

# ***FINAL REPORT: IIU concludes investigation into injury to suspect following WPS traffic stop***

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On January 10, 2017, at 10:15 a.m., Winnipeg Police Service (WPS) notified the Independent Investigation Unit (IIU) about an incident that occurred on January 9 around 11:00 p.m. According to this notification:

*Suspect observed operating 2006 Black Ford F150 during surveillance in suspected drug investigation. Suspected drug transaction observed after which the accused was observed to drive his vehicle west bound on Chancellor Drive near Pembina Hwy. Officers blocked suspect vehicle with police vehicle at approx. address of 919 Chancellor. As ( WPS officer) exited passenger door of lead police vehicle, the suspect accelerated his vehicle into the police vehicle causing the police vehicle door to slam against (WPS officer) (treated and released for injury to hand and leg) Suspect then drove over median, across eastbound lane, and into open field where the vehicle became stuck in heavy snow. A struggle ensued during arrest where the suspect received injuries listed.*

The suspect, later identified as the Affected Person (AP), was treated for a number of injuries including a left orbital socket fracture, bruising and swelling to his head, bruising to the left bicep, and abrasions to his face. He was also arrested and charged with a number of *Criminal Code* and *Controlled Drugs and Substances Act* offences.

The broken orbital bone sustained by AP was determined to be a serious injury as defined by IIU regulation 99/2015. Accordingly, IIU assumed responsibility for the investigation in accordance with subsection 66 (4) of *The Police Services Act (PSA)*. A team of IIU investigators was assigned to this matter.

The IIU civilian director initially designated two WPS officers as subject officers (SO1 and SO2) and 16 WPS officers as witness officers (WO1 through WO16). Ten of the witness officers did not see any use of force directed at AP and had no conversation with any of the SOs. As well, during the course of the investigation, pursuant to section 14(2) of regulation 99/2015, a previously designated witness officer was re-designated as a subject officer (SO3).

AP cooperated with IIU investigators and participated in an interview.

IIU investigators conducted a canvass of the area where the incident occurred but were unable to find any eyewitnesses to the arrest of AP, nor was any video surveillance found that captured the incident.

IIU investigators also received and reviewed:

- a summary of all reports filed;
- audio copies of WPS radio transmissions;
- dispatch history;
- WPS Prisoner Log Sheet (X2);
- WPS Time Checks and Activity Log;
- WPS Forensic Identification Report;
- photographs of AP;
- WPS officers' notes and narratives;
- use of force report;
- medical release and medical records

As outlined under the PSA, a subject officer cannot be compelled to provide his notes to IIU investigators nor to attend an interview with them. In this matter, SO1 agreed to provide his prepared use of force report, narrative and notes to IIU investigators. SO2 provided a narrative report to IIU investigators. SO3 provided his narrative report to IIU investigators. None of SO1, SO2, nor SO3 participated in an interview with IIU investigators.

The following facts and circumstances were determined:

On January 9, 2017, at approximately 11:00 p.m., WPS officers were involved in an ongoing drug investigation. AP was observed operating a 2006 black Ford F150 westbound on Chancellor Drive near Pembina Highway. After observing what was believed to be a drug transaction, WPS officers blocked the F150 on Chancellor Drive. SO3 exited the passenger side of the lead WPS vehicle. Immediately, AP accelerated his vehicle and collided with the rear of the WPS vehicle, causing the open door to slam against SO3. SO3 was subsequently treated for an injury to his hand and leg. AP then drove over a median, across the eastbound lane of Chancellor Drive, and into an open field. AP's vehicle became stuck in heavy snow. A struggle ensued between WPS officers and AP during his arrest. It was during this struggle that AP suffered his injuries.

### **Affected Person**

When interviewed, AP stated that late evening on January 9, he had been parked outside an apartment block on Chancellor Drive waiting for a friend. He started to drive away when a marked police vehicle, without any emergency equipment activated, suddenly cut in front of him. This caused AP to turn abruptly to the left, drive across a median, then into a snow bank and immediately stop. AP denied hitting the police vehicle with his truck and denied trying to escape across the field.

