

FINAL REPORT: IIU concludes investigation into injury following police pursuit in Winnipeg

On September 1, 2020, Winnipeg Police Service (WPS) notified the IIU that WPS officers transported a male (later identified as the Affected Person (AP)) to hospital following a police pursuit and foot chase.

The salient portion of the written notification read as follows:

“On Tuesday, 20/09/01, at approximately 12:03 a.m., WPS members were notified that the RCMP had been in pursuit of a stolen vehicle that was wanted in conjunction with a rural residential B&E where firearms were stolen. A male, identified as AP below, was noted to be an occupant of the vehicle in question. RCMP advised that the suspect vehicle had been lost inside city limits and was last seen northbound on Keewatin Street.

At approximately 12:40 a.m., patrolling WPS members observed the suspect vehicle in the vicinity of William Avenue and Worth Street and attempted to follow it. The driver of the vehicle then fled from police, proceeding northbound on King Edward Street. WPS units were able to monitor the direction of travel of the suspect vehicle as it proceeded eastbound on the North Perimeter Highway at a high rate of speed. As the suspect vehicle approached the intersection of the East Perimeter Highway and Dugald Road, an RCMP police unit attempted to stop the vehicle but immediately aborted the effort when the driver refused to stop and continued westbound on Dugald Road at a high rate of speed.

At the intersection of Lagimodiere Boulevard and Dugald Road, assisting WPS units were able to successfully deploy stop sticks, which began to deflate the suspect vehicle's tires. At approximately 1:06 a.m., WPS units engaged in a pursuit of the vehicle northbound on Lagimodiere Boulevard. As the vehicle fled northbound on Lagimodiere Boulevard, the damaged tires began to disintegrate which impeded the speed of the vehicle. Upon approaching the intersection of Grassie Boulevard, the driver drove the suspect vehicle into the southbound lanes of Lagimodiere Boulevard, where he continued northbound against oncoming traffic.

At approximately 1:08 a.m., the suspect drove the vehicle into the west side ditch of Lagimodiere Boulevard in an effort to evade police, however the vehicle became stuck. At this point two males fled on foot, one armed with a shotgun. Two other males remained in the disabled vehicle and were arrested by attending officers. During a brief foot pursuit, the third male was taken into custody.

Tactical Support Team (TST) members subsequently located the lone outstanding male, identified as AP, hiding at the rear of a residence on Mahonee Drive where he was taken into custody. At the time of his arrest, AP was found to have a laceration to his left ear. He was subsequently conveyed to the Health Science Center (HSC) for treatment of this injury, however was admitted to hospital for a possible collapsed left lung. It is

unclear at this time how and when these injuries occurred. A search for the firearm has produced negative results at the time of this report.”

The injuries and hospitalization noted above both meet the definition of a serious injury as defined in IIU regulation 99/2015. As a result, IIU assumed responsibility for this mandatory investigation in accordance with section 66 of *The Police Services Act* (PSA). A team of IIU investigators was assigned to this investigation.

The IIU civilian director designated two WPS officers as subject officers (SO1-2). Nine WPS officers were originally designated as witness officers, but following a review of file materials, it was determined that four were not involved in the arrest of AP. As such, interviews were conducted with the remaining witness officers (WO1-5). IIU investigators met with and interviewed AP. IIU investigators identified and conducted interviews with three civilian witnesses (CW1-3) who had relevant information about this incident. Finally, a physician with the Chief Medical Examiner’s (CME) office was consulted and was requested to provide an opinion on the likely cause of the injuries sustained by AP.

Among the agency information obtained by IIU investigators included:

- Incident History Report;
- WPS officers’ notes and narrative reports;
- Forensic Identification Report;
- Use of Force Report;
- AP medical report;
- WPS radio transmissions recordings;
- WPS use of force policy

Facts and Circumstances

Affected Person:

AP states that after the vehicle went off the road, he ran and hid under a house’s deck. AP states that he was not injured when the vehicle lost control and went off the road. AP states that a police service dog, (PSD), “*sniffed him out*” and police told him to come out with his hands up. He came out and laid down flat on his stomach with his hands out. AP states that police officers got on top of him, started to knee him in the back and punched him on the side of his ear. AP states there were between 10 and 12 police officers at the scene, and at least five or six police officers had their hands on him. AP states that when he was taken to a police cruiser, he was having difficulty breathing.

