



**IN THE MATTER OF AN INVESTIGATION INTO A SERIOUS INJURY
SURROUNDING AN ARREST BY WINNIPEG POLICE SERVICE**

FINAL REPORT OF THE CIVILIAN DIRECTOR
OF THE INDEPENDENT INVESTIGATION UNIT

Civilian Director:	Roxanne M. Gagné
IIU File Number:	2022-0042
Date of Release:	August 29, 2024

Introduction

On August 29, 2022, the Winnipeg Police Service (WPS) notified the Independent Investigation Unit of Manitoba (IIU) of an incident.

The written notification disclosed the following information:

*“On Friday, August 19, 2022, at approximately 8:53 pm, General Patrol officers were dispatched to attend 4** Dufferin Avenue for a male attacking people.*

General Patrol officers attended the scene and located the male lying on his stomach in the front porch while being restrained by friend. Officers attended to the male at which time a brief use of force encounter occurred where he was placed in handcuffs.

The male was detained under the Intoxicated Persons Detention Act (IPDA) and was transported to 75 Martha, Main Street Project. At 9:18 pm officers arrived at Main Street Project and escorted the male inside. The male was assessed by the on-scene paramedic. During the assessment the male was found to have a broken bone in his upper left arm area. Winnipeg Fire and Paramedic Service were contacted and ambulance arrived on scene. Male was transported to the Health Sciences Centre where he was treated by medical staff and admitted for a broken left humerus.

On August 29, 2022, the injury to this male was reported to the Independent Investigation Unit.”

As this matter concerned a serious injury as defined in the IIU regulations, the IIU assumed responsibility for this investigation in accordance with Section 66(4) of The Police Services Act (PSA). IIU investigators were assigned to this investigation.

IIU investigators obtained the following information from WPS, among other items:

- 911 Audio 1
- 911 Audio 2
- Radio Audio
- Statement CW1
- CAD Event and Unit Reporting
- CAD Information
- Prisoner Injury Report
- AP Subject Profile
- Use of Force Report W06
- Narrative WO3 and WO2
- Officer Notes – WO2, WO3, WO5 and WO6

The civilian director initially designated WO5 and WO6 as subject officers; however, the investigation led to these officers being re-designated as witness officers on January 17, 2024. Therefore, one subject officer (SO) and six witness officers were designated.

This document is the property of the IIU and is not to be distributed to any other party without the written consent of the IIU.

Facts and Circumstances

Scene Examination

IIU investigators conducted an examination of the front porch at a residence in the 400 block of Dufferin Avenue but were unsure of the actual incident location. No surveillance cameras were observed in the area.

Canvass

IIU investigators conducted a canvass at a residence in the 400 block of Dufferin Avenue. IIU investigators located CW1 at the residence; however, they were unable to locate CW2.

Affected Person (AP)

Between October 2022 and October 2023, IIU investigators attempted to contact AP on 14 occasions, with the assistance of family members, the North Spirit Lake First Nation band office, the Ontario Correctional Facility (Kenora) and the Nishnawbe Aski Police Service.

On October 4, 2023, the IIU sent a registered letter to AP at North Spirit Lake First Nation, which prompted AP's sister to contact him; AP then contacted the IIU for an interview.

On October 30, 2023, IIU investigators obtained a statement from AP. He stated that he did not remember the incident as he was intoxicated. He recalls sitting on the couch in the porch on Dufferin Avenue with his cousins and nephew when he saw the police. The police stated that he was intoxicated, and they were going to take him to the drunk tank to sleep it off for a while. He remembered there were two policemen, and he thought they were taking him to Main Street Project; however, he does not remember being there. He noted that he just remembers getting in the police cruiser. He thought he was going to the drunk tank and stated that he blacked out and woke up in his underwear, outside in the back lane, and his arm was sore. He stated that this occurred somewhere on Dufferin Avenue, at his late uncle's place where he was staying. When the police first arrived, it was daylight out and when he woke up in the back lane it was dark. AP stated that when he woke up in the back lane a second police car pulled up as he was trying to get up, but his arm was hurting, and it cracked, and he fell down. He added that the new officers came and picked him up and discovered that it was broken, and they took him to the emergency department at the Health Sciences Centre (HSC) Winnipeg. AP stated that he had a broken bone in his left arm (the humerus), but he did not know how he broke his arm and did not have any memory of where it happened.

