



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

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

Civilian Director:	Roxanne M. Gagné
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## **Introduction**

On August 17, 2023, the Winnipeg Police Service (WPS) notified the Independent Investigation Unit of Manitoba (IIU) of an incident.

The written notification disclosed the following information:

*“At the time of this incident, the accused (AP) and the protected person (CW), had been involved in an on and off again common law relationship for approximately 8 years. They have 1 child together as a result of their union. There are no previously documented criminal or non-criminal domestic related incidents involving this couple filed with Winnipeg Police.*

*On March 16, 2023, AP was charged with Assault with Weapon, Assault while Choking and Uttering Threats in the Fisher Branch RCMP; Manitoba Integrated High Risk Sex Offender Unit. As part of his ensuing sentence, AP was issued a Release Order by Justice of the Peace K. Oxenforth. That order bore conditions in addition to, and including, that he:*

*You must not contact the complainant, CW in person or communicate with her by telephone, mail, email, in any other way or have another person communicate with the complainant for you*

*Between the dates of July 31st 2016 to February 7th, 2023 AP was charged with Fail to Comply w/order made under Section 490.012: Registration requirements. AP was named on a release Ordered by a Justice which required attendance in the Provincial Court on April 4th, 2023 and thereafter as required by the order of the court.*

*On July 28th, 2023 AP failed to attend as so ordered.*

*On August 3rd, 2023 a warrant for AP's arrest was issued by Judge R. Finlayson.*

*On August 16th 2023, AP and CW were in the parking lot of (business) located at 1576 Regent Avenue, Winnipeg. The two parties became involved in a verbal argument which escalated to the point where a civilian witness contacted 911 to report the domestic related disturbance at 5:02 a.m.*

*At 5:04 a.m., members of the Winnipeg Police Service responded and opened an investigation with respect to this matter. During the course of initial investigation, officers located both AP and CW in each other's company in front of the (local business) located at 1560 Regent Avenue West contrary to above mentioned order.*

*At 05:10 hours, as WPS members attempted to speak with AP, he suddenly fled on foot, throwing a full ginger ale bottle towards Police. After a brief foot pursuit, AP stopped running, turned to face Police and adopted a fighting stance while closing the distance towards the approaching WPS members. Officers attempted to deploy a taser, however this proved to be ineffective on AP who pulled the CEW probes from his chest. A second taser deployment was required which was successful and AP was taken into custody.*

*At approximately 5:14 a.m., AP was formally arrested on the outstanding warrant as well as the new Domestic Breach related charges.*

*WPS members requested EMS as AP had been tasered. While waiting for EMS to arrive, AP reported having consumed a large amount illicit drugs and that he had a heart condition. EMS*

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*was notified to attend on a rush. AP was observed to be sweating profusely and acting erratically.*

*AP was transported to the Health Sciences Center (HSC) where he was medically sedated and received treatment while under WPS guard.*

*At 3:35 hours, medical staff advised WPS members that AP had a facial fracture (right side of his face) along with a fractured rib (right side of his body).*

*At 6:40 hours, AP was discharged from the hospital and subsequently transported to WPS HQ at 245 Smith St, Winnipeg where he was later turned over to CPU with Police being opposed to his release.”*

As this matter concerned a serious injury as defined under 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.

The civilian director designated two subject officers.

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

- Call History, 911 audio calls X2 and radio transmissions
- Medical note – AP
- Narrative reports X4
- Arrest report, prisoner log sheet
- Use of Force Report
- CEW analysis, Taser deployment and download forms, pulse log graphs and Taser information X2
- Narrative Reports, Notes, Use of Force Report, and Prisoner Injury Form

## **Facts and Circumstances**

### **Canvass**

On August 21, 2023, IIU investigators attended four businesses in the area where the incident took place. Three businesses did not have video footage to provide. One business was able to provide surveillance video footage that captured the incident. It was 55 seconds in duration; the quality of the video was grainy but did show a vehicle arriving, sitting in idle for some time with its lights on. The vehicle was parked close to Regent Avenue West and was approximately 200 feet from where the camera was located. A few minutes later, a first police vehicle arrives on scene and an occupant speaks with a person (presumably AP's girlfriend) outside the vehicle. The two officers then walk over to the parked vehicle and eventually walk approximately 20 to 30 feet in front of the vehicle to speak with a person (AP) seen sitting on the curb. As the police

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approach, AP gets up and starts to walk away from the officers. AP eventually starts to run and is followed closely by the two officers. Within a second or two all parties are off camera and the actual tasing and use of force encounter is not captured by the camera.

