

FINAL REPORT: IIU concludes investigation into injury to man during WPS arrest

On February 2, 2018, at 8:15 a.m., Winnipeg Police Service (WPS) notified the IIU of an incident in which a male, later identified as the affected person (AP), sustained fractured vertebrae during the course of his arrest. The salient portion of initial notification read, in part:

Police responded to call in hallway at apartment block on Sherbrook Street - male banging on doors armed with weapons. Police met with a violent/aggressive male armed with a knife and scissors who was attempting to enter suites. Male refused to drop weapons and was fighting with officers. Restrained and transported to hospital. Appears to be high on drugs and may be experiencing excited delirium.

A more detailed notification update was received by IIU on March 8, 2018 which provided more detail of the confrontation and struggle between AP and WPS officers. It also noted that AP sustained a fractured nasal cavity in addition to the injuries to his vertebrae.

As fractured vertebrae are defined by regulation 99/2015 as a serious injury, this matter was deemed a mandatory investigation and the IIU assumed responsibility for the investigation in accordance with section 65(1) of *The Police Services Act* (PSA). A team of IIU investigators was assigned to the investigation.

The information obtained by IIU investigators included:

- WPS officers' notes and narratives reports;
- WPS arrest report;
- Computer Assisted Dispatch (CAD) messages;
- Forensic Identification Unit reports;
- Closed circuit television video (CCTV);
- Scene photographs;
- Call history;
- WPS radio/dispatch audio recordings;
- 911 audio recordings;
- Witness interviews and statements;
- WFPS paramedic statements;
- Conductive Energy Weapon (CEW) use of force deployment forms;
- Medical report respecting AP.

At the outset of this investigation and due to the dearth of information available, it was uncertain which of the WPS officers should be considered as subject officers. Based on the available information, 14 WPS officers were designated as witness officers. By April 23, 2018, as additional and more detailed information was received and reviewed by IIU, the civilian director was satisfied that two of the witness officers should be re-designated as subject officers (SO1-

SO2). It was also determined, following review of the further and more detailed information received, that four of the witness officers were required for interviews (WO1- WO4).

IIU investigators also met with and interviewed AP and four civilian witnesses (CW1-CW4). In addition, IIU investigators interviewed the physician who treated AP at hospital.

Scene Examination

A red fire extinguisher, approximately 18 inches in height, was located at the scene. Glass debris from the fire extinguisher's broken casing was photographed at the scene. Photographs of the scene also depicted a white powdery substance throughout the hallway area together with blood-like substances. Evidence of a CEW deployment was received as part of the information requested. An "8 ball"¹, measuring 16 inches in length, was located at the scene and seized, in addition to a pair of scissors measuring 7 ¾ inches in length, and a drywall knife with a serrated blade, measuring 10.5 inches in length.

Civilian Witnesses (CW)

CW1-CW3 were all residents of a suite at the apartment block. They all witnessed a male knocking at their door, with a fire extinguisher in his hand. This male had been knocking on doors for approximately 30 minutes. CW1 stated that all the occupants were fearful and they phoned police for assistance. CW2 advised that he had received a telephone call from another tenant in the building reporting that a male was also knocking on their door. The witnesses all reported that approximately 10 to 15 minutes after their telephone call, WPS officers arrived and entered the building.

CW1 said he heard what he believed to be the sound of the fire extinguisher discharging. CW1 looked out his suite and saw a police officer with a baton in hand. CW1 also said he heard an "electrical sound" and heard the male yell out. CW1 said the police officers took the male to the ground and handcuffed him. The male was resisting the police by moving his hands and trying to prevent the handcuffing.

CW2 heard the male screaming, "No. No. No. No." CW2 looked out his apartment door and saw the male lying chest down on the floor with one police officer on top of him. The police officers were trying to handcuff the male but he was resisting them. CW2 did not see police officers strike, kick or punch the male.

CW3 stated the police officers were already on top of the male on the floor when he noticed the fire extinguisher lying on the floor. CW3 witnessed police officers trying to twist the male's arms to get them behind his back. CW3 did not witness the police officers kick or hit the male.

CW4 was the resident who had telephoned CW2 about a male knocking at her suite door. CW4 stated that a man was knocking on doors while holding a fire extinguisher. CW4 noted that police officers arrived on scene a short time afterwards. According to CW4, the police officers were trying to calm the male down but he was not cooperating with them. As the officers were trying to control and handcuff the male, he was resisting, screaming and throwing the police officers off him.

