

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

On April 18, 2019, the Winnipeg Police Service (WPS) notified the Independent Investigation Unit of Manitoba (IIU) of an incident where a police officer was alleged to have assaulted a male during the course of an arrest.

According to an excerpt of his notification:

On April 15, 2019, the affected person (AP) used his personal Facebook page to make a detailed post about an interaction he had with the subject officer (SO) in front of a residence on Home Street, in the City of Winnipeg.

In his post, AP advised that he was cycling home from work at 3:15 a.m. on April 12, 2019, when a police car stopped in front of him abruptly, and SO got out of his vehicle. AP advised that SO was “already belligerent and swearing” and told AP that he matched the description of a white male on a bicycle with a backpack.

AP stated that SO asked him for his backpack. AP said he hesitated for a moment before telling SO that he “didn’t think he (SO) had the right to do that”, following which SO “maced him in the face point blank”. SO then quickly pulled out his baton and AP said he believed he was going to be assaulted further however, he was not.

AP goes on to suggest that he was unlawfully detained and searched for fabricated reasons, assaulted with ‘mace’ and intimidated with a baton for no apparent reason. He felt SO had used his power as a police officer to exercise excessive force on him.

On April 16, 2019, the Professional Standards Unit (PSU) was made aware of AP’s Facebook post. I reviewed the post and corresponding police reports and assigned the Professional Standards Unit to make contact with AP.

On April 18, 2019, PSU contacted AP by telephone and asked if his intentions were to make a complaint in regards to his interactions with SO. AP advised PSU that he felt he was unlawfully detained and then assaulted by SO with ‘mace’. PSU advised AP that because his complaints involved criminal allegations, LERA would be unable to investigate his complaint.

AP stated that he was definitely interested in pursuing this avenue and lodging a criminal complaint against SO. AP was subsequently advised that his complaint would be referred to the IIU for follow-up investigation.

Note: *Further investigation, indicated the linked incident was for three persons who were seen breaking into cars near Simcoe Street. The caller indicated that one of the suspects was a white male, with a backpack, riding a bike and the other two suspects were on foot.*

SO was in the general vicinity of this call when it was voiced by dispatch and is the believed to be the reason he stopped AP.

As the allegations in the notification are discretionary matters pursuant to the provisions of The Police Services Act (PSA), the civilian director determined that it was in the public interest for an independent investigation to be undertaken by IIU. Accordingly, pursuant to s. 75 of the PSA, IIU assumed conduct of this matter and commenced an investigation. IIU investigators were assigned to this investigation.

Information obtained by IIU investigators included:

- audio of 911 call;
- audio of WPS dispatch communications;
- event history;
- subject officer's notes and reports;
- PSU notes and reports;
- use of force report;
- WPS policy on use of O/C spray¹;
- GPS data for the police vehicle;
- Facebook posts;
- Winnipeg Fire and Paramedic Service (WFPS) medical reports respecting AP occurrence details summary report

As noted above, the civilian director designated the involved WPS officer as SO. 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, SO provided his notes and did agree to participate in an interview with IIU investigators.

Additionally, IIU investigators interviewed AP, two civilian witnesses (CW1-2) and four WFPS members (PW1-4).

Affected Person:

AP stated he was working a night shift until 3 am early Friday morning as a technician at a downtown hotel. AP stated that he rode his bike home, westbound on Ellice Avenue then southbound on Home Street. As he was approaching the intersection with St. Matthews Avenue, a vehicle, with high beam lights on, was heading northbound on Home Street. AP stated that shielded his eyes with his arm because the lights were very bright. AP stated that he noted that it was a police car and the driver's window was partially down. AP told the driver/officer, "*Turn your brights off.*" AP stated that he did not use any provocative or aggressive language. AP stated that the police vehicle turned around and sped in front of AP, stopping abruptly. A lone uniformed police officer exited the vehicle and stated, "*...it's very clear that this is the person that was there.*" AP stated that the officer, later identified as SO, said, "*What the f**k did you say to me?*" AP responded, "*I just asked you to turn your brights down...Please turn your brights off.*" AP stated that SO replied, "*Maybe I need them to do my f**king job.*" AP stated that SO advised that AP matched the description of a white male on a bike with a backpack he was looking for who was breaking into cars. AP told him that it was not him, as he was going