Medical report:

IIU investigators received and reviewed AP’s medical report. According to file information, AP was admitted to hospital for a laceration to his left ear and for a left pneumothorax (a collapsed lung). The report notes that AP stated he was involved in a motor vehicle accident while in the process of evading WPS. AP was treated at HSC, consisting of the use of a chest tube to manage the pneumothorax and received three sutures to his left ear to close the laceration. There were no indications of fractures to AP’s ribs or clavicle.

Civilian Witness:

CW1 reports that on September 1, just past 1:00 a.m., she heard noises in her back yard and saw flashlights behind her fence. CW1 states that she saw WPS officers and cruiser cars out front of her residence on Mahonee Drive. CW1 states that she could see people in the back of her next-door neighbour's home. CW1 states that she saw police locate a person there who appeared to be hiding, but her view was partially obstructed by a fence. CW1 believed a person was arrested because they were taken to the front and held by police. CW1 did not see police use any force on that person as they were taken to the police cruiser.

CW2 resides on Molson Avenue, with a view of the residence on Mahonee Drive. CW2 states that on September 1, WPS officers attended his home and asked for permission to search his yard for weapons. CW2 did not witness an arrest of any persons in the area.

CW3 resides at the residence on Mahonee Drive where AP was located and arrested. CW3 states that he and his wife were home and asleep on September 1 and were not awakened or alerted to any police presence. CW3 states that he later learned from his neighbour about police on scene. CW3 states that he checked his backyard and observed broken vegetation at the top of his back (east) chain link fence of his backyard. CW3 states that there was also broken vegetation on the south and west side of a gazebo, located in the backyard. CW3 states that this broken vegetation was consistent with someone crawling under the deck. CW3 states that the chain link fence was hard to see at night. CW3 believes that someone may have injured himself or herself scaling the chain link fence at night.

Witness Officers:

WO1 was a member of TST when after midnight, a radio broadcast advised of a traffic pursuit occurring and that the suspects may be armed. WO1 states that TST members attended the area on receiving information that the suspect vehicle had crashed and that there was now a foot pursuit underway. WO1 states that the TST members met up with a K9 Unit and assisted in a track of the area. The PSD showed interest in a yard of a residence on Mahonee Drive. WO1 states that he and TST members made their way to a backyard of a residence on Mahonee Drive, which had a large enclosed gazebo with decking. The PSD was now showing interest to the area under the gazebo. WO1 states that he peeked underneath the gazebo's deck and observed some feet and head of a male, later identified as AP. WO1 states he commanded and directed AP to exit and make his way out towards the house. WO1 states that AP made his way out towards the opposite where waiting police officers took him into custody. WO1 states that an adjacent residence of Molson Street had a three and a half foot wood fence. The residence on Mahonee Drive, where AP was located, had a higher chain link fence, approximately five to six feet tall.

WO2 was a member of TST. WO2 states that sometime between 12:30 a.m. and 1:00 a.m., he became aware of a pursuit of a stolen vehicle and that the occupants were possibly armed. ON further information that the suspect vehicle had crashed on Lagimodiere Boulevard, WO2 states that TST members attended to Molson Street and assist a K9 Unit conducting a track. WO2 states that the tracking PSD showed interest in a yard on Mahonee Drive, that contained a large gazebo. WO2 states that when the PSD showed interest under the gazebo and WO1 looked underneath it, TST was informed that a male, later identified as AP, was there. WO2 states that he gave verbal commands to AP to come out with his hands up and to keep them visible. WO2 states that AP did emerge slowly from under the gazebo. WO2 states that information was provided earlier that AP might be armed with a shotgun. WO2 states that he took hold of AP by his right arm and

SO2 grabbed his left arm. WO2 states that they dragged AP out and applied handcuffs to him. When AP was handcuffed, he was turned over for a weapons check, at which point WO2 states he observed blood coming from AP's ear. When AP was on the ground, he did not say he was injured. WO2 states that he did not use force when dealing with AP.