According to AP, after his vehicle stopped a uniformed police officer ran up to the vehicle yelling, "*He's got a gun. I can see the gun.*" AP called out that he did not have a firearm in the vehicle and said he raised his hands to illustrate the point. AP was ordered to open the door of the vehicle. AP complied and then the officer struck him with something hard on the left side of the head and dragged him from the vehicle. AP was thrown to the ground and repeatedly kicked,

punched and choked by a number of WPS officers before being placed into a police vehicle and then transported to hospital for medical treatment. AP was unable to describe any other WPS officers involved in the incident, noting his eyes were swollen shut from the blows he had experienced and he could not see them. AP denied colliding with the police vehicle as alleged and denied doing anything to warrant police striking him in any way.

Damage was located on the front right door of the police cruiser car, as well as its right rear quarter panel near the back passenger door. Damage was located on AP's vehicle at the right rear corner of the truck, including a broken tail light. The damage to the rear right corner of AP's vehicle is consistent with the damage found on the right side of the police vehicle.

Photographs of the scene show red debris on Chancellor Drive, consistent with broken tail light fragments, and also suggest that AP's vehicle travelled through accumulated snow before stopping near a parking lot, in contrast to what AP claimed took place that night.

Two photographs taken of the cab of AP's vehicle show what appears to be a machete in a black nylon case between the driver's seat and centre console of the truck.

### **Witness Officers**

WO1 was partnered with SO3 that evening. SO1 was partnered with SO2. They were in the area of Chancellor Drive and Pembina Highway. WO1 said a message over the WPS police radio identified that a black Ford pickup truck had been involved in a suspected drug transaction in front of an apartment building on Chancellor Drive and that any and all occupants of the vehicle should be detained and arrested. The truck was spotted and WO1 attempted to cut it off by driving in front of it, without his emergency equipment activated. According to WO1, the driver of the truck accelerated quickly and turned his wheel to go around the officers. However, that driver lost control and struck the passenger door of the police cruiser car just as SO3 was attempting to exit it. The truck then drove across the median on Chancellor Drive and entered a snow-covered field to the south where it became stuck.

WO1 said SO3 ran after the truck as he drove his police cruiser car near where AP's truck was stuck. WO1 stated he could see SO1 pulling AP out of the truck and onto the ground. WO1 also heard SO1 yelling that AP had a knife. WO1 ran to the location and saw AP lying face down in the snow with his arms under his body and SO1, SO2 and SO3 on the ground trying to gain control.

WO1 said officers were telling AP to "give up" his hands. WO1 observed between five and eight strikes being delivered to AP's body and head but was uncertain who did the hitting. WO1 called out for the use of a conducted energy weapon (CEW), at which time AP surrendered his arms and was handcuffed.

WO2 was alone in an unmarked police vehicle at the time of AP's initial contact with WPS officers. WO2 heard a WPS radio transmission that there had been a vehicle collision. He drove up Chancellor Drive and observed AP's vehicle stuck in the snow. He could hear someone yelling, "Stop resisting." He did not see a physical struggle but noted that WO1 was near AP's upper body, SO1 was at his feet and SO2 was at his left side. He was unable to recall where SO3 was positioned. AP's face was swollen at the time.

WO3 was alone in a police cruiser in the vicinity when he heard a transmission over the police radio that there had been a collision between AP and a police cruiser car on Chancellor Drive. He did not see the collision but did see the black truck stuck in the field. WO3 also noted a marked police cruiser car was stopped near the truck with SO1 and SO2 standing outside it. SO1 had his service pistol drawn. WO3 heard someone yell, "Stop resisting." He ran over to the black truck to find AP lying in the snow, with officers grabbing his arms and applying handcuffs. WO3 did not see anyone strike AP.

WO4 and WO5 were together working in an undercover role that evening and were parked at a gas station north of Chancellor Drive when they heard about a collision over the police radio. They departed their location and observed AP's truck stuck in the snow. A marked police vehicle was stopped nearby, with SO1 and SO2 outside, looking towards AP. SO1 had his service pistol drawn. Neither WO4 nor