Civilian Witnesses

CW1

On October 7, 2022, IIU investigators obtained a statement from CW1. CW1 stated that around 10 p.m. on August 19, 2022, he and CW2 were sitting on the porch of a residence in the 400 block Dufferin Avenue when AP came over and was under the influence of alcohol and "whatever else." He indicated that AP started acting crazy, throwing things at them with both hands and pushed him. CW1 stated that he took AP to the ground by placing his foot behind him, pushing him over and tripping him so he landed on his back. He added he lost his grip when he

This document is the property of the IIU and is not to be distributed to any other party without the written consent of the IIU.

fell. AP was pushing him off and AP had the wind knocked out of him. He added that he re-grabbed AP's wrists again to get control of him, while he was sitting over top of AP. CW1 restrained AP for about 10 minutes in the porch until the police arrived. CW1 told AP to calm down or the police were going to tase him. He added that the police officer pulled out their Taser and put it to AP's back. AP stopped so CW1 let go of him and AP stood up. A second officer arrived, and they rolled AP over and placed his arms behind his back and handcuffed him. CW1 stated that AP was able to move both of his arms before the police cuffed him and was complying with the police as they helped him stand up. AP walked out of the porch himself. AP was placed in the backseat on the driver side; however, the door was not closed. The second marked police car arrived with two more police officers. When the three male police officers turned their back to AP, he tried to get out of the car and run south across the street. AP made it to the trunk before one of the first attending police officers grabbed his wrist and swung him around towards the car again where they let go of his hand. AP ended up falling and smacking his head on the bottom door frame of the open car door. He noted that AP went limp and laid flat after he hit his head. Two police officers picked up AP by his forearms and put him back in the car. CW1 stated that the same police officers came back about 45 minutes later and informed them that AP's arm was broken, and they were trying to figure out what happened.

CW1 stated he talked with AP when he got out of the hospital. AP told him that he remembered it all and that AP knew for sure his arm was broken after he left the house.

CW1 noted that the police officers were nice, and they were not aggressive toward AP.

CW2

On October 25, 2022, IIU investigators obtained a statement from CW2. CW2 and AP walked to her uncle's residence, in the 400 block of Dufferin Avenue, at approximately 7 p.m. She indicated that AP was intoxicated, would not calm down started getting angry and was throwing punches at everybody. AP hit her cousin, a friend and CW1. She stated that four adult males took turns holding AP down three times for 20 minutes, within the 30-minute period from when they arrived at the house to the moment the police arrived. CW2 stated that the third time they zip-tied the AP's hands together behind his back to the couch as they were getting tired of holding him down. However, this did not last long, and AP got out of the zip ties by the time the police arrived. She added they tried to calm him down, but he would not calm down. CW2 stated AP got a little out of hand, "To the point he ended up breaking his arm, apparently before the cops got there." CW2 called the police. The first police car arrived with two male police officers, who attended to the porch and grabbed AP from CW1 who had been holding AP. AP became more physical when he saw the police. The officer took AP off the couch and handcuffed him on the ground. The police pinned him down and were telling him to stop resisting or they were going to taser him. AP calmed down and the police handcuffed him.

The police were walking AP out the door of the porch when a second police car arrived.

CW2 indicated a police officer let go of AP as they were getting him into the police car, and AP hit the concrete face first as he was in handcuffs. She thought the police were rough with him as they got him up and threw him in the backseat of the cruiser car.

Later, the second cruiser car came back to the house; they told her that the police tried to take AP to the drunk tank, but they noticed that he had a broken arm so they took him to HSC.

CW2 stated that she saw AP a week after the incident, and he had a broken arm. She indicated that AP asked her what happened and after she explained to him what he did, AP just laughed and told her that he did not remember. She had heard that AP was drinking hard liquor, beer and hand sanitizer that day. CW2 thought AP's arm was broken by the way they were holding him down because there were four people taking turns.