¹ oleoresin capsicum spray commonly known as pepper spray

home from work and was almost home. AP stated that SO wanted to search his backpack and asked AP if he could. AP stated that he considered this request, but felt SO did not have the right to do so. However, before he could respond, SO drew his O/C spray and sprayed him in the face. SO then pulled out his baton and AP feared he would be hit by SO. AP stated that he did not do anything to suggest he was a safety risk. AP asked SO why he did that. SO said, "*Because, you refused to comply with my demands.*" SO then told AP to put his hands behind his back, handcuffed him and shoved him in the back seat of the police vehicle. AP stated that SO then searched the backpack and seemed unsatisfied that he did not find anything. AP stated that SO radioed for WFPS to attend and examine AP for exposure to O/C spray. As they waited in the car together, the AP asked if SO would roll down his window so he could spit out the OC spray from his mouth. AP stated that the O/C spray struck his right cheek, nose and his mouth and ran down his chin and chest. On WFPS arrival, AP stated that SO let him out of the police vehicle so the paramedics could examine him. AP stated that he was told that he did not receive a large exposure of O/C spray. AP stated he was treated with a saline solution and returned to the police vehicle. AP stated that he would be released once SO could confirm his identity. AP was eventually released from the police vehicle, the handcuffs were removed and AP cycled home, arriving there after 4:00 a.m. AP stated that he telephoned CW2 to talk about the incident. AP states SO never told him he was under arrest or the reasons for his detention.

WFPS Reports:

IIU investigators received a copy of a WFPS Report, which included Incident Details, Patient Care Report and Pumper Report, which stated inter alia:

- *incident location on Home Street*
- *WPS on scene with male exposure to OC spray - req assess*
- *At scene 3:31:56 am then cleared 3:39:37 am (less than 8 minutes)*
- *Amb required, male exposure to O/C spray, matching desc for breaking into vehs*
- *Assess 29 y/o male in police custody that had been pepper sprayed. Pt. stated he only had mild discomfort in left eye and no breathing problems. Flushed lt eye with saline. Vitals taken all within reasonable limits for Pt. Pt. left with Winnipeg Police Services.*

Civilian Witness (CW):

CW1 was at home when, at 3:00 am turned off the lights. CW1 stated that he looked out his front window, which faces Simcoe Street, and saw three people looking inside cars parked on the street. CW1 stated he called 911 and reported the incident to WPS. CW1 described the three individuals as:

- *an older Caucasian male, 50 - 65 yrs old, groomed beard, wearing a dark colored, slightly glossy rain coat, dark colored pants and carrying a plastic Walmart or yellow grocery bag;*
- *a younger Caucasian male, early 20's, no facial hair, wearing a hoodie, dark pants, with a dark colored back pack and pushing a bright colored bicycle;*
- *a younger Caucasian female, under 18 yrs old, wearing a red jacket with a backpack and carrying a plastic bag.*

CW2 was at home sleeping when AP called her between 4:00 and 4:30 a.m. CW2 stated that AP was upset and had been crying. CW2 stated that AP related what had happened earlier, including:

- AP was stopped by a police officer, maced, handcuffed and placed in the back of the police car;
- AP was biking home from working night shift;
- He yelled at a vehicle with its high beams on to turn them off because it was blinding him;
- It was a police vehicle, which then stopped him on Home Street just south of St. Matthews Avenue;
- The lone officer came out and said, "*What did you say to me?*" Thomas replied, "*I said turn off your high beams. They were in my eye.*" The officer asked him what he was doing. "*Why are you out here?*"
- AP said he was on his way home from work;
- The officer said looking for someone with his description, a white male on a bicycle with a backpack;
- Officer said let me search your bag;
- The officer pulled out his can of pepper spray then sprayed AP in the face, missed most of his eye but he got a lot in the mouth area
- The officer handcuffed him and put him in the back of his police cruiser;
- The officer proceeded to look through AP's bag looking for something, but did not find it;
- Paramedics were called and treated him;
- Paramedics left. About an hour later, the officer let AP go.

WFPS Members:

A four-man WFPS crew responded to the call to assess and treat AP. The WFPS crew were at the scene for between 5 and 10 minutes and then left.

PW1 stated that on arrival, AP was sitting on a boulevard in front of a residence on Home Street. PW1 stated that he was not certain if AP was handcuffed. AP had been pepper sprayed but it did not hit him directly. AP did not have any respiratory issues. AP did not show any signs that he suffered from any severe reaction to the pepper spray save for slight burning in his eyes. PW1 did not see any pepper spray residue on AP. In PW1's opinion, AP's exposure was minor. AP stated that he was not the person the police were looking for and he was not doing anything wrong.

PW2 could not recall if AP was in the rear seat of the police vehicle upon their arrival on scene, but his first recollection was the male was standing outside of the police vehicle. PW2 did not have much interaction with either AP or the police officer. Based on PW2's experience, AP did not appear in any distress.

PW3 stated that AP was in the back of the police vehicle on WFPS arrival. PW3 stated that AP's eyes were rinsed and then they cleared the call. The pepper spray exposure had to be minimal as there were no residual effects on AP.

PW4 stated that on arrival, a male WPS officer had AP handcuffed in the back seat of the marked police vehicle. AP had just been pepper sprayed and had some discomfort in his eyes. Paramedics assessed AP while he was standing just outside the police vehicle and poured a large bottle of saline on his eyes to alleviate pain. AP did not appear in a state of distress. AP did not want to go to the hospital.