### **Affected Person (AP)**

On August 21, 2023, IIU investigators attended the Winnipeg Remand Centre to meet with AP. AP indicated that he had been arrested the previous Wednesday early in the morning hours somewhere on Regent Avenue West. He stated that his memory was foggy, and he could not remember all the details of the incident. AP did recall getting tasered by the police. AP said his body locked up and he fell to the ground. AP was transported to the hospital, where he spent the next 24 hours before he was discharged.

AP said that he was told that he had a right broken eye socket and fractured ribs on his right side. AP also disclosed that he had pain in his wrist and ankle, but no bones were broken.

AP declined to provide a statement to the IIU indicating that he wished to speak to his legal counsel and discuss the ramifications of providing or not providing a statement to the IIU.

Between October 10, 2023, and November 27, 2023, IIU investigators made numerous attempts to locate and interview AP without any success. A registered letter was also sent to his last known address in Winnipeg.

### **Civilian Witness (CW)**

On August 31, 2023, IIU investigators obtained a statement from CW, AP's ex-girlfriend. She called the police as she had an ongoing domestic situation with AP. At around 5 a.m. on August 16, AP had started chasing her with her car. When the car would not run anymore, he started chasing her on foot. There was a security guard near a store and CW asked the security guard to call the police. The security guard was close to where CW and AP were, and he told her to hide behind his vehicle. CW then called 911 herself.

When the police arrived, AP was wandering in the parking lot near a store just a few feet in front of the police vehicle. The officers called him by his name, but he ignored them. Suddenly, AP started running away from the police officers. He got a few feet away from them when he turned around to face them. AP was trying to dodge the police. The female officer pulled out her Taser and hit AP on the leg. AP pulled the probes out and was still trying to run away. The male officer also tasered AP on his body but AP pulled out those wires too and was still trying to get away. Eventually the two officers tasered him at the same time. AP went down onto the ground. The police officers were yelling at AP to get down and put his hands behind his back when they were tasing him. When AP went down on to the ground, one of the officers had a foot on his legs while the other one had a foot on his upper body. When the police finally got him under control, they took him to the police car. A short time later, an ambulance and five more police officers arrived on scene.

CW stated that she saw AP go down onto the ground when he was tasered but could not recall if AP's face hit the pavement. CW did not see the officers use any force on AP other than tasing him. During the time officers were trying to arrest AP, they were repeatedly yelling for him to co-operate.

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CW also stated that she and AP were doing drugs and living out of her car for the past four to five days prior to this incident, and that they had consumed approximately eight pieces of crack per day over the last three to four days.

CW informed the officers that she and AP have had previous domestic incidents where AP had been criminally charged. AP was also wanted on an outstanding arrest warrant.

### **Witness Officers (WO1-4)**

#### **WO1**

On October 18, 2023, IIU investigators obtained a statement from WO1. WO1 and his partner attended to the vicinity of a store on Regent Avenue West and were the first unit to arrive on scene. After a brief search for the female victim in the area, WO1 and his partner located the 911 male caller in the parking lot and spoke with him. The caller was standing near an abandoned vehicle and said that he had seen a female exit the vehicle and walk away. The caller said that a male driver of the vehicle tried to follow the female as she was walking and tried to get her to come back in the vehicle. The caller also saw the male driver get out of the vehicle and he was last seen walking in the same direction as the female passenger was last seen going, towards a restaurant.

A short time later, the police dispatcher came on the air and voiced that the female victim from the incident had just called 911 to provide further details and her current location. They then heard that one of the police units had located the accused male; there was a foot pursuit and a taser had been deployed. WO1 and his partner headed to the area where AP had been tasered to assist the involved officers. Upon arrival, they observed the male was already in handcuffs and was placed in a police vehicle. EMS arrived. The initial request for the ambulance was to attend and remove the taser probes, but soon after the ambulance was asked to attend on a rush as the male said he had a heart condition, and he was sweating profusely. WO1 accompanied the male in the ambulance to HSC. WO1 did not recall AP complaining of having any other injuries to the paramedics. AP did not complain about being assaulted by any of the police officers.

