian witness (CW1) who picked up AP after his release from police HQ. Two other potential civilian witnesses, who also picked up AP, were never located. One civilian witness who moved to Alberta, was spoken to on a number of occasions and notwithstanding promises to attend IIU for an interview, has never contacted investigators. The other known only by a first name, was visiting Winnipeg from Calgary and had advised other witnesses that he did not wish to be involved in this matter.

IIU investigators also received and reviewed:

- complete file package from WPS Professional Standards Unit, including witness officers' notes, reports and an interview with AP;
- video from WPS headquarters (including lobby waiting area, interview room, hallways and basement) together with exterior street views near HQ (SW corner of

- Smith Street and St. Mary Avenue, NW corner of Smith Street and Graham Avenue, northbound and southbound Smith Street along HQ);
- security video from Winnipeg Millennium Library;
- medical report from St. Boniface Hospital and Seven Oaks General Hospital respecting 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, SO agreed to provide his own notes and reports to IIU investigators and agreed to participate in an interview.

Interviews:

AP

On June 15, AP was interviewed by members of PSU. During this interview, AP advised that he arrived at HQ and met with an officer, later identified as WO1, and her male partner. AP was handcuffed and escorted to a room where he was asked questions by WO1. AP stated WO1 was in an angry mood. AP stated that he told WO1 that he would not say anything and wanted to speak with his lawyer. AP stated that WO1 told him several times “not to play games.” AP said he was given a “Promise to Appear,” was taken for fingerprinting and photographs and then returned to the room. AP said he was sitting on a chair with his head down when WO1’s male partner entered the room and “kicked” AP with “a knee to his nose”. AP said he was also punched twice with fists. All of these blows were very forceful. AP stated that this occurred just before he was released from HQ. AP stated that WO1 was present and witnessed the assault.

AP further advised members of the PSU that the officers told him to get up and “walk straight or it would happen again” and called him a “brown person.” He was taken to an elevator and was given his belongings. The male officer told AP that “if you play games, I will hit you very badly.” AP stated that after exiting the elevator, the male officer held his arm and pushed him. AP was then walked to a backdoor and pushed out of the building into a parking lot. AP said he had swelling to his face and pain. AP said he was picked up by his cousin and driven to St. Boniface Hospital. AP said an x-ray was taken and a doctor told him his nose was broken. AP said he was prescribed medication. AP said that, once home, he was still in pain and so attended Seven Oaks Hospital. At the end of the PSU interview, AP was shown two photo packs. He was able to identify WO1 but was not able to identify the male officer.

On July 13, AP, accompanied by an interpreter from the Language Bank, attended the IIU offices, met with investigators and provided a statement. AP stated that on May 17, he was asked by WO1 to attend HQ to discuss a matter. He arrived and WO1 met him in the lobby with a male partner. He was arrested, handcuffed and taken to an interview room. While in the interview room he spoke to WO1, who he described as “very angry.” AP said he requested an interpreter from police and WO1 told him “not to play games.” He spoke to a lawyer and after that a sergeant came into the room. The sergeant gave AP a Promise to Appear. AP said he was taken out of the room to be fingerprinted and photographed. AP stated that he was returned to the same room, where he then sat for about 15 minutes. When the door opened, he was sitting on a chair with his head slumped over at his waist, and toward the ground. Someone entered but he

did not look up. That person then hit him on his nose very hard, but he was uncertain if he was hit with a knee or a toe. AP told IIU investigators the person who entered the room was the same man who was with WO1, and this officer then punched him twice near his eye. AP said he was in total shock and his nose was still “bent” from the punches. The man grabbed his arm and said “walk straight” or be hit again. He was walked to an elevator and got off at the parking level. When the elevator opened, the male grabbed AP’s arm and led him to a door. AP said he was told to leave and that if the officers saw him again they would beat him again. AP said he was then pushed out the door to the street and the police closed the door behind him.

After leaving, he walked to a mall where a lady gave him money to call his cousin. His cousin picked him up and wanted to know what had happened. The cousin told AP that the police cannot beat him, and the decision was made to take him to see a doctor. He was taken to St. Boniface Hospital, had an x-ray and was told by the doctor that his nose could be fixed after the pain stopped.