WO3 was a member of TST and was the acting sergeant. WO3 states that he was aware that earlier that evening, the RCMP had issued a lookout for a stolen vehicle with potentially armed occupants. WO3 states that early in the morning, a police radio broadcast reported that the stolen vehicle was now being pursued in Winnipeg. WO3 states that he was advised that the suspect vehicle ended up in a ditch and abandoned on Lagimodiere Boulevard, just north of Grassie Boulevard. There were four occupants in the suspect vehicle and three had been taken into custody. The three occupants confirmed that a male had run from the vehicle and that he was armed. WO3 states that WO4 was in a foot pursuit of the male, later identified as AP, which led to a fenced area on Molson Street. WO3 states that TST members began their search of that area with the K9 Unit. They followed the track to the backyard of a residence on Mahonee Drive where a PSD showed interest in a gazebo in the backyard. WO3 states that WO1 looked under the gazebo and observed AP hiding. WO3 states that AP was ordered to crawl out from under the deck and show his hands. WO3 states that AP partially emerged but did not show his hands, WO2 and SO2 pulled him from under the gazebo. Following some resistance, AP was controlled and handcuffed. When a stream of blood was noted coming from AP's ear, WO3 called for an ambulance to check on the injury. The only use of force WO3 observed was when SO1 applied a pressure point behind AP's ear, which he described as a very low level of force. Once AP was removed from the scene, a further search was conducted with the PSD to try to locate the firearm, with negative results.

WO4 states that a message from the RCMP was received concerning a stolen vehicle thought to be in the Brooklands area of Winnipeg. The message identified AP as the driver of the stolen vehicle and indicated he may be in possession of firearms. WO4 states that he was familiar with AP through previous dealings. WO4 states that as a result, he and other officers attended to a last known address of AP to look for him. On arrival, the stolen vehicle was observed driving in the area. WO4 states that they initiated a pursuit of the stolen vehicle. WO4 states that a spike belt (a tire deflation device) was deployed and was successful in deflating the stolen vehicle's tires. WO4 states that the stolen vehicle eventually drove into the ditch and two people fled from it, running westbound through a grassy field. WO4 states that one of runners was AP. WO4 states that he was focused on AP as he was running. WO4 states that it was broadcasted over a police radio that stolen firearms were in the vehicle and AP may be armed. WO4 states that AP was followed to a residence on Molson Street. WO4 states he exited his vehicle and pursued AP on foot. WO4 states that AP ran towards a six-foot high chain link fence. WO4 states that AP climbed the fence. WO4 states that he was closing in to grab AP's feet when AP went over the fence hard. WO4 states that AP's feet went up and over like "*...an ass over tea kettles, like a sandbag or sack of potatoes*". WO4 did not see how AP had landed on the ground because it was too dark. WO4 states that he then heard some rustling as AP continued to run away. WO4 states that he requested the K9 Unit to attend to his location and then took them to the last spot he saw AP. WO4 states that WO5, the K9 officer, started to track the area with a PSD. WO4 states eventually he heard a radio broadcast that AP was in custody at a residence on Mahonee Drive.

WO5 is a member of the WPS K9 unit. On September 1, WO5 and his PSD were on duty when a radio broadcast was received regarding a stolen vehicle that may have been involved in a break

and enter in Oakbank and may have stolen firearms. Further information was received that a pursuit of the vehicle had occurred and ended when the stolen vehicle entered a ditch on Lagimodiere Boulevard. WO5 states that he attended the area and heard another radio transmission that WO4 was chasing a male, later identified as AP, on foot but lost him in a yard. WO5 states he met up with WO4 and was directed to the last location of AP. WO5 states that he deployed his PSD to commence a track of the area. WO5 states they went into a backyard where WO4 stated he saw AP jump a fence. The PSD began the track for AP leading them to a residence on Mahonee Drive. WO5 states that it was at this location's backyard where the PSD showed interest in a deck. WO5 states that he did not look under the deck, but based on the change on PSD's behaviour, he believed someone was under the deck. WO5 states that TST members extracted AP. WO5 states that at no time did he see any knee strikes used on AP.