Professional Witnesses

PW1

On November 22, 2022, IIU investigators obtained a statement from PW1. PW1 stated that she was working at the Main Street Project (MSP) as an advanced care paramedic. She saw AP laying on the floor on his stomach handcuffed behind his back struggling with four WPS officers holding his legs and one on each side of his upper torso holding him down. PW1 stated that her partner, PW2, asked the police to move AP to the bench. AP was co-operative and sat on the bench. PW1 noted AP had some trauma to his face; he was bleeding from his mouth and nose and had a hematoma or goose egg on his forehead.

They assessed AP. They could not accept AP as his blood sugar was high and he had trauma; he was not considered medically cleared. An ambulance was called. They continued with a more thorough assessment before the ambulance arrived. PW2 conducted a body survey and noticed something was not right with AP's left arm. She then cut AP's shirt and noticed there was a deformity to his upper arm, halfway between the shoulder and the elbow; instead of a straight line, there was a break off to the side.

When they asked AP what happened, he would not answer. AP gave no indication that he was in pain or discomfort; AP did not even realize he was injured. He appeared to be under the influence, as he had glassy eyes, and she could smell the odour of ethanol or beer. She added that the decreased level of consciousness could have been from this or a head injury. The police reported to MSP that AP's injuries happened before police arrived.

PW2

On January 9, 2023, IIU investigators obtained a statement from PW2. PW2 stated she was an intermediate paramedic working at MSP with PW1. AP was laying down on his back and was handcuffed behind his back. He had his legs tied with rope. PW2 smelled alcohol on AP. She noted that AP was lethargic. PW2 stated that it was hard to say if AP was heavily intoxicated or under the influence of drugs. He had some signs of trauma to his face with minor bleeding from his nose, mouth and lips. He had a superficial hematoma on his left forehead; however, there was no active bleeding. PW2 did not know if AP was lethargic because of the head trauma or because of alcohol. AP presented with two emergencies: hyperglycemia with decreased levels of consciousness and very high blood sugar. They could not accept him at MSP and he would need to be transported to the hospital.

As PW2 went to take AP's blood pressure, she saw that his left arm was strangely positioned as his shoulder was lower and a little bit to the side. She cut AP's shirt to check his arm and noted that it was deformed. She placed a splint on his arm and applied a cervical collar to support his neck. AP's reaction surprised her as he was not screaming; he was moaning a little more. There was no bruising on his arm to suggest he was hit by heavy object, and she did not see any open wounds or bruises. PW2 asked the police what happened, and they said there was no use of force to account for the injury.

Witness Officers

WO1

On February 8, 2023, IIU investigators obtained a statement from WO1. He heard WO3 requesting assistance to attend at MSP. Upon arrival, he observed WO3 and WO2 briefing with WO4. He overheard that AP had been on the front porch of a residence fighting with family members, and he was brought in under The Intoxicated Persons Detention Act (IPDA). Medical staff at MSP thought that AP's arm was broken or that his shoulder was dislocated. Nothing more was required of WO1.

WO2

On February 17, 2023, IIU investigators obtained a statement from WO2. WO2 attended 4** Dufferin Avenue with her partner, WO3. When they arrived, WO6 and WO5 were already on scene. She observed five or six individuals in the porch. AP was on the ground with one officer applying a shin pin and one handcuff applied. She heard officers give commands to AP, to give up his hands and arms. It took a minute or less to handcuff him. She noted AP was intoxicated. The officers assisted him up and three of them escorted AP to the cruiser car. WO2 interviewed CW2 and CW1 at the residence and they told her that AP was drinking and was very intoxicated. They stated that AP had grabbed a baseball bat and was threatening to hurt people and ran onto the street. They called 911, and WO2 restrained AP on the ground until police arrived.

As they escorted AP, he fell into the open rear driver side passenger door of the cruiser car. AP fell to the ground with his handcuffs behind his back. WO2 assisted by grabbing AP's right arm and pulled him into the cruiser car. There were no strikes or blows delivered.