¹ An improvised, home-made, melee, swinging type weapon where a pool ball, weight or similar object is attached to a string, rope or inserted into a sock or sack and is swung with the potential to cause serious or grievous injury.

911 Call

The IIU obtained a recording of the initial 911 call which revealed that at 2:24 a.m., a 911 call was made by the occupants of a suite in the basement of the apartment block. Although there was a language barrier, the caller described that a male had been banging on their door with a ‘long’, ‘white’ weapon for some 28 minutes.

Affected Person (AP)

IIU investigators initially attended the Health Sciences Centre (HSC) emergency room and met with AP, who was there under police guard. AP provided IIU investigators with his consent to obtain his medical records. It was determined that this setting was not suitable for an interview to be conducted and another meeting was scheduled a few days later.

Subsequently, IIU investigators attended the Winnipeg Remand Centre (WRC) and interviewed AP. AP stated he entered the apartment block and went to the basement where he knocked on a door which he believed was the maintenance worker’s suite. AP stated he was cold and wanted some gloves. AP said he fell asleep in the hallway and was awoken by police officers beating him. He said it was dark at the time and the officers did not say anything. AP said he may have had a fire extinguisher at some point and he may have discharged it but did not threaten the police officers. AP also stated he had a drywall knife hidden in his jacket sleeve and an “8-ball” up the other sleeve. AP said he is a methamphetamine (meth) user but had not taken any that evening, and that when he does not take meth he gets irritable. He also said he had consumed alcohol that evening. AP recalled being “tasered” four or five times while on the ground face down² and also being struck multiple times around his head, shoulders, eye, back and kidneys area. AP said his nose was broken again and that three of his teeth were knocked out. AP said doctors advised him he will be fine.

Medical Records

AP’s medical records from HSC were received and reviewed by IIU investigators. AP was diagnosed to have fractures of the L3 and L4 (lumbar spine) and acute nasal bone fractures. IIU investigators met with the physician who treated AP. According to the physician, when he first examined AP, he noted him complaining of back pain and observed some facial swelling. A CT scan was conducted. There was evidence of previous acute fractures of his nasal bone. Fractures of AP’s L3 & L4 (lumbar spine) were also noted. AP did not tell the physician how or why he had these injuries. According to the physician, there was evidence of old injuries and new injuries to AP’s facial area. In respect of the injuries to AP’s L3 and L4 vertebrae, the physician said that a form of blunt force could have caused the injuries. According to the physician, the injuries were not life changing and he expected AP to make a full recovery.

Witness Officers

WO1 was a street supervisor working a night shift on the incident dated. WO1 had never dealt with AP before that date. WO1 recalled the apartment block had sufficient lighting and his

² During the interview, AP showed the skin area where he stated the “taser” was in contact with his skin. It should be noted that IIU investigators did not observe any markings consistent with direct “taser” contact. There were no burn marks or obvious skin breaks.

visibility was good. WO1 did not see any weapons at first when he ran toward the altercation between AP and other police officers. AP was face down but moving and wrestling when WO1 first arrived at the altercation. WO1 confirmed he did strike AP's leg with a "back handed baton strike" which he believed landed on the upper open part of AP's right leg thigh area. WO1 then assisted the other WPS officers in trying to apply handcuffs on AP. WO1 noticed blood on AP after he was subdued. He did not know what caused AP to bleed.

WO1 knew that SO1 and SO2 were on scene prior to his arrival. He did not know the order in which officers arrived after himself. WO1 did not see any police officer use force on AP. WO1 did see SO1 trying to move AP's left hand for handcuffing. WO1 described the incident as ever changing, dynamic, a struggle and a fight.

WO2 was partnered with SO2 that night. WO2 stated that when he arrived at the apartment block, the altercation between police officers and AP was toward the far end of the hallway by the back door on the west side. WO2 stated that he saw weapons close to AP, within arms reach. AP was face down on the ground with SO1 and WO3 holding him. WO2 could not describe what they were doing as he was concentrating on assisting with the restraint of AP.

WO3 was working with SO1 that night. WO3 said the lighting at the apartment block was dim. WO3 stated he did not see where WO1's baton strike landed and it was a tight area where they were fighting with AP. WO3 did not see any blood on AP's face prior to AP being handcuffed. WO3 stated he saw SO1 deploy his CEW. WO3 recalled other police officers arriving at the scene but could not say in what order. WO3 did not see any other police officer use force on AP.

