

FINAL REPORT: IIU concludes investigation into serious injuries during interaction with WPS officers

On April 7, 2021, the Winnipeg Police Service (WPS) notified the Independent Investigation Unit (IIU) of serious injuries sustained by a male (later identified as the affected person (AP)) during an interaction with police.

The notification, provided to IIU (edited for clarity), read in part:

“On November 9, 2020, CW2 contacted police to have her two sons removed from an apartment block on Boyd Avenue as they were reportedly intoxicated. Four WPS officers attended and met with CW1 who was detained [under the Intoxicated Persons Detention Act] IPDA. AP contacted the Manitoba Law Enforcement Review Agency (LERA) on December 7th, 2020, and advised that he was also in attendance on Nov. 9, and alleged that he suffered a fractured humerus while in contact with police when CW1 was detained. On April 7th, 2021, LERA forwarded the investigative material to the Professional Standards Unit. ”

In that notification, information was provided to suggest that AP had sustained a fractured arm, as a result of his encounter with police. As a fractured arm is defined as a serious injury under Independent Investigation regulation 99/2015, this matter was a mandatory investigation for which IIU was statutorily required to assume responsibility. A team of IIU investigators was assigned to this investigation.

WPS file material and other information obtained by IIU investigators included:

- Computer-aided dispatch (CAD) records
- WPS radio transmissions
- IPDA report for CW1
- Witness officer notes
- Copy of LERA complaint
- LERA audio interview with AP
- AP’s medical records from Health Sciences Centre (HSC)
- LERA file material

As there was a lack of information on whether any member of the WPS was directly or indirectly involved in the cause of AP’s injury, the civilian director deferred the designation of a subject officer pending further investigation into this matter. The civilian director did designate four WPS officers who had contact with AP as witness officers (WO1 – WO4). IIU investigators also met with and interviewed AP and four civilian witnesses (CW1 – CW4).

Facts and Circumstances

Affected Person:

AP was interviewed by LERA investigators at the onset of his complaint with that agency, and that statement was supplied to IIU investigators. AP stated he was at his apartment with CW1. Both were drinking and had consumed approximately two litres of beer and 26 ounces of liquor. CW2, who lives across the hallway in a separate apartment, told AP and CW1 to quiet down. Following an argument with CW1, CW2 called police to have him removed from the apartment block. WPS officers attended a short time later and entered AP's suite. AP spoke with police officers in the living room while CW1 met with officers in a bedroom. AP stated that he told police that he wanted CW1 removed from his suite due to his behaviour and because he "...was a mean guy when he had been drinking and was aggressive." AP stated that CW1 was detained by police due to his intoxication and was taken out of his suite. AP stated that he was not arrested by police and was left alone in the apartment. AP stated that he did not remember what, if anything, the police did to him nor what happened after CW1 was removed. AP was asked if any police officer touched him at any time to which he stated, "*I know [CW1] wanted to fight me and I don't even know what happened to tell you the truth.*" When asked how he received his arm injury, he stated,

"I don't really know, maybe they roughed me up I guess, maybe I was being a smart ass, I don't know, maybe that's probably it. They took my brother away and they just left me home."

AP could not recall whether any police officer had grabbed his arm. AP stated that he attended Health Sciences Centre (HSC) on November 9, and was advised that his left arm was broken between the elbow and the shoulder and he was placed in a cast.

IIU investigators conducted a separate interview with AP. AP stated that he was drinking with CW1 in the apartment. AP stated that CW1 was "*being mean*" to CW2, so she called the police to come and take him (CW1) to the "*drunk tank*". AP stated that he recalls four police officers entered his apartment and separated him and CW1. The police eventually took CW1 out of the apartment. AP stated,

"... they kind of roughed me up, I guess...Well [CW1] wouldn't fight me like that."

AP stated that he vaguely recalls that a male and female officer remained in his apartment after CW1 was taken away, and the male officer broke his left arm by twisting it behind his back. AP stated that when his arm broke, he yelled out loud but then stated that he blacked out prior to any force being applied to him. AP stated that he initially thought his arm was sprained and did not realize it was broken until two days later, when he went to the hospital. AP stated that he was very intoxicated when the police arrived at his apartment.