They went to MSP along with WO6 and WO5. When they took AP out of the vehicle, he seemed co-operative. However, as soon as they sat him down inside MSP and were searching him, he became unco-operative and started kicking at them. WO2 applied a rip hobble (restraint system) to AP's legs. The paramedic assessed AP and observed he had a possible broken left humerus. She noted that AP never complained of any pain. WO2 then returned to the residence on Dufferin Avenue and took a statement from CW1.

WO3

On February 17, 2023, IIU investigators obtained a statement from WO3. He responded to a call at a residence in the 400 block Dufferin Avenue to assist WO6 and WO5. He arrived one minute

This document is the property of the IIU and is not to be distributed to any other party without the written consent of the IIU.

after WO6 and WO5. AP was lying on his stomach and handcuffed behind his back. He was saying unintelligible things and seem very intoxicated. WO3 assisted AP up, on his left side. He did not notice any anomalies on AP, and he was not complaining. AP was not combative; however, he could not stand and fell twice by the car, on his right side. WO2 helped pull him into the car. WO3 attempted to have a conversation with AP; however, he could not answer questions. He noticed AP's mouth was bleeding and noted a tiny thin brown zip tie on AP's right wrist. AP was detained under IPDA and taken to MSP.

At MSP, WO3 assisted AP by holding his left arm. He did not notice any injuries and AP was not crying out in pain. AP became unco-operative; he was swearing and slightly aggressive, but not combative. AP's legs were then restrained with a rip hobble as he tried to kick a police officer.

The paramedics conducted an assessment and determined he had to go to the hospital due to his blood sugar levels. However, during a secondary evaluation, the paramedics determined he had a fractured left humerus.

WO3 then returned to the residence on Dufferin Avenue and spoke with CW1. CW1 stated that AP had just gotten out of jail, he was diabetic and was out of control. AP was armed with a baseball bat; however, no one was assaulted and the family restrained AP.

WO4

On February 21, 2023, IIU investigators obtained a statement from WO4. WO4 stated that on August 19, 2022, he was summoned to attend MSP. When he arrived, he assumed responsibility of the incident. WO3 briefed him that AP had a broken arm. He then saw AP on a stretcher at HSC, with WO5 and WO6. WO4 asked AP what happened, and he replied by swearing and speaking nonsensically. He interacted with AP for approximately 10 seconds. He did not see any injuries and AP did not complain.

WO5

On March 4, 2024, IIU investigators obtained a statement from WO5. He and his partner, WO6, were dispatched to a residence in the 400 block of Dufferin Avenue for a call about a cousin that was attacking, punching and trying to fight people and had a baseball bat that was taken away from him. They were first on scene. WO3 and WO2 then attended within a minute. Upon arrival, AP was being held down on the front porch by his cousin CW1. AP was yelling and moving around. The officers identified themselves as Winnipeg Police and AP complied without resistance. They walked AP to the cruiser car and conducted a cursory search. AP was trying to blow bubbles and hinting that he might spit; therefore, the officers stood back and placed him in the vehicle. When handcuffing AP, WO5 noticed a black zip tie tightened on one of AP's arms. According to WO5, it looked like someone had attempted to restrain AP with zip ties. WO5 stated that he and his partner did not apply any physical force to AP while they were arresting him. He noted that the AP had a little bit of blood in his mouth.

WO5 spoke with CW1 and CW2 who told him that AP was really drunk, had just got out of jail, was fighting everybody and had a baseball bat.

While AP was transported to the drunk tank at the Main Street Project (MSP), his demeanour escalated. It continued to escalate while escorting him into MSP. During the processing, AP kept trying to stand up from a bench. Officers had their hands on his shoulders. AP was bubbling in the mouth, acting like he could spit on them, and was acting erratically. As the officers were trying to get him down to one layer of clothing, AP threw a kick at his partner. At that point, the officers went hands on to get a rip hobble on AP. WO5 believes he put his hand on one leg or foot. WO5 believes he was within three or four feet when, out of the corner of his eye, he saw AP swing upwards. He did not see anyone apply any physical force or strike AP. He noted that all six officers eventually touched the AP to stop him as they did not want the situation to escalate any further. WO5 noted that SO assisted them; however, he did not recall seeing SO strike AP.