Subject Officer

AP was the only white male with a backpack, riding a bike at that hour when SO saw him riding his bike southbound on Home Street. SO stated that AP fit the description of the male that was broadcast over the police radio. SO stated that he completed a U-turn then sped up and stopped in front of the AP. He then exited his police vehicle and stopped him. SO stated that he advised AP that he was not free to leave. SO stated that he did not advise AP of his right to contact a lawyer because everything happened too fast and he was unable to advise him at that time. SO stated that AP was unwilling to dismount the bike. SO's notebook entry detailed "...AP was going to flee and escape a lawful detention and assault SO in the process". SO stated in response that AP made it very clear that he was leaving even if he had to go through SO. SO believed that AP's intention was to leave. SO stated that he provided the description of the suspect male on the bike as reported by the 911 complainant but AP chose not to believe him. SO stated that as soon as he had the opportunity, he advised AP the reason for his detention, the matter under investigation and his right to contact legal counsel. SO confirmed he handcuffed AP's hands in accordance with WPS policy absent exigent circumstances. SO denied swearing at AP or that any of the conversation reported by AP took place, as he did not hear AP say anything to him. SO denied that he made any request to search AP's backpack prior to the detention and prior to spraying him with O/C spray. The only instruction SO gave was for AP to dismount from his bike, place his bike on the ground and take his backpack off. SO clarified that these requests were for officer safety, as one does not know what is inside the backpack. SO stated he sprayed AP across the front of his jacket and that the OC spray was visible only on the front of the jacket.

Use of Force Report:

A call for service was received relating that three people breaking into vehicles. The caller indicated one of the suspects was a white male with a backpack who was riding a bike. SO wrote that he attended the area to see if the suspects could be located and while searching, he observed a white male on a bicycle with a backpack traveling southbound on Home Street. The male continued southbound passing St Mathews Ave. SO wrote that he conducted a U-turn, sped up, and passed the male. SO wrote that he stopped in front of a residence on Home Street and flagged down the male on the bicycle. SO wrote that he told the male there were several break-ins to vehicles in the area and that was why he was stopping him. The male told him it was not him and attempted to leave. SO wrote that he moved in front of the male and told him to stop and get off his bike. The male said, "*No, that's not reasonable I'm not getting off my bike*". SO wrote that he told the male the suspect description was a white male on a bike with a backpack. SO wrote that he told the male he was not free to leave, that SO was investigating thefts from motor

vehicles. The male told SO to move out the way and attempted to ride away a second time. SO wrote that the male would have to run into SO, which would have most likely resulted in a physical altercation. SO wrote that the male had a large build, SO was alone at 03:20 am and was unsure where his friends may be. SO wrote that he had not had the time or the ability to investigate whether the male was involved with the break-ins, but believed this male was involved and was attempting to evade the investigation. SO wrote that in order to prevent the male from escaping, prevent a physical altercation and fearing for safety, he deployed O/C Spray. SO sprayed the front of the male's jacket with a short burst in an attempt to stop this behaviour. The short burst of OC Spray was effective, the male immediately stopped, and SO repeated directions for him to get off his bike. The male complied and sat his bike down. The male was instructed to turn around and place his hands behind his back, which he did. The male was advised he was being detained for a theft investigation and removed from the contaminated area immediately. The male was handcuffed and a pat down search was conducted. The male was placed in the rear of the cruiser car and SO requested the WFPS to attend in order to rinse AP's face. AP was treated by WFPS and cleared. After establishing the male's identity and determining he was not involved in the thefts, AP was released.

WPS policy on use of O/C spray:

A review of WPS policy on the use of O/C spray:

- O/C Spray is considered an intermediate weapon by WPS;
- An intermediate weapon is intended to incapacitate a person by overcoming their resistance in cases where lethal force is not justified and empty hand control is ineffective or inappropriate.

Conclusion:

Following the completion of this investigation, the civilian director forwarded the IIU investigative file to Manitoba Prosecution Service (MPS) and requested a review and opinion on whether any Criminal Code charges should be authorized against the subject officer.

In the course of reviewing the matter, MPS requested, received and considered an expert report on use of force by a police officer.

Following the review of the IIU investigative file and other material, MPS provided a written opinion, in which it was stated:

MPS has reviewed the IIU investigation of [SO]. While it is always in the public interest to hold police officers accountable, there must also be a reasonable likelihood of conviction for MPS to prosecute a matter. In this case, after considering all of the evidence and expert opinion, we have concluded that a reasonable doubt exists as to whether the officer's use of force was excessive. Consequently, although grounds exist to arrest the officer and lay a charge, we are not satisfied that there is a reasonable likelihood of conviction. When MPS is consulted for charge authorization in any criminal matter, we employ the same standard for proceeding with criminal charges.

Accordingly, MPS will not authorize any criminal code charges against SO as there is no reasonable likelihood of conviction in this matter.

The IIU investigation is now complete and this file is closed.

Final report prepared by:

Zane Tessler, civilian director
Independent Investigation Unit
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