



**IN THE MATTER OF AN INVESTIGATION INTO A SERIOUS INJURY
DURING AN INCIDENT ON OCTOBER 19, 2019**

**FINAL REPORT OF THE CIVILIAN DIRECTOR
OF THE INDEPENDENT INVESTIGATION UNIT**

IIU File Number:	2019-0062
Final decision made by:	Zane Tessler, Civilian Director
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Date of Release:	August 21, 2023

Introduction:

On October 20 2019, the Winnipeg Police Service (WPS) notified the Independent Investigation Unit (IIU) of an incident.

The written notification, received on October 21, 2019, disclosed the following information (excerpt):

On October 19, 2019 at approximately 9:31 p.m., members of the Winnipeg Police Service (WPS) were patrolling in the area of 393 Portage Avenue when they observed the Affected Person (AP). WPS were actively attempting to locate the AP, as he was wanted on the strength of several outstanding warrants; including the most offence which was an aggravated sexual assault.

WPS members approached the AP resulting in an extensive foot chase, during the course of which, he armed himself with a can of bear mace that he was carrying on his person. While fleeing from members of the WPS, the AP discharged the can of bear mace, actively targeting several WPS officers. As a result, three members of the WPS were contaminated and suffered the effects of the mace.

The AP continued to flee on foot until he was taken into custody in the area of Ellice Avenue and McMicken Street. WPS members were required to use force in order to affect the arrest of the AP, as he was still refusing to relinquish the mace.

The AP was subsequently arrested for the following offences:

Assault with a Weapon x 3, Assault Police Officer x 3, Resist Arrest, Possession of a Prohibited Weapon, Possession of a Weapon Dangerous to the Public Peace, Breach of Order of Firearms and Weapons Prohibition, Breach Recognizance x 2, CDSA 4.1 – Methamphetamine, Warrant x 4.

The AP was later transported to the Health Sciences Centre for Treatment for the injuries he sustained while resisting arrest. A subsequent medical examination completed on the AP, revealed that he had a fractured skull (forehead), laceration over his left ear, 2 swollen eyes, swollen upper lip, bloody nose and a cut over his right eye.

AP was treated and then turned over to WPS members for processing on October 20th. Follow-up medical treatment not required.

During the course of the arrest of the AP, two WPS members sustained substantial injuries that require further medical treatment.

The AP was subsequently lodged at the Provincial Remand Centre as direct lock up.

As this matter concerned a serious injury as defined under the IIU regulations, the IIU assumed responsibility for this mandatory investigation in accordance with section 65(4) of the *Police Services Act* (PSA). IIU investigators were assigned to this investigation.

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On October 22, 2019, IIU investigators contacted Manitoba Housing Security and reviewed their surveillance video. Nothing of evidentiary value was noted. On October 23, 2019, a canvass was completed around the incident location, and no witnesses to the incident were located. The location provided on the initial Part 7 was incorrect causing a delay in canvassing the area.

WPS provided the IIU with an amended Part 7 on November 5, 2019, to clarify which individuals were involved in this matter.

The civilian director eventually designated two officers as subject officers. The two subject officers participated in the investigation. Two paramedics (PW1-2) and a firefighter (PW3) also participated in the investigation. Six WPS officers participated as witness officers (WO1-6).

Air 1 video was obtained by investigators. It shows the final few minutes of the foot pursuit up to the point the officers apprehend the AP. The AP is observed carrying something in his hand while he runs from police and climbs over fences.

Facts and Circumstances

Professional Witnesses

On February 21, 2020, IIU investigators interviewed PW1. She stated that she was an advanced paramedic with the Winnipeg Fire Paramedic Service (WFPS). Her unit was called by the WPS to attend and conduct an assessment on a person that had been arrested. She met with the affected person (AP) and transported him to Health Sciences Centre (HSC) Winnipeg. She believes there may have been four or five officers at the scene when she attended, but she did not know any of them. She was told that the AP had discharged pepper spray at the officers. She stated that she could smell the pepper spray and observed one or two officers coughing. She heard that the officers who had received the brunt of the spray had already left the area. She documented that at times the AP was difficult to interview and would not answer some of her questions. She observed that the AP had minor bruising about his face. He was handcuffed and standing when she arrived on scene. She did not observe any officers with injuries other than coughing. The AP admitted to her that he had used methamphetamine and was consistent with the “clinical picture” of a person under the influence of methamphetamine.