WO5 rode with AP in the ambulance. At the hospital, AP was restrained with soft restraints and he continued to yell and scream. AP rolled over in his bed to the point where his arm was backwards. He added that AP did not complain once throughout the whole incident about being in pain. When AP was asked what happened by a supervisor the AP stated, "Fuck you, incest motherfucker," and kept telling them to "Fuck themselves."

WO6

On March 4, 2024, IIU investigators obtained a statement from WO6. He and his partner, WO5, were the primary unit at the 400 block of Dufferin Avenue. The person causing the disturbance (AP) was currently being restrained by family members. WO6 was the first officer to get to the front door of a screened-in porch area. He observed a male on top of another male (AP) laying on his stomach, who appeared to be the aggressor and was screaming nonsensically. He identified himself as Winnipeg Police. AP was co-operative and was handcuffed without incident. WO6 stated that AP's left arm was very easy to pull back and there was no resistance or strength in his arm. WO6 guided AP out of the house with his left arm. AP was not wincing or mentioning that his arm was broken. WO6 indicated that he had no idea that there was an injury. He later noticed that AP had a zip tie on one of his wrists, once they arrived at MSP.

WO6 assisted in getting AP to the police vehicle. He noticed AP had a bloody lip. AP was leaning against the car. WO6 released his grip as AP was spitting. WO6 was not sure if AP was about to try and fight them or spit on them. AP's legs went limp, and he fell to the ground.

AP was then transported to MSP. As they entered, AP was combative and reverted to a mode where he wanted to fight. AP was verbally aggressive to WO6, with general threats that he would beat WO6 up. However, he was not concerned as there were lots of officers.

AP kept challenged him and kept trying to stand up. WO6 put a firm hand on AP's shoulder and told him to stop getting up. AP started bubbling spit and spitting on the floor. An officer was on AP's left side, making sure AP was not going to tip to the left or right. WO6 believed SO was on his right, and he was directly in front of AP. As WO6 looked over to see if the paramedics were ready to see AP, in the corner of his eye he saw AP's foot leave the ground, aimed towards his groin area, to possibly kick him in the testicles. WO6 jerked back. When AP kicked at him, he saw SO deliver a punch to the mid-section of AP, and then kept control of his head, to regain control and allow officers to then place a rip hobble on him.

The paramedic assessed AP and noticed something was off with his left arm; they believed he had a broken arm. AP was then transported to the hospital.

WO6 stated the only officer he saw strike AP was SO. He described it as a closed fist strike to the mid-section. SO was in close proximity of AP. WO6 saw *SO's arm coming through and connecting somewhere in the mid-section while he converged as well to make sure he was pinned to the bench so they could get his feet after that.*

WO6 stated that a single strike to the mid-section was effective, and that officers did not have to use any more force.

SO spoke with WO6 after the incident and stated that he had applied a pressure point and delivered that strike. WO6 added that he was not aware it was a pressure point or just holding onto the head because AP was thrashing around.

Subject Officer

On March 6, 2024, SO voluntarily provided a copy of his notes.

SO assisted E205 at MSP with combative IPDA who was being aggressive and trying to spit. He escorted AP to the MSP bench and while sitting down AP lunged at other officers and tried to kick. SO gave one distractionary [sic] punch to ribs and pushed AP flat against the bench. The AP kept fighting and being combative. SO used pressure points to jaw area for pain compliance.

AP was moved to other bench for assessment where the Medic finds BGH at 33 and possible humerus. Call for medic and 60 unit and E205 goes with AP to HSC.

Summary of Other Evidence

911 audio recordings

CW2 indicated that she needed her cousin (AP) picked up. He was attacking everybody that walks by, and the neighbour has kids. She noted they took away all of his weapons (bat). She clarified he was punching and throwing everyone around and he would not calm down. She stated he was in the porch, and they were holding him down, and that he was drunk.

A second call was placed by a woman, who reported that her daughter CW2 called her asking her to phone the police as AP was drinking and fighting everyone.

Use of Force Report

A use of force report was completed by WO6. It describes the incident and is consistent with witness officer accounts and civilian statements.

The report mentions that prior to police arrival, a male relative was on top of AP, pinning down his arms and torso with his body weight. AP had a zip tie around his right wrist. The AP was handcuffed without incident and assisted to his feet. AP refused to bear his own weight and slumped sideways down the side of the cruiser car to the pavement on two occasions after letting his legs go limp.