WO4 acknowledged that he made no notes or reports regarding his involvement, which was only to answer a distress call from his colleagues, WO3 and SO1, who were involved in a fight at the location on Sherbrook Street. Upon attendance, WO4 noticed a fire extinguisher had been discharged and a handcuffed male prisoner on the ground.

Subject Officers

Pursuant to the provisions of the PSA, a subject officer cannot be compelled to provide his or her notes regarding an incident nor participate in any interview with IIU investigators. In this case, each of the two subject officers declined to attend for an interview. However, each provided prepared statements regarding their involvement in this incident. The following are summaries of those statements.

SO1 was partnered with WO3 and they attended a weapons call at the apartment block. Several small pieces of broken Plexiglas was observed on the floor. A male, later identified as AP, was lying on the floor, near the emergency exit door. Upon approaching a motionless AP, a knife was seen lying beside AP's hand, appearing to have fallen from his grasp. WO3 moved the knife away from AP, while attempting not to alert him. Once the knife was moved away, AP was noted as "embracing" a fire extinguisher. WO3 went to remove the fire extinguisher from AP, announced "Winnipeg Police, wake up," and in doing so, woke AP. AP went into a violent frenzy and was yelling incoherently while continuing to hold the fire extinguisher. A struggle then ensued between the police officers and AP. The fire extinguisher was discharged during this altercation. According to SO1, he saw that AP was also in possession of an "8-ball type weapon" in his waistband, and AP was reaching for it. SO1 wrote that during the altercation he verbally commanded AP by saying, "Stop, it's the police." AP continued to struggle with the police

officers. SO1 wrote that he delivered two to three kicks to AP's legs. SO1 then gave a verbal warning that he was about to deploy his CEW, following which he shot the probes into AP's legs holding the trigger for what he believed was 10 seconds. AP continued to fight with the officers. SO1 discharged the CEW a second time, aiming for AP's back. However, due to bulky clothing, the second discharge had no effect.

SO1 wrote that he and WO3 were in a physical fight on the ground with AP. SO1 described how he used AP's own hand to punch AP in the face three to four times. AP's behavior did not change. SO1 wrote that he saw AP had an object, with a handle, in his left hand and warned WO3 about the object in AP's hand. SO1 wrote that he delivered three to four knee strikes to AP's upper body. SO1 wrote that he then saw that AP had produced a pair of scissors from his sleeve, which he was holding with an 'ice pick grip' and making downward stabbing motions at SO1.

The fight continued, with SO1 writing that he feared for his personal safety. According to SO1, WO1, SO2 and WO2 arrived and assisted SO1 in restraining AP's left arm. SO1 delivered a further one to two knee strikes to AP's face.

On the date of the incident, SO2 was partnered with WO2. On arrival at the apartment block, he ran to the basement area and saw SO1, WO1 and WO3 fighting with AP. SO2 wrote that he joined in to assist the other police officers and that he delivered a knee strike to AP's left upper back/shoulder blade area. SO2 yelled at AP to give up his arm in order to handcuff him but AP did not comply. SO2 delivered a second knee strike to the same area. After a struggle, two pairs of handcuffs were linked together and applied. SO2 wrote that he saw scissors or shears under AP. AP grabbed SO2's left hand as he tried to prevent AP from grabbing at the weapon. SO2 responded by striking AP in the back of the head. SO2 saw other officers arrive to assist and leg shackles were applied to AP who was being held down by police officers. SO2 stood on AP's lower back and applied pressure. At one point, SO2 was applying his whole body weight on AP.

Police radio transmissions and call histories

Police radio transmissions were reviewed by IIU investigators. At 2:29:14 a.m., a WPS operator was recorded voicing out a dispatch call, asking a police unit to attend the apartment block for a call related to a male banging at doors and who appeared to be holding a weapon.

At 2:53:36 a.m., SO1 and WO3 were dispatched to deal with the matter. At 2:59:30 a.m., the two police officers were reported "on scene." Other officers were also reported as arriving on scene.

At 3:05:49 a.m., a male police officer was heard requesting the assistance of another police unit. The female police operator was heard transmitting a request for a police unit to assist. A male voice was heard saying "...we're fighting." At 3:09:04 a.m., a male officer was heard transmitting "male in custody." The police operator asked if an ambulance was required. At 3:12:35 a.m., a male police officer voiced that an ambulance was required for a male who was conscious and breathing. At 3:20:25 a.m., a male police officer asked for an estimated time of arrival for the ambulance and to advise the ambulance crew that the matter may be a case of excited delirium.