On February 21, 2020, IIU investigators interviewed PW2. PW2 was a paramedic with the Winnipeg Fire Paramedic Service. Upon arrival at the scene, she observed the AP was standing up. He was handcuffed and had a c-collar on his neck. She did not know the names of any of the officers that were present. She stated that she could smell pepper spray in the area. She did not notice any injuries on the officers. A police officer rode in the ambulance with the AP because

the AP was high on methamphetamine, which was for the safety of the ambulance crew. The AP was not answering some of her partner's questions. As PW2 was standing with the AP at the hospital, the AP was screaming and yelling. The officer tried to get the AP to calm down. The AP had some bruises on his face when she first arrived on scene. The WFPS personnel had placed the c-collar on the AP.

On February 21, 2020, IIU investigators interviewed PW3, who was a firefighter. When she arrived at the scene, she observed many police officers. The AP was on the ground either sitting or laying down. He had bruising and cuts on his face and appeared to be under the influence of drugs. The AP was unco-operative with WFPS and police. The AP had no conversation with WFPS members with regard to what had occurred. PW3 did not detect the odour of pepper spray in the area. When she arrived at the scene, the officers were standing; they were not holding the AP down. She believes the AP was handcuffed. PW3 did not see anyone else with injuries and did not have any conversation with the officers.

Witness Officers

On December 9, 2019, IIU investigators took a video recorded statement from WO1. He advised that he and his partner (WO2) were the officers that arrested the AP. They heard a call over the radio that there was a foot pursuit in progress nearby their location and the male that was being pursued was pepper spraying officers. As they were in the area, they made their way to where they believed the male was headed. Air 1 was also involved and providing location updates. They drove slowly down the back lane behind Furby Street and were looking into the yards when the AP ran out from a yard and tried to jump over the hood of their police car. WO1 observed the can of bear spray in the AP's right hand. The AP slid on the hood of the police car and got hung up and fell to the ground. He and his partner exited their vehicle and the AP was on the ground, face down with his right arm under his body.

WO1 grabbed the AP's left hand and pinned it behind the AP's back. He and WO2 both applied a shin pin to the male and held him down. Two other officers, SO1 and SO2, arrived on foot and they tried to get the bear spray out of the AP's hands. All four officers were demanding that the AP let the bear spray go. The AP refused to let the can go.

WO1 and his partner had the lower part of the AP's body and started delivering knee strikes, while continuing with verbal demands. WO1 believed both SO1 and SO2 delivered knee strikes also. WO1 stated that even with four officers on the AP and giving demands the AP still refused to give up the bear spray. WO1 stated that eventually the AP dropped the bear spray. WO1

handcuffed the AP and WO2 advised him of his rights. No intermediate weapons were used. WO2 rode in the ambulance with the AP and WO1 followed.

On December 10, 2019, IIU investigators took a statement from WO2. He indicated that as he and his partner WO1 drove north in the lane, the AP ran in front of their vehicle. He observed the AP holding a can of bear spray in his right hand. WO2 stated he and his partner exited the cruiser car and found the AP on the ground in front of the car. They both shin pinned him and held him on the ground. The AP refused to give up the bear spray. WO2 stated that both he and WO1 delivered knee strikes to AP's lower body in an attempt to get him to give up the bear spray. SO1 and SO2 arrived at the scene and took control of the upper part of the AP's body as he and WO1 were on the lower part. The AP refused to comply with all verbal direction to let go of the bear spray and received further strikes from SO1 and SO2. The AP eventually dropped the bear spray and was handcuffed. There was no further use of force after the AP was in handcuffs. In his narrative, WO2 noted that the AP had sustained a small laceration to the right side of his forehead and refused to have stitches applied at the hospital. The AP was provided with Steri-Strips (skin closure strips) to keep the wound closed. WO2 stated that the AP also had a swollen upper lip, a small cut above his left ear, swelling to both eyes and a bloody nose.