This document is the property of the IIU and is not to be distributed to any other party without the written consent of the IIU.

At MSP, AP began escalating, being verbally aggressive towards officers and feinted a kick with his right leg towards WO6's groin area. AP was struck in the ribs/abdomen area by SO, one time with a closed fist, and he applied a pressure point behind the right jawline of AP.

The AP did not communicate, complain or indicate he had any injuries. MSP paramedics conducted an assessment of AP and suspected he had a possible broken left arm.

Main Street Project Surveillance Video

Two surveillance videos were obtained from 75 Martha Street. In the first video, AP emerges from the police vehicle (E205) at the IPDA pad and walks on his own while escorted by WO6 on his right arm and WO3 on his left arm. AP is observed in a stretcher that was loaded into the ambulance with WO5 escorting. The second video is of the IPDA lobby. AP is seen with handcuffs behind his back and walks into the front entrance escorted by WO6 on his right forearm and WO3 on his left forearm. AP stands by a bench with WO3 holding his left forearm and WO6 repositions his hands to both of AP's right and left biceps; there is no reaction from AP. PW2 starts to take blood pressure of AP's left side then stops. PW2 touches AP's left bicep then lifts AP's left T-shirt sleeve and looks at his arm. PW2 places a splint on AP's left bicep then cuts and removes AP's T-shirt. AP is repositioned on a stretcher into prone position with his right arm handcuffed to top of stretcher above his head, and his left arm handcuffed to the left side of the stretch parallel to his body.

Medical Records of AP

The medical records of AP indicate that there is a *transverse oriented fracture involving the mid humeral diaphysis with anterior displacement of the distal fracture fragment on the order of one shaft width. There is impaction of fracture fragments on the order of 2.1 cm.*

Applicable Law

Sections 2 and 3 of The Intoxicated Persons Detention Act, C.C.S.M. c. I90 (IPDA):

2(1) Where a peace officer finds in a place to which the public has access a person who is intoxicated, he may take that person into custody.

2(2) Where a peace officer takes a person into custody under subsection (1), if there is a detoxication centre in the community, the peace officer may take the person to the detoxication centre and deliver him into the custody of the person in charge of the detoxication centre.

3(1) Where a person is taken into custody under section 2, the person having custody of him shall release him

(a) on his recovering sufficient capacity to remove himself without danger to himself or others and without causing a nuisance; or

(b) if an application is made sooner by a member of the person's family or by a person who appears to be suitable and capable of taking charge of the person, into the charge of that applicant;

but in any case before the expiry of 24 hours after the person was taken into custody.

Sections 25 and 26 of the Criminal Code of Canada:

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.

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

In this investigation, it is the IIU's mandate to consider whether the serious injuries suffered by AP may have resulted from the actions of the police officers. In considering all the circumstances, I do not have reasonable and probable grounds to believe that the interaction of SO and the police officers that dealt with AP caused his serious injury.

AP was severely intoxicated and was acting aggressively and violently towards people, to the point where family members (four adult males) took turns holding down AP three times, for 20 minutes. They even attempted to zip-tie AP's arms. The police were called and arrived to see CW1 holding down AP. The police then legally arrested AP under The Intoxicated Persons Detention Act (IPDA) without incident.

As AP was taken to the police cruiser, he fell twice.

Once AP was at the Main Street Project (MSP), he became aggressive again and was acting as though he was going to spit. AP then attempted to kick WO6 in the groin area. SO hit AP in the mid-section, in the ribs or abdomen, with a closed fist. He then applied a pressure point behind AP's right jawline to gain control of AP. There was no other use of force.

This document is the property of the IIU and is not to be distributed to any other party without the written consent of the IIU.

The serious injury suffered by AP was to his arm, not his ribs or abdomen. There is no evidence to suggest AP's injuries were related to SO's use of force. Further, given the totality of the circumstances in this investigation, there is insufficient evidence to indicate when or how AP's arm was broken.

Therefore, no charges are recommended against any police officers, and the IIU investigation is now completed and closed.