AP's Medical Records:

LERA investigators obtained medical information pertaining to AP and forwarded the records to IIU investigators. The records indicated AP attended HSC on November 10 and was diagnosed

with a displaced left segmental humerus¹ fracture and a radial nerve palsy². A closed reduction was performed of his humerus and he was placed into a long arm splint. He was admitted to the hospital pending operative intervention and discharged himself, against medical advice, on November 13. It was also noted in the records:

“About three days ago, under the influence of ETOH, patient injured his left arm. Mechanism of injury not clear ... There was an oblique spiral fracture through the distal third of the humerus...[AP] denied trauma but is unsure how/why it started as he was heavily intoxicated at the time and does not recall events leading up to his elbow pain”

Civilian Witnesses:

CW1 stated that he was drinking with AP at AP’s apartment. CW1 stated that they were both drunk, though he believed that AP was the more intoxicated of the two. CW1 stated that they must have been getting too loud but were not fighting and that CW2 must have called the police. CW1 stated that police officers opened the door to AP’s apartment, without knocking, told CW1 to get up, and then removed him from the suite. CW1 stated that a male and a female officer were involved in removing him. CW1 stated that two other male officers were standing in the hallway and then entered AP’s suite, as he was being led away by the male and female police officers. CW1 stated that he did not see the two male officers interact with AP, did not see any police officer hit or use force on AP, but he could hear them talking to AP. CW1 stated that he did not hear any yelling from the apartment. CW1 stated that the male and female police officers took him to the “drunk tank” where the female police officer kned him in the ribs. CW1 stated that he was released the following morning and made his way back to AP’s apartment. CW1 stated that AP appeared to have been roughed up as he had bruising to the side of his face and his arm was swollen. CW1 stated that AP could not remember what had happened. CW1 stated that the two male police officers, that entered the apartment after he left, must have hit AP with something,

"... because he couldn't have fallen like that."

CW2 stated that she attended AP’s apartment (situated across from her suite) and noted that both he and CW1 were intoxicated. CW2 stated that she was at AP’s apartment for approximately two minutes and AP did not appear to be injured. CW2 stated that while she was there, CW1 pushed her, so she returned to her suite and called the Police, asking that CW1 be removed from the building. CW2 stated that some time later, four WPS officers (two Male and two Female) attended the building and saw them attend to AP’s suite door. The police officers spoke with CW2 and said that they would take CW1 someplace safe. CW2 stated that she closed the door to her apartment and did not open it again. CW2 stated that she did not hear anything through the door of her apartment after that, specifically any sounds of fighting or yelling. CW2 stated that the next day, AP showed up at her apartment and had a swollen left arm. CW2 stated that AP said that the police must have broken his arm. CW2 stated that she believed that the police must have attacked AP because he did not have a swollen arm when she saw him earlier and now he

¹ The humerus is a long bone in the arm that runs from the shoulder to the elbow

² The radial nerve runs from the upper arm to the wrist and fingers. This nerve controls movement and sensation in the arm and hand and extension of the elbow, wrist and fingers. Radial nerve palsy is a condition that affects the radial nerve and if damage to this nerve occurs, weakness, numbness and an inability to control the muscles served by this nerve may result.

was injured. CW2 stated that AP then said that he did not know what happened to him, but it must have been the cops that injured him.

CW3 resides in an apartment directly below AP's apartment. CW3 stated that there was loud music coming from AP's apartment at around midnight on November 9. CW3 stated that she went and spoke with AP and asked him to keep the noise down. CW3 stated that both AP and CW1 were both in the apartment and were "...really drunk". CW3 stated that AP complied with her request. CW3 stated that ten or fifteen minutes later, two to four police officers arrived at the apartment block and went to AP's suite. CW3 stated that while she could hear talking from his apartment, she did not hear any yelling or anyone calling out in pain. CW3 stated that approximately five minutes later, she heard a loud bang coming from above her apartment as if someone had fallen. CW3 stated that all the police officers came downstairs with CW1 and left.

CW4 resides in the apartment below AP's suite. CW4 stated that he was in his suite that evening when police officers came to the front and back doors of the building. CW4 stated that prior to the police arrival, there had been noise coming from AP's suite. CW4 stated that he let two officers, a male and a female, in through the back door. These two officers went to the front door of the apartment block and they let two other officers, a male and female, inside. CW4 stated that all of the police officers went upstairs. CW4 stated that he left his own suite door open so he could hear what was said and done. CW4 stated that it was very quiet. Two police officers, a male and a female, came downstairs with CW1 and left the building. Within two to three minutes later, the other police officers came downstairs. CW4 stated that there was no noise, yelling or any commotion sounds coming from upstairs and at no time did he hear AP yelling.

Witness Officers:

WO1 was partnered with WO2 when they were dispatched to a call for service where a caller complained that two males were intoxicated and causing a disturbance. Additionally, WO3 and WO4 were also dispatched to the same call. WO1 states that both police cruisers arrived at the front of the apartment block, but they could not enter through the front door. WO1 stated that he and WO2 went to the back of the building and climbed the fire escape. WO1 is a male police officer and WO2 is a female police officer. WO3 and WO4 are both male police officers. WO1 stated that he could hear yelling from inside the building. WO1 stated that they rejoined the other officers and were eventually allowed entry through the front door, but he was unsure who allowed them inside. WO1 stated that they attended to CW2's apartment. One of the other officers spoke with CW2 and was advised that AP and CW1 were together in AP's apartment, were drunk, yelling and fighting. WO1 stated that all officers attended to AP's apartment and knocked on the door. The door was opened and police spoke with the occupants. WO1 stated that this conversation lasted three to four minutes, during which time AP and CW1 were told that one of them would have to come with police and go to 75 Martha Street so that there would be no more disturbance calls coming from this location. WO1 stated that one of the males volunteered to go, and was escorted by WO1 and WO2, to the police car parked outside. WO1 stated that both WO3 and WO4 were seconds behind them and there was no mention about any struggle inside the building. WO1 stated that no police officers entered AP's suite and he did not know how AP's arm came to be broken.