On December 9, 2019, IIU investigators took a statement from WO3. He stated he was the acting supervisor on the evening of the incident and heard a call over the radio regarding officers being assaulted with bear spray. He headed towards the location of the call. Prior to arriving at the scene, he heard the AP was apprehended and under control. Upon arrival on scene, WO3 observed that the AP was on the ground, and he was handcuffed behind his back. WO3 learned that some officers had been pepper sprayed and others had hand injuries. WO3 observed an injury to the AP's head. He did not witness any use of force and the AP was placed in an ambulance.

On December 9, 2019, IIU investigators took a statement from WO4. WO4 also provided his narrative and stated he was involved in the foot pursuit of the AP. He stated that due to the fact he was assaulted with bear spray by the AP, he was unable to continue chasing the AP. When he attended to the arrest scene, he did not see the AP. He believes the AP had been placed in a cruiser car by that time. During the foot pursuit, WO4 stated he had attempted to Taser the AP, but it was ineffective.

On December 9, 2019, IIU investigators took a statement from WO5. She was partnered with SO2. They located the AP at the rear of Portage Place. They were aware the AP was wanted on a

warrant for arrest, for an aggravated sexual assault. She observed a cylinder-shaped object in the AP's hoodie pocket. The officers approached him and the AP took off running and dropped his backpack. WO5 stopped to pick it up and got separated from the foot pursuit. WO5 stated she caught up at the arrest scene, and the AP was laying on the ground in handcuffs. When she arrived SO1, SO2 and WO4 arrived around the same time. WO1 and WO2 were also present at the scene. WO3 arrived a short time after and an ambulance was called. WO5 had no conversation with the AP, and she left the area before he was transported. WO5 did not see any use of force or intervention tools being used. When she arrived at the scene, she noticed the AP had a bloody face. He was conscious and was answering questions when asked.

On December 9, 2019, IIU investigators took a statement from WO6. WO6 stated he participated in the foot pursuit. During the pursuit, he deployed his Taser once at the AP, but it was ineffective. After deploying his Taser, he chased the AP through a hole in a fence. His gun got caught and he broke his gun magazine causing his bullets to spill out onto the ground. When he arrived at the arrest location, WO6 saw that the AP was in handcuffs and on the ground. He noticed blood on the AP's face. WO6 saw things were under control so he returned to the area where he had lost his bullets to retrieve them.

Subject Officers

SO1 provided IIU investigators a copy of his notes and a shared narrative, and he declined to be interviewed. The shared report was the narrative provided by WO4 and in his notes SO1 wrote about the foot pursuit. He described feeling the effects of the bear spray, and that he attempted to Taser the AP during the foot pursuit. He noted that he delivered strikes to the AP when the AP was apprehended. He also noted that when the AP fell to the ground he attempted to take him into custody with other officers. The AP would not release the can of bear spray that he held and continued to struggle. He noted that he delivered several "*closed hand strikes*" with his left hand to AP's upper body and head. The AP was finally subdued, handcuffed and taken into custody. SO1 noted that he received a broken hand during the arrest and was required to begin taking antibiotics for possible blood contamination.

On February 13, 2020, IIU investigators interviewed SO2. He advised that on October 19, 2019, he was working with WO5 conducting a foot patrol in the area behind Portage Place. Prior to the start of their shift, the officers had been advised that there was an outstanding arrest warrant for sexual assault for the AP. SO2 had looked at a recent photograph of the AP to confirm his appearance.