The distance between the store and the area where the officers had tasered the male is approximately 500 to 600 metres.

WO1 recalled that AP appeared intoxicated and under the influence of drugs. AP had informed the officers on scene that he had consumed a quantity of drugs prior to police involvement but did not say what type of drugs.

#### **WO2**

On October 18, 2023, IIU investigators obtained a statement from W02. He and his partner, WO1, responded to domestic-related incident near a store on Regent Avenue West. His accounts were similar to WO1. He stated that once they arrived in the parking lot, they located and spoke to the male that had called 911 to report the incident. He then headed over the area of the foot pursuit and observed that the male was already in handcuffs and being escorted to a police cruiser car by officers. They waited for ambulance to arrive to examine the male as he had been

tasered. WO2 drove to the hospital while his partner accompanied the male in the ambulance to HSC.

WO2 observed some blood on AP's face as he was being taken to the police vehicle. AP was yelling but WO2 could not really make out what he was saying.

WO2 and his partner returned to the hospital and assumed control of AP when they relieved an evening shift unit. AP was complaining of a sore wrist and ankle. AP also appeared to have a scrape on his temple area and a one inch cut to eyebrow, and the right side of his face looked swollen. There was no further conversation with AP regarding his injuries or how he was injured. Once AP was released from HSC, WO2 and his partner transported him to WPS headquarters.

### **WO3**

On November 1, 2023, IIU investigators obtained a statement from WO3. He and his partner, WO4, responded to assist another general patrol unit on Regent Avenue West. As they arrived in the vicinity of the call, the primary unit (SO2 and SO1) came over the radio and voiced that they were in a foot pursuit. As they pulled into the parking lot near a store, WO3 noticed the members were in the process of taking the male into custody. WO3 and WO4 immediately exited their cruiser car and ran over to assist with handcuffing the male being taken into custody. The male was laying on his stomach. Both SO2 and SO1 were trying to get the male's arms from under his body. WO3 recalled hearing the male saying that he had done a lot of drugs earlier that day. A short time later, EMS arrived on scene and AP was transported to the hospital.

WO3 stated that AP did not complaint of being injured or being sore. WO3 did not recall seeing any injuries on his face but added that he might have had some blood on his face, however he was not certain.

### **WO4**

On November 9, 2023, IIU investigators obtained a statement from WO4. WO4 was wearing fully marked WPS uniform and driving a fully marked police cruiser car. He and his partner WO3 were assigned to assist other police units with the call. WO4 indicated that when they first arrived on scene, he saw SO2 and SO1 involved in a foot chase. Upon arrival in the parking lot, WO4 observed a male already on the ground with two WPS members standing near his feet with their tasers drawn. The male was yelling something and was not moving much. WO4 noticed that the male was sweating profusely. The taser wires were stuck to his back side. WO4 was unable to recall what the male had been wearing at the time of the incident. WO4 ran up to the male and grabbed one of his arms to bring it behind his back, to assist in handcuffing him. Soon after the male was successfully handcuffed and placed in the rear of a police cruiser car. EMS were summonsed to attend and check on AP as he had been tasered. While waiting for EMS to arrive, WO4 observed the AP to be either drunk or high on drugs. EMS arrived and transported AP to the hospital. Eventually WO4 and partner also attended to the hospital to see if the members needed any further assistance from their unit.

WO4 does not recall seeing any facial injuries on the male's face or observing any blood on the ground where the male had been laying down after being tasered. WO4 also does not recall the male complaining of any injuries or being in pain.

### **Subject Officers (SO)**

#### **SO1**

SO1 declined to provide an interview to IIU investigators, however he voluntarily provided his notes, and provided his shared narrative and use of force report. She and her partner SO2 responded to a disturbance/domestic incident near a department store on Regent Avenue West. A female complainant, CW, contacted 911 and advised that her boyfriend AP had stolen her vehicle and tried to run her over.