CW1

CW1 is the cousin of AP. CW1 told the IIU that AP called him from a payphone around 9:45 p.m. and he picked up AP on the street near the HQ. He observed tears in AP's eyes, bruising under both eyes and a swollen nose. AP told him the police beat him up, that he was grabbed and punched three or four times, and was kicked or kneed in the face. CW1 drove AP to St. Boniface Hospital to see a doctor. CW1 did not see any blood on AP’s shirt but noted there was some dried blood on his nose. He observed the area under both of AP’s eyes were black. AP told him only the male officer hit him.

WO1

On September 27, WO1 attended to IIU and was interviewed. WO1 advised that AP arrived at HQ at 8:01 p.m. on May 17. He was taken to an interview room in the station duty area, out of public view, and advised of his arrest. WO1 told AP that he was being placed under arrest for a criminal offence, that he would be searched by SO and then would be placed in handcuffs and taken upstairs. WO1 attempted to interview AP. He did not appear to understand English, which was frustrating as she had spoken with AP earlier that day by telephone and had no issues communicating with him at that time. WO1 felt AP was “playing games.” She left the interview room and went to her office, where she phoned the number AP had provided for his lawyer. AP was allowed to speak with his counsel in private. WO1 was convinced that AP was not going to provide a statement. AP was left alone in the interview room while they completed the report. Officers are able to watch the live feed from their office. Once the paperwork was completed, WO2 served the documents on AP in the interview room and he was released. WO1 and SO removed AP from the room and took him through Central Processing Unit (CPU) to an elevator and then out the door at the St. Mary exit of HQ.

WO1 stated that when the release documents were served on AP, the video recording of the interview room was off. WO1 advised that when the interview is being recorded, CPU members cannot view the room but as soon as it is off they can see it. WO1 confirmed no WPS officers other than herself, SO and WO2 entered the interview room with AP. She was present when the

release documents were signed. She stated no member of the WPS struck AP. She did not notice any fresh injuries on AP during or after his arrest. AP did not complain about his treatment while in custody. WO1 said AP did not antagonize officers to use force and that if she had noticed any injuries to AP's face this would have been listed on the prisoner log.

WO2

On August 2, WO2, a WPS unit supervisor, attended IIU offices for a witness officer interview. According to WO2, on May 17 AP had turned himself in or voluntarily met with investigators concerning a criminal allegation. WO1 and SO were dealing with AP who was met and greeted in the HQ lobby. AP was brought upstairs to CPU and taken to an interview room with continuous video recording. AP was interviewed, following which WO2 was consulted. WO2 found AP suitable for release and served him with the release documents in the interview room.

WO2 did monitor the interview for a while but it was already in progress when he first began watching. SO was the monitor and he did not mention any issues to WO2.

When WO2 served AP with his release documents, AP said his lawyer told him not to sign anything. WO2 advised AP that he had to sign to be released, so AP then signed the documents. WO2 finished dealing with AP at 11:05 p.m. The video recording of the room was turned off following the completion of AP's interview and prior to the release documents being served.

WO2 was asked why the video was off during the release procedure. WO2 stated it is standard practice--that quite often video is turned off after an interview and prior to documents being served. He also said that when the video is off it cannot be live monitored. WO2 could not comment on whether AP was left alone in the room after he was given his release documents.

WO2 said the typical procedure follow is that the video is shut off, investigators consult with the supervisor, and a decision is then made regarding release. The paper work is completed, if it is not already done, and the supervisor goes in and serves the documents when the recording is off.

He stated that after telling AP he would be released within minutes, he left the room and secured the door. WO2 did not discuss anything with either WO1 or SO after AP was released and he did not see AP leave the room.

WO2 was asked about the usual route WPS investigators would travel when they escort a prisoner out of HQ. WO2 stated that from the interview room, prisoners must go back through CPU after being buzzed in. The time it takes to be released from interview room to getting out of the building can vary. He said AP's complaint came as a surprise to him and he did not know of any issues and none were noted on any reports.

