

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

On May 14, 2018, at 7:36 p.m., Winnipeg Police Service (WPS) notified the IIU of an incident in which a male, later identified as the affected person (AP), sustained a fractured humerus bone during his arrest. The salient portion of this notification read, in part:

On May 14, 2018 at 11:46 a.m., officers attended to an address on Dumoulin Street regarding a breach of court order (Domestic) by [AP]. The Recognizance prevents [AP] from attending within 100 meters of this residence. Officers located [AP] inside the residence. [AP] was un-cooperative and initially refused to open the door. [AP] eventually opened the door and officers identified him via a previously viewed police photo. [AP] continued to be un-cooperative and during the application of the handcuffs [AP]'s left Humerus was fractured. [AP] was transported to the Health Sciences Centre (HSC) Emergency where an X-ray confirmed the injury.

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

Information obtained by IIU investigators included:

- WPS officers' notes, narratives and use of force reports;
- WPS arrest report;
- Copy of recognizance;
- Identification Unit photographs;
- Identification Unit report;
- Computer Assisted Dispatch (CAD) messages;
- WPS radio/dispatch audio recordings;
- Use of force training records;
- Winnipeg Remand Centre video;
- Medical report respecting AP.

Originally, one WPS officer was designated as a subject officer (SO) while five WPS officers were designated as witness officers (WO1 – WO5). Following review of materials received subsequent to these designations, it was determined that one witness officer should be re-designated as a subject officer. Accordingly, by May 31, two WPS officers had been designated as subject officers (SO1 – SO2).

IIU investigators also met with and interviewed AP and a civilian witness (CW).

Affected Person (AP)

IIU investigators attended the Winnipeg Remand Centre (WRC) to interview AP (who had been remanded in custody following his arrest). AP provided IIU investigators with his consent for the release of his medical records and agreed to be interviewed.

AP advised that during the late morning of May 14 he showered and planned to meet his wife, CW. AP advised that before he could dress, he heard a bang and pounding at the front door. AP asked who was at the door but, hearing no response, did not bother opening it. AP stated he started putting clothes on and there was more banging at the door. He then heard someone say, "Open the door or we'll kick it down." AP stated he asked who was there and someone said it was the police. AP stated he opened the front door and asked the officers if they had a warrant, and was told they did not need one. AP said they attacked him and put his head through the drywall, damaging the wall. AP said his arm was twisted and that he resisted because the WPS officers were rough with him. AP said the officers punched him in the back of his left arm as it was twisted upwards; he told the officers he was in pain and wanted to go to the hospital.

AP said this incident occurred at CW's apartment and that no one else was at the residence when the arrest occurred. AP said CW had not been home for a week but had let him into the apartment about a week prior to this incident. AP stated he does not have a key to the apartment. He told investigators he was living with CW at the apartment but then stated he does not live there and was just using the residence as he was homeless. AP said that when he opened the front door, he did not invite the police officers into the apartment but they entered the suite and "jumped" him. He said the officers informed him he was under arrest for breaching his bail conditions. AP stated he was aware that he was not supposed to be at this address and a court order prohibiting him had been in existence "for around one year." AP advised that he had been previously charged with a domestic matter involving CW. AP was asked what he had meant by his comment that he was resisting (see previous paragraph). AP said he had his left hand on his hip and did not do anything else. He said the same two police officers took him to HSC and then to police headquarters, and that two different police officers took him to WRC.

Medical records confirmed that AP had suffered a spiral type fracture involving the left distal humerus which required open reduction internal fixation surgery, including a fixation plate and screws positioned at the distal humerus.

Recognizance

IIU investigators received a copy of a recognizance in the name of AP dated March 26, 2018, setting out that AP must, among other things:

1. Reside at an address on Robinson Street, in Winnipeg;
2. Tell the court of any change of address;
3. Not contact directly or indirectly CW and others, nor communicate by telephone or other means with any of them;
4. Stay at least 100 meters away from the home of CW (and other locations);
5. Not possess firearms.

The recognizance was in full force and effect on May 14, 2019.

Civilian Witnesses

IIU investigators met with CW at her apartment. Upon entry to the apartment, there was a circular hole on the drywall above a light switch, next to the entrance doorway. CW allowed IIU investigators to take photographs of the damaged wall. An interview with CW followed.