While behind Portage Place, he observed the AP and called out to him by name. The AP, who was holding a bicycle, spoke back to SO2 and then threw the bicycle at SO2's feet and ran away. As the AP took off, SO2 observed a cylinder item in the AP's waistband. As the AP ran, he dropped his backpack along the way. SO2 saw the AP pull out a black can and believed it to be bear spray, as he has seen it before and bear spray is a common weapon in that area. SO2 voiced the AP's direction of travel over the air and said that the AP was armed with bear spray. SO2 stated that he continued to pursue the AP through yards and over fences. During the pursuit, the AP discharged the bear spray at SO2 and other officers on at least three separate occasions. SO2 was aware that an officer deployed a Taser at the AP but it had no effect. SO2 stated that when the foot pursuit reached McMicken Street, he observed the AP attempt to jump over the front of a marked WPS cruiser car. The two officers from the cruiser car were first to lay hands on the AP. SO2 went to control the AP's upper body to assist in holding him and placed a shin pin on the AP's collarbone area. The AP was lying on his side at that time.

SO2 stated he had concerns for his safety and the other officer's safety as the AP still had the bear spray and had deployed it at other officers earlier. SO2 could see the bear spray in the AP's left hand and the AP was trying to point the spray in an upward position. All four officers issued commands for the AP to release the bear spray and to give up his hands. SO2 unsuccessfully attempted to control AP's left hand, as he feared the AP could spray the officers and get control of their weapons. SO2 stated that he delivered knee strikes to the AP that were ineffective and did not result in the AP releasing the bear spray. SO2 stated he then delivered at least three closed-fist strikes to the AP's head and face area. Those strikes were successful and the AP released the bear spray. The AP was handcuffed and placed in the recovery position. SO2 then placed the AP under arrest and read the AP his rights. The AP said he understood and requested an ambulance. SO2 checked the AP for any noticeable injuries and noted that the AP had bleeding around his nose and abrasions to the underside of his head. A supervisor arrived at the scene and separated SO2 from the area as he was in need of medical treatment as he had a broken hand and received cross contamination of the AP's blood. SO2 subsequently received anti-viral treatments. SO1, who was also involved in the foot pursuit and arrest of the AP, also received injuries.

Affected Person

On October 25, 2019, IIU investigators attended the Winnipeg Remand Centre (WRC) to attempt to interview the AP. A corrections officer spoke to the AP, but the AP refused to attend the interview area. IIU investigators requested the correction officer to inform the AP that investigators wanted to discuss how he received his injuries during his arrest. The AP still refused to speak to IIU investigators. An intake photo was obtained from the WRC, but there was

no context as to how the injuries observed in the photo were received. Given the AP refused to meet with IIU investigators and declined an interview, IIU investigators were unable to receive a medical release from the AP. Therefore, no medical information confirming the AP's injuries was obtained.

Applicable Law:

Sections 25 (1), (3), (4) and Section 26 of the Criminal Code of Canada are applicable 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

(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

(e) the flight cannot be prevented by reasonable means in a less violent manner

26. Everyone who is authorized by law to use force is criminally responsible for any excess thereof, according to the nature and quality of the act that constitutes the excess.

Conclusion

The IIU's mandate is to consider whether the serious injuries suffered by the AP may have resulted from the actions of the police officers and whether the officers' actions were justified. Civilian Director Zane Tessler, assigned to this matter at the time, gave due consideration to all the circumstances and did a thorough review of all evidence and material facts obtained in this investigation, and determined that no criminal charges would be laid against the subject officers. He took into consideration various facts, including the following:

- AP did not co-operate in this investigation and the IIU was unable to confirm existing injuries or the extent of same;
- AP sprayed the officers with bear spray on three separate occasions;
- AP was determined to flee from police and did not comply with officers' directions;
- SOs were briefed regarding the AP and his outstanding warrants and known violent history;
- AP admitted using methamphetamine;
- AP's determination to get away resulted in force being used to take him into custody; and
- The spray used by the AP could have disabled all officers and placed them and the public at greater risk.

Therefore, in consideration of the totality of the evidence, the civilian director concluded that the use of force was reasonable, and no charges would be laid against the subject officers in this matter.

The IIU investigation is now completed and this matter is now closed.