SO

On October 16, SO, in company with his counsel, attended to the IIU for an interview. SO read from a prepared statement following which he answered questions posed to him by IIU investigators. He stated that WO1 arranged for AP to attend HQ and met AP in the lobby. AP was taken to a private area where he was arrested, searched, and handcuffed. At that time, he held AP's arms while WO1 handcuffed AP. AP was then walked through the building, the garage, CPU and placed in an interview room. Once inside the CPU, SO put on gloves and performed a more thorough search of AP. AP's personal property was removed and placed in a large bag. When the search was concluded, he asked AP a number of questions required to complete the Prisoner Log Sheet. Once AP was placed in the interview room at 8:22 p.m., he had no further physical contact or conversation with AP.

SO denied striking AP or witnessing any other member of the WPS strike AP.

Medical Reports:

St. Boniface Hospital medical records were received and state that AP was seen at 11:55 p.m. on May 17. AP told triage that he was punched and kicked in the face, abdomen, chest and back by police. There was swelling present to his nose, bleeding had stopped, and there was hematoma and swelling to right orbital area. AP also complained of pain to his chest, lower back, and abdomen where he said he was kicked, though there was no sign of bleeding in those areas. The clinical findings noted he was hit in the face, had a broken nose and some bruising to the right periorbital region. X-rays were taken. He was released at 6:33 a.m. and told to return the following week if he felt that his nose looked displaced after the swelling had settled.

A radiologist viewed the X-ray at 10:08 a.m. on May 18 and no fracture was observed.

A medical report was received from Seven Oaks General Hospital which stated that AP attended on May 20 at 4:34 a.m. with a complaint of "too much pain" on the right side of his face, being unable to breathe out of his nostrils, having a tingly scalp, and feeling dizzy and having a headache.

AP informed Seven Oaks medical staff that he attended St. Boniface Hospital on May 17 after being assaulted by WPS. The x-rays taken on May 17 were reviewed and showed no fracture to his nose.

The report further stated that the following injuries were observed:

- a small healing bruise under the right eye;
- left nostril had some mild septal bulging;
- right nostril was normal;
- nose seemed to deviate slightly to the left at the bridge, was swollen and both nostrils were "patent" (open and unobstructed)

A CT scan was conducted and revealed no nasal septal hematoma. AP was directed to take Tylenol or Advil at home.

Video Review:

HQ Interior

- AP is first observed entering the HQ lobby and being approached by SO and WO1. He is observed leaving the area with the officers.
- The three are seen walking through the parking garage in HQ. AP is handcuffed and WO1 is holding his arm. They stop for a moment, have a discussion and then continue to walk out of camera view.
- AP is seen walking down the hallway, handcuffed, and in the presence of SO and WO1. They walk out of sight of the camera.
- AP is observed in an interview room, speaking to WO1 and is left alone in the room for extended periods of time.
- AP is seen leaving the interview room. He is seen walking off the elevator and he is not handcuffed. He follows WO1 and is followed by SO. There is no contact between AP and either WO1 or SO.
- AP is then observed walking through doors and in the hallway with WO1 and SO.
- AP is observed leaving the HQ. There is no physical contact with AP by either WO1 or SO.
- AP is handed the bag that SO was carrying.
- AP is observed walking alone, northbound on Smith St.

Exterior HQ Video (bolded names are the intersections or street views from various fixed cameras):

- **Smith St. and St. Mary Ave (SW corner)** – At 3:47 minute mark of the video, AP is exiting the building and walking northbound on Smith Street and then crosses the street westbound and goes out of sight.
- **Smith St and Graham (NW corner)** - At 5:55 minute mark of the video, AP enters the screen and crosses street westbound and then out of screen. At the 11:03 minute mark, AP appears on the southwest corner of Smith Street and Graham Avenue and at 11:59 minutes goes out of sight. At 12:19 minute mark, AP is back in camera view and appears to be waiting for someone. At 12:30 minutes, AP begins to run westbound out of screen view.
- **Smith St. and Graham (NW corner)** - At 5:33 minute mark, AP enters screen walking northbound and crosses Smith Street westbound. At 6:15 minute mark, AP exits screen walking westbound. At 7:42 minutes, AP is observed at the corner of Smith Street and Graham Avenue. At 8:03 minutes, AP walks westbound out of view. 10:11 minute mark, AP is back in view at corner of Smith Street and Graham Avenue. At 12:31 minute mark, AP begins to run westbound on Graham until out of sight.
- **Smith St. (West side HQ facing northbound)** - At 4:43 minute mark, AP enters screen walking northbound and crosses Smith Street westbound. At 6:20 minute mark, AP goes

out of view walking westbound. The southwest corner of Smith Street and Graham Avenue is not in focus in this camera view.