SO1 and SO2 immediately attended located CW. Both officers spoke with CW and learned that she and her ex-boyfriend (AP) were involved in an argument. CW exited her vehicle and took off on foot to avoid further escalation. CW also informed the officers that both parties had a current court order in effect prohibiting AP to have any contact or communication with her. This information provided the police sufficient grounds to locate and arrest AP. CW pointed out AP, who was only a short distance away located in the same parking lot. Both officers walked in the direction of AP and asked to speak with him regarding the incident. AP threw down two bottles of water on the ground, turned around and began running away from the officers. After a brief foot chase, AP turned around and attempted to throw a bottle of ginger ale towards the officers. AP took a fighting stance with his hands up at his chest level. At this time, a use-of-force encounter occurred where both officers discharged their conducted energy weapons (CEW) at AP.

SO1's notes also confirm the details as written in the shared narrative between SO1 and SO2. In addition, SO1's notes indicate that AP was tasered twice which resulted in his body locking up and forcing him to fall unsupported onto his left side, directly onto the pavement.

#### **SO2**

SO2 declined to provide an interview to IIU investigators; however, he voluntarily provided his notes, narrative report and use of force report, which provided similar details as reported by SO1.

The use of force report indicates that he and his partner pursued AP on foot, giving him verbal direction to stop. AP stopped and turned around to face police in a fighting stance, with his hands in front of his chest, closing the distance and coming towards the officers. He and his partner had their Tasers in ready position and had ruled out any lower forms of force; lethal force was not justified, and empty hand control would be ineffective. SO2 verbally advised AP that he had a Taser and to get on the ground. AP did not follow the directions. SO2 discharged his Taser with the intent to temporarily incapacitate AP. AP remained standing, made eye contact with the officers, and ripped the probes out of his body. SO1 then deployed her Taser with the same intent as SO2, to stop AP's behaviour and prevent him from escaping. AP remained standing and stumbled towards the officers. At that point, both officers deployed their remaining probes, which resulted in a full body lockout; unable to brace himself, AP fell on his left side directly onto the pavement.

## **Summary of Other Evidence**

### **Medical Records**

On September 22, 2023, the IIU received AP's medical records from HSC. During the initial assessment, AP informed the hospital staff that he was using multiple substances leading up to the incident with police, including cocaine and methamphetamines. AP did not recall the events but said he was in an altercation with police and was tasered.

### **Scan results**

Medical orbital wall blowout fracture with fluid within the right ethmoid air cells. Mild soft tissue contusion overlying that right anterior frontal bone and periorbital region. Rightward nasal deviation with age indeterminate nasal bone fracture.

Acute right anterior fifth rib fracture. No pneumothorax.

### **Impression**

Patient presenting after altercation with police; he has a right orbital fracture and right rib fracture.

### **Tasers (CEW)**

An analysis of the Tasers demonstrated that they were both deployed. The analyst indicated that X300092XD was armed and activated two times over the course of one minute and 11 seconds by trigger pull. The first cartridge to deploy was cartridge 2, and it may have had some initial connection into conductive material; however, the connection was lost. After the officer turned the CEW off and on again to reset cartridge 1, a trigger pull deployed the cartridge, which was energized for approximately 19 seconds.

X300092XM was armed and activated three times during this incident, twice by trigger pull approximately three seconds apart, followed by an Arc Switch press before the end of the trigger cycles. Cartridge 1 had an intermittent circuit for 8.5 seconds. Cartridge 2 had minimal or no connection over the six seconds it was energized.

### **Applicable Law**

Sections 25 and 26 of the *Criminal Code of Canada* are applicable to this analysis:

*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.*

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*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**

Following due consideration of all the circumstances of this matter and a careful, thorough review of all evidence and material facts obtained in this investigation, I am satisfied that the subject officers' actions were reasonable.

The police attended a parking lot to deal with a domestic incident after receiving 911 calls. AP was also breaching a court order not to be in contact or communication with his ex-girlfriend, CW. Upon arrival, police attempted to speak with AP; however, he attempted to flee on foot. The officers gave AP verbal commands to stop; however, he did not comply. AP then adopted a fighting stance. A subject officer gave verbal directions that he had a Taser and to get on the ground; however, AP did not comply. The subject officers deployed their Tasers on two occasions and were eventually able to effectively arrest AP. There is no evidence suggesting that the officers used any other force on AP. The accounts of the use of force are also corroborated by CW.

In considering the totality of the evidence, I am satisfied that the officers were in the lawful execution of their duties and that their use of force was reasonable in the circumstances. Therefore, no charges are recommended against the subject officers, and the IIU investigation is now completed and closed.