



**IN THE MATTER OF AN INVESTIGATION INTO A SERIOUS INJURY
RELATED TO A WPS ARREST ON SEPTEMBER 7, 2021**

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

IIU File Number:	2021-0042
Final decision made by:	Zane Tessler, Civilian Director
Report prepared by:	Roxanne M. Gagné, Civilian Director
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Introduction

On September 8, 2021, the Winnipeg Police Service (WPS) notified the Independent Investigation Unit of Manitoba (IIU) of an incident.

The written notification, dated September 9, 2021, disclosed the following information (excerpt):

On September 7th, 2021, at approximately 2:52 p.m., members of the Winnipeg Police Service (WPS) attended to Mathers Avenue for a report of a domestic assault.

Prior to police arrival the victim of the assault fled to a nearby Esso service station located at 1330 Taylor Avenue. Further information that the female victim has been punched and kicked repeatedly in the face by the affected person (AP), who as later identified. As WPS members were arriving at the location, they learned that WFPS was transporting the victim to HSC in unstable condition.

Upon arrival, WPS members located the AP on Waverly Street. He refused to comply with the verbal directions given by the attending WPS members, turned to walk away and moved his right hand towards his pocket.

Attending officers continued to provide verbal direction to the AP, but he ignored them and became even more agitated. Shortly thereafter, a WPS member deployed his taser causing him to fall to the ground where a brief struggle ensued. WPS members eventually managed to place him in handcuffs.

The AP continued to fight with WPS members and had to be chemically sedated by WFPS personnel. The Taser probes were successfully removed by WFPS on site and he was then conveyed to the HSC for further treatment. It was later learned he had consumed methamphetamine prior to police arrival.

The AP was treated at the HSC and then released into police custody for processing. There were no notable injuries at this time and he was processed accordingly.

On September 8th, 2021, approximately 11:30 a.m., the WPS Duty Office received a call from the attending physician at HSC, indicating the AP had actually sustained an orbital fracture. The injury was not life threatening and did not require immediate medical attention.

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.

Background and circumstances

Between September 14, 2021, and December 1, 2021, IIU investigators received the following investigative materials:

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- Call history;
- Forensic Identification Service (FIS) victim injury report, showing injuries of the civilian witness;
- FIS victim injury report, showing injuries of the AP;
- Prisoner log sheet;
- Medical release from HSC;
- CD containing an audio record of the radio communication between the involved units and dispatch;
- Use of Force Report;
- Narrative and notes of witness officers;
- CD containing photos of the AP's injuries.

At the time of this incident, the civilian director designated two subject officers and four witness officers. The subject officers submitted their notes and declined an interview. IIU investigators met with the AP and two civilian witnesses. The four witness offices provided an interview.

On September 10, 2021, IIU investigators met with the AP. He was complaining of numbness in hands. IIU investigators noted that there were no visible injuries to his hands. He said that the probes from the Taser struck him in the left leg, which caused him to fall forward. He said there were four officers involved, but he could not describe them and he could not say what any of the officers were doing.

On September 17, 2021, IIU investigators obtained a copy of a video that shows a female (later identified as the victim in the domestic matter) outside the Esso service station. The video shows the ambulance attending to her pick up from the scene.

On May 25, 2022, IIU investigators provided a copy of the investigative file to a Use of Force expert and obtained an expert opinion, which indicated the following:

With respect to my analysis of the use of force in this case, it is the author's expert opinion, which I hold to a high degree of confidence, that the WPS officers chosen force intervention techniques; the use of the Taser, the fisted strikes, and the application of the spit sock and RIPP Hobble restraint, during the incident were consistent with the principles of the philosophy of police use of force as generally taught as well as consistent with WPS police governing use of force.

The expert provided the following opinion regarding the use of the Taser:

The AP was a subject demonstrating "active aggression" behavioral cues. He had just minutes before violently assaulted his girlfriend causing what were believed to be serious injuries.

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When being told he was under arrest, he turned his back to the officers and began to move away, which would have necessitated force to control him. He was observed to move his right hand towards his waistband area and had not been searched.

The use of the Taser would have been appropriate, based upon the totality of the circumstances, to suspect he was attempting to access a concealed weapon on his person. WPS policy (5.A.) defines the CEW as an 'Intermediate Weapon' within the WPS Use of Force continuum. An intermediate weapon is an appropriate intervention to consider when dealing with a subject demonstrating 'active aggression'.

IIU investigators asked the expert to provide his opinion as to whether the AP would have been able to put his hands out to stop his fall:

When the AP was Tasered; he experienced 'full body tetany' or 'muscular lockup' and fell headfirst into the concrete. Many subjects have experienced head injuries because of falling in an uncontrolled fashion to the ground and striking their heads on a hard surface. This could certainly have caused the AP's fracture.

On July 22, 2022, IIU investigators sent the following information to Chief Medical Examiner (CME) Dr. Younes regarding the AP's injuries:

- During the AP's assault on his girlfriend, the AP's mother hit him in the head area with a pool cue in an attempt to stop the assault.
- During his initial interaction with the WPS officers, he was Tasered for not complying with the officer demands. The Taser was successful and the AP fell to the ground. His face hit the concrete without him being able to protect himself with his hands.
- During his arrest, he remained combative and was punched in the face by the officers in order to stop his behavior.

Dr. Younes was asked to indicate if any of the above scenarios could have caused the orbital fracture to the AP. Dr. Younes stated that any of the scenarios could produce an orbital fracture if the impact to the face was in the right spot.

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 if so, whether the officer's 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. In consideration of the CME's opinion, he considered that any of the actions could have caused the injury. Further, the severity of the injury alone does not dictate whether force was excessive or not. Therefore, in consideration of all the evidence obtained in this

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matter, including the Use of Force expert opinion, and the CME's opinion, the civilian director determined that the police were justified in the use of force.

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