WO2 stated she was partnered with WO1 when they were dispatched to a call for service at the apartment block. WO2 stated that CW2 had called at 12:04 a.m. and advised that two adult males

were being noisy and violent. WO2 stated that WO3 and WO4 were also dispatched to this call. WO2 stated that she recalled that the police officers were allowed entry to the apartment building through the front door. Once inside, they went to CW2's suite, spoke with her, and then they went to AP's suite. WO2 stated that someone opened AP's suite door. WO2 stated that WO3 spoke with CW1, following which CW1 volunteered to exit the suite and go to Martha Street to be lodged until sober. WO2 stated that CW1 was intoxicated, slurring his words and smelling of liquor. WO2 stated that her view inside AP's apartment was blocked due to WO3. WO2 stated that she did not see any other occupants in the suite nor did any police officer enter the suite. WO2 stated that CW1 exited the building with her and WO1 and was cooperative. WO1 stated that WO3 and WO4 followed them out but was unsure how long it was after they came outside. WO2 stated that she did not see or hear any physical force being used at any time on anyone during this call for service.

WO3 stated he was partnered with WO4 when they attended a call for service with WO1 and WO2. The call involved CW2 contacting police because two males were drinking and fighting. WO3 stated that he was unable to recall the time of the call. Upon arrival, they spoke with CW2, who was living in a suite across the hall from the apartment in which the two males were located. CW2 told police that the males had been drinking and fighting. WO3 stated that he attended to the suite where the males were located and knocked on the door. WO3 stated that the door was opened by a male inside the apartment. WO3 stated that he explained the reason for police attendance and the male who answered the door left voluntarily with WO1 and WO2. This male was cooperative and was not handcuffed. WO3 stated that there was another male inside the suite. WO3 stated that he could not recall if this other male appeared injured but both of the males were intoxicated. WO3 stated that he went to CW2's suite to tell her what was happening. WO3 stated that no police officer entered the suite and there was no force used at any time during the interaction with either male. WO3 stated that he did not know how AP's arm came to be broken.

WO4 stated that he and his partner, WO3, attended a call for service, with WO1 and WO2 at the apartment building. This call involved CW2 reporting that two males were causing a disturbance. WO4 stated that when they arrived at the scene, they spoke with CW2, who said the two males were in another suite across the hall, were intoxicated and were noisy and violent. WO4 stated that the police officers then went across the hall where WO3 knocked on the door. WO4 stated that he could not recall if the door was already partially ajar or if it was opened by someone inside in response to the knocking, nor could he remember if "*Winnipeg Police*" was announced by any officers. One of the males, either AP or CW1, was at the door, and the other was somewhere inside the suite. WO4 stated that WO3 spoke with the male at the door for two to three minutes, then CW1 left with them voluntarily. WO4 stated that CW1 was intoxicated and was unsteady on his feet. WO4 states that all four police officers left the apartment building with CW1, at the same time. WO4 stated that no police officer entered AP's suite and there was no physical struggle with anyone. WO4 stated that he did not know how AP's arm came to be broken.

Conclusion

AP sustained a spiral fracture to his upper arm following a night of substantial consumption of alcohol and police attendance on a call for service concerning a disturbance out of his suite. The quality of recollection by AP, CW1 and to a lesser extent, CW2, is limited and extremely

qualified. On the whole, the evidence of the civilian witnesses is insufficient to establish the necessary grounds to support an allegation that police employed excessive and unnecessary force on AP. In fact, the evidence is so weak, it is insufficient to identify any attending police officer as a possible subject officer.

All police officers stated there was no physical struggle with anyone during the call. Evidence from independent civilian witnesses contradict AP's assertion that he yelled out in pain following his interaction with police. There are no independent witnesses to the interaction between AP and the police.

This investigation must consider whether the actions of any or all of the police officers who were involved with AP at his residence caused, or in any way contributed, through action or inaction, to his injury, and if so, should criminal code consequences flow therefrom.

Based on the various witness accounts, I am not satisfied that any reasonable grounds exist to justify the designation of any police officer as a subject officer or laying of any criminal code or other offence against any or all of the police officers. There is no further requirement or need for IIU to continue with this investigation.

The IIU investigation is complete and this file is closed.

Final report prepared by:

Zane Tessler, civilian director
Independent Investigation Unit
August 03, 2021

Ref 2021-0011