CW stated that she has lived at her apartment since October 2017. She said AP did not live with her and had no idea where he lived. CW stated they had been in a common-law relationship for 33 years, described by her as an on-again/off-again relationship. On May 14, at approximately 6:00 a.m., she saw AP at her home. CW left her home and went to the Siloam Mission, arriving at 7:00 a.m. CW stated that she spoke with a police officer (later identified as WO2) at Siloam Mission. She told WO2 that AP was at her home and that is why she was at Siloam Mission. CW stated that she telephoned AP at her home, and arranged to meet in a couple of hours at a location on Main Street. CW stated she went to that pre-arranged location but AP did not show up. She tried calling her home phone again several times but the line was busy. CW stated she went home and noticed her suite door was not closed and there was a hole in the drywall next to the door which had previously not been there. CW was aware that a court order was in place that prevented AP from being in contact with her.

Witness Officers

WO1 was partnered with **WO3** on May 14 and was assigned to relieve **SO1** and **SO2** at HSC. Upon arrival at HSC, AP was in a room waiting to be assessed further for injuries. **WO1** was briefed by **SO1** and **SO2** at HSC. **WO1** was advised that **SO1** and **SO2** had attended a call at the Dumoulin address. Upon arrival, they spoke with AP, advising him that he was in breach of a court order and, specifically, that he should not be at this address. He was placed under arrest and a struggle ensued. AP was resisting arrest at that time. AP was placed up against a wall, his arms were placed behind his back and he was handcuffed. AP was taken to HSC because of a sore arm. **WO1** had had previous dealings with AP. Prior to this incident, **WO1** had attended the Dumoulin address and arrested AP for breaching his conditions.

WO2 stated that on the morning of May 14 he was at Siloam Mission. At approximately 11:10 a.m., he spoke with CW who advised that AP was at her residence on Dumoulin. **WO2** knew there was a court order in place requiring AP to have no contact or communication with CW. **WO2** had been the investigator in the matter that gave rise to the court order. **WO2** stated he reported the potential breach of the court order while putting in a call for service to the Dumoulin address.

WO3 was partnered with **WO1** on May 14. **WO3** confirmed that at HSC he was advised by **SO1** and **SO2** that AP had resisted arrest and would not comply with putting his arms behind his back.

WO4, though designated as a witness officer, was not interviewed as all his observations and involvement occurred at HSC and after the incident at Dumoulin.

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 their

incident notes and use of force reports regarding their involvement in this incident. The following are summaries of those notes and reports.

SO1 wrote that he and **SO2** were dispatched to the apartment at the Dumoulin address and verbally identified themselves as police officers at the suite's front door. **AP** refused to open the door at first but eventually did so and swore at the police officers. **SO1** wrote that they entered the suite and he held **AP**'s right arm to restrain him during the arrest. **SO1** described how **SO2** held **AP**'s left arm and how **AP** showed clenched fists, continued to swear at the police officers and resisted arrest by pulling away and kicking at them. **AP** was warned to stop resisting the arrest. **SO1** heard a popping sound and **AP** told the police officers his arm was broken. The two police officers took **AP** directly to HSC for treatment.

SO2 wrote that he and **SO1** attended the apartment on Dumoulin in response to a protected person complaint call at that location, made by **WO2**, and to check on **AP** at that location. **SO2** documented that he conducted record checks and was aware that **AP** was subject to a court order to have no direct or indirect contact with **CW** (and others) and to stay at least 100m away from their respective homes, place of work, school or worship. **SO2** wrote that, upon arrival, the police officers announced their identity at the closed door to the apartment. **AP** refused to open the door at first but was warned by the police officers that force may be used to gain entry into the suite. **SO2** believed the person behind the door was **AP** but did not know whether **CW** was in the suite. **SO2** wrote that **SO1** attempted to force entry into the suite. **AP** then opened the door. **SO2** positively identified the male as **AP**, having viewed a police photograph of him. **AP** was advised he was under arrest for breaching conditions of his recognizance. **SO2** took hold of **AP**'s left arm at which point **AP** began to resist. **SO2** wrote that he put **AP**'s left arm behind his back and placed him chest first up against a wall. **AP** attempted to kick at the officers. **SO2** heard a popping sound. **SO2** wrote that he handcuffed **AP** and **AP** continued to threaten the officers.

Conclusion

The completed **IIU** investigation file was forwarded to Manitoba Prosecution Services, requesting that it be reviewed and advice be provided respecting whether any criminal charges should flow from the conduct of **SO1** and **SO2**.

Following a thorough review of the file, Manitoba Prosecution Services advised this office that there is no reasonable likelihood of a conviction of either **SO1** or **SO2** and no charges would be authorized against either of them.

Based on this advice and review, neither **SO1** nor **SO2** will be subject to any Criminal Code charges arising from this matter. This investigation is complete and the **IIU** will close its file.

Final report prepared by:

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Independent Investigation Unit
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