Winnipeg Millennium Library

- AP enters view at 11:25:26 p.m. carrying the same bag he is seen carrying when leaving HQ. At 11:26:03 p.m., AP enters the library doors and is then seen entering the lobby at 11:26:30 p.m. AP is seen speaking to two people and then goes off screen. AP is back on screen at 11:32:45 p.m. and appears to receive something from another person. AP goes off screen at 11:32:29 p.m. AP is observed on a payphone in the lobby at 11:34:09 p.m. AP is next seen speaking to people in the lobby and then goes off screen at 11:36:32 p.m. There appears to be swelling on AP's face under his left eye. AP is observed leaving the library at 11:36:41 p.m. At 11:37:16 p.m., AP goes off screen east of the library on Graham Ave.

Review of Investigation and Conclusion:

The relevant issues in this matter are whether, at any time, SO punched, kicked, assaulted or threatened AP while in custody and in an interview room at HQ. While a peace officer is authorized to use force in the lawful execution of his duties (and as much as necessary for that intended purpose) and 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 Criminal Code of Canada), there would be no doubt whatsoever that SO's conduct would attract criminal charges if the version of events as detailed by AP were accepted at face value. However, there exists evidence that calls into question AP's recollections:

- According to AP, the male who entered the room and assaulted him was the same man who was with WO1. AP was shown two photo packs. AP was able to identify WO1 but was not able to identify the male officer, and in particular, SO.
- AP stated that WO1 was present and witnessed the assault. WO1 was present when the release documents were signed.
- AP said he was taken to an elevator and was given his belongings. HQ video shows SO was carrying the belongings and handed them to AP as he left the building.
- AP stated that he was pushed after exiting the elevator, adding that the male officer "was holding my arm and pushing me." On video from HQ, AP is seen walking off the elevator and he is not handcuffed. He follows WO1 and is followed by SO. There is no contact of any kind between AP and either WO1 or SO. Specifically, SO is never seen holding AP's arm or pushing him.
- AP said he was walked to a back door, then pushed out the door onto the street. On video from HQ, AP is observed leaving the building on his own. The door is opened by the officers. There is no physical contact with AP by either WO1 or SO. AP walks out of HQ on his own accord.
- AP said he was taken to St. Boniface Hospital, had an x-ray and was told by the doctor that his nose was broken and could be fixed. According to medical reports

from both St. Boniface and Seven Oaks Hospital, x-ray images did not disclose any fractures.

There appears to be evidence that AP suffered an injury to his face but the medical descriptions and clinical findings are not in concert with the severity of the beating described by AP.

In conclusion, following a careful and full assessment of all the available evidence, coupled with the divergence of evidence in key areas of AP's recollections, I am not satisfied that the requisite reasonable and probable grounds exist to justify the laying of any Criminal Code or other offence against SO.

There is one matter that I wish to comment on by noting that if circumstances were different, much of the time and effort involved in this investigation could have been avoided.

Following WO1's interview with AP, he was processed and served his release documents while he was in the interview room. AP's interview with WO1 was recorded on video. SO monitored the interview on video. The video recording of the room was turned off following the completion of AP's interview and prior to him being served the release documents. WO2 stated that turning off the video at the conclusion of the interview and prior to documents being served is standard procedure. He also said that when the video is off it cannot be live monitored. No reason is given for this. In the meantime, AP remained in the custody of WPS and was detained in that interview room pending a decision on release.

In this matter, the time between AP being served the release documents and his ultimate release from custody was the critical moment subject to the IIU investigation. Since the video was turned off, IIU investigators were denied the opportunity to know what may have been recorded had the video remained on and recording. A continuation of video recording of AP while in custody in that interview room may have determined the very issue of this investigation. WPS may wish to reconsider its policy on continued video recordings of individuals in their custody.

In any event, IIU has completed its investigation and this matter is now closed.

Final report prepared by:

Zane Tessler, civilian director
Independent Investigation Unit
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