Subject Officer:

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 subject officers agreed to provide a copy of their respective notes to IIU investigators. Additionally, each subject officer agreed to attend and participate in an interview with IIU investigators.

SO1, a TST member, worked the evening shift with WO3. SO1 states that a radio broadcast was received that the RCMP was involved with a stolen vehicle that was operated by AP. Information further conveyed that AP may have been responsible for break and enter activity outside of the city and that firearms may have been stolen. The radio transmission further broadcast that the RCMP had lost sight of the stolen vehicle. SO1 stated that he and WO3 were assigned to this incident and they began to search for the suspect vehicle. SO1 states that as they drove, at 12:45 a.m., a radio transmission was received noting that the suspect vehicle was located and was being followed to the vicinity of Pipeline Road and the Perimeter Highway. The suspect vehicle was travelling eastbound on the Perimeter Highway at a high rate of speed. SO1 states that he joined with other WPS units to pursue the suspect vehicle. The suspect vehicle continued eastbound then southbound to Dugald Road. A spike belt was successfully deployed around the area of the Dugald Road overpass. The suspect vehicle continued to Lagimodiere Boulevard and Grassie Boulevard where the tires began to disintegrate and it came to an abrupt stop in the ditch on the west side of Lagimodiere Boulevard. SO1 states that when the suspect vehicle came to a stop, a number of people were taken into custody. A radio transmission was received that advised that a male, later identified as AP, was running away and may be armed with a shotgun. AP was chased on foot by a couple of uniformed officers and WO4 to a backyard on Molson Street. SO1 states that that they attended to that area with the K9 Unit and a PSD track was commenced. SO1 states that the PSD track led them to a backyard of a residence on Mahonee Drive where AP was ultimately located. This backyard was surrounded by two fences described as a six-foot and a four to five foot wooden fence, with an approximately one-foot gap between them. SO1 stated that it was extremely dark and was hard to navigate in the back yard. SO1 states that AP was pulled from under a gazebo by SO2 and WO2. SO1 states that AP was given commands to show his hands, however he refused to comply. SO1 states that he applied a pressure point to AP's left ear to gain compliance. Despite the issuance of commands to stop resisting and to put his hands behind his back, AP flailed his head around. SO1 states that SO2 and WO2 took hold of AP's hands behind his back and handcuff him, at which point SO1 immediately released the pressure point.

SO2 was a member of the TST and was assigned to a call on Mahonee Drive to assist in a search for a male suspect, later identified as AP. According to information received by SO2, AP was allegedly involved in a rural break and enter where it was reported he fled in a stolen vehicle and later pursued by WPS officers. SO2 states that he assisted the K9 Unit with tracking AP to a backyard of a residence on Mahonee Drive, near Lagimodiere Boulevard. SO2 states that he was the first police officer to enter the backyard. Other WPS soon joined him in the backyard. SO2 states that he had to scale two fences. SO2 states that the taller fence was chain link and shorter one was a wooden fence. The fences were difficult to climb over, and SO2 states that the ground on the other side to be uneven rocks. SO2 states that that once in the backyard, the PSD began to indicate that AP was underneath a gazebo deck. WO1 gave commands to AP to come out. SO2 stated that he and WO2 removed AP from under the gazebo. It was believed that AP was in possession of a firearm. AP was refusing to show his hands. SO2 stated that he and WO2 each took an arm and “*shin pinned*” AP, face down on the ground to secure him. SO2 states that a shin pin is a trained manoeuvre where officers place their weight, often with a knee or lower leg, on a subject's buttocks area to control them without interfering with breathing. It is not a striking motion, but more a transfer of weight. SO2 states that at no time was AP subjected to knee strikes. SO2 states that as AP continued to be non-compliant, SO1 administered a pressure point to the left ear. SO2 states that AP complied after the pressure point was administered and was handcuffed. SO2 states that he then noticed that AP’s left ear was bleeding.