CEW Deployment

IIU investigators received and reviewed a CEW report regarding SO1's assigned CEW. According to the report, there were three trigger deployments that night:

- 3:06:22 a.m., lasting nine (9) seconds from cartridge #1;
- 306:32 a.m., lasting five (5) seconds from cartridge #1; and
- 307:03 a.m., lasting five (5) seconds from cartridge #2.

Issues and Conclusion

The relevant issue in this matter is whether, at any time, the subject officers applied excessive or unnecessary force to AP, from the time of their initial contact through to his arrest and detention.

The mere fact that AP sustained a serious injury is not determinative of whether the force used was excessive or unnecessary in the circumstances.

A police officer is entitled to arrest a person he finds committing, or has reasonable grounds to believe has committed, an indictable offence. Furthermore, police can arrest anyone to prevent a breach of the public peace.

Pursuant to section 25 of the *Criminal Code of Canada*:

(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.

(2) Where a person is required or authorized by law to execute a process or to carry out a sentence, that person or any person who assists him is, if that person acts in good faith, justified in executing the process or in carrying out the sentence notwithstanding that the process or sentence is defective or that it was issued or imposed without jurisdiction or in excess of jurisdiction.

(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.*

(5) A peace officer is justified in using force that is intended or is likely to cause death or grievous bodily harm against an inmate who is escaping from a penitentiary within the meaning of subsection 2(1) of the Corrections and Conditional Release Act, if

- (a) the peace officer believes on reasonable grounds that any of the inmates of the penitentiary poses a threat of death or grievous bodily harm to the peace officer or any other person; and*
- (b) the escape cannot be prevented by reasonable means in a less violent manner.*

Any force in excess of what is necessary is not justified and can constitute an assault (Section 265 of the *Criminal Code of Canada*).

Section 265 (1) (a) states:

A person commits an assault when...without the consent of another person, he applies force intentionally to that other person, directly or indirectly

AP's injuries constitute bodily harm under the *Criminal Code of Canada*.

After a review of the investigative file, the following factors are critical to the analysis of whether the subject officers applied excessive or unnecessary force to AP:

- SO1 and SO2 were lawfully placed and in lawful execution of their duties at the time of their interactions with AP:
 - At the time and date of the incident, SO1 and SO2 were on-duty WPS police officers;
 - Police officers were dispatched on a call for service to the apartment block;
 - Information gleaned from a telephone call to 911 operators was included in the call for service;
 - Police officers attended the apartment in a timely fashion;
 - Police officers entered the apartment block, attended to the basement level, located AP sleeping or unconscious, and observed a knife was by his hand and that he was cradling a fire extinguisher;
 - Police officers entered the apartment block to respond to a call for service related to a male in possession of a weapon;
 - AP responded with violence and use of the fire extinguisher.

- Police officers were immediately faced with the potential for physical confrontation with an armed AP;
- AP was combative and refused all directions to submit;
- AP used actual violence against police officers;
- AP confirmed he was armed with a knife, “8 ball” and fire extinguisher;
- The potential for serious and grievous harm to officers was escalating;
- AP was seemingly unaffected by numerous taser deployments;
- AP was not complying with orders to raise his hands and submit.

The subject officers applied force to AP:

- in response to AP’s use of force on police officers;
- to prevent AP’s use of weapons that could cause potential and serious injury to any or all police officers;
- to disarm AP;
- to end the altercation;
- to prevent harm to themselves; and
- to prevent significant harm to AP.

The subject officers employed all means available to disarm and disable an armed individual and defuse a potentially serious and deadly situation. In my opinion, the subject officers demonstrated calculated, crucial and necessary actions to avoid the necessity of resorting to potential lethal force.

While AP suffered a serious injury through the application of force, I am satisfied that the force used in this instance was reasonable and necessary in the circumstances and within the ambit of Section 25 of the Criminal Code of Canada. In the end, more serious physical harm and the potential for loss of life was completely avoided by the actions of the subject officers.

In conclusion, there are no grounds to justify any charges against either or both of the subject officers.

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

Final report prepared by:

Zane Tessler, civilian director
Independent Investigation Unit
October 25, 2019

Ref 2018-003