Physician’s Opinion

IIU investigators contacted the CME and requested that AP’s medical information be reviewed and that an opinion on the likely cause of these injuries be provided. A physician with CME stated that based on the information provided, he was of the opinion that the pneumothorax would be far more likely to have been the result of a fall AP had onto his back as opposed to any pressure applied by knees. Knee strikes could produce a pneumothorax, but it would be unlikely to take place in the absence of other trauma such as chest wall bruising or rib fractures. Falling flat on the back from a height would produce a pneumothorax without the fracturing of any ribs. The physician further states that bruising from a kick or a punch is usually specific to the strike zone and will spread over hours and days as the body causes more blood to flow into the injured area. Such a blow can also be responsible for breaking bones. On the other hand, a fall from a height with the back landing on a hard surface may not cause any bruising. The force of the fall could knock the wind out of the person, and in turn could cause a lung to collapse, especially in a scenario where the body is under stress, such as running or jumping.

Conclusion:

The relevant issue in this matter is whether, at any time, either or both of SO1 and SO2 used excessive or unnecessary force on AP at the time of his apprehension and arrest.

Subsection 25(1), section 26 and subsection 265(1) (a) of the *Criminal Code of Canada* are relevant to this analysis:

25 (1) Every one 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.

26 Every one 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.

265 (1)(a) 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*.

Police may be required to use force and levels of interventions in their law enforcement role. Section 25 of the *Criminal Code of Canada* establishes protections from liability for a police officer, who, in the course of enforcing the law, finds it necessary to use force. The facts and circumstances, coupled with training and assessments, must be considered to determine whether the use of force, the method(s) employed and the degree of force used were necessary and justified in law.

The available intervention options may be considered individually or in combination. The type and use of intervention methods and tools is a dynamic process. This allows appropriate decisions to be made and assessed in light of the requirements of the specific circumstances.

The dynamic nature of the choice and implementation requires continual evaluation by the police officer and recognition that the particular strategy may change at any stage.

A shin pin and pressure points are intervention tools and use of force methods. Proper training, control, assessment of the situation and consideration of all other forms of reasonable options are factors to be assessed to determine appropriateness and authorization.

In these circumstances:

- Both SO1 and SO2 were in the lawful execution of the respective duties and were each lawfully placed at the time of their contact with AP;
- Information was provided that AP was allegedly involved in a break and enter wherein firearms were stolen;
- Further information provided suggested that AP was in the possession of a firearm when he ran from stolen vehicle after it entered a ditch;
- It was reasonable to assume that AP posed a real threat to officers and the general public while he was at large;
- When AP was apprehended and pulled from beneath the gazebo deck, he refused to show his hands and resisted to his arrest, thereby amplifying the potential risk to police and public;
- The shin pin and pressure point were used to obtain AP's compliance and to further his arrest and detention;
- There is no evidence of direct use of multiple, if any, knee strikes and punches to AP's back and head;
- There is no evidence to suggest that five or more officers had physical contact with AP once he was pulled from beneath the deck;

- There is evidence that AP fell to the ground after he attempted to scale the chain link fence, landing on a rocky base on his back;
- The medical evidence and physician's opinion support the conclusion that AP's injuries were a direct result of his fall and not from any physical blows committed by any police officer;
- AP is solely responsible for his injuries.

I am not satisfied that any reasonable grounds exist in these circumstances to justify the laying of any criminal code or other offence against either or both of SO1 or SO2.

This matter is now complete and the IIU will close its investigation.

Final report prepared by:

Zane Tessler, civilian director
Independent Investigation Unit
March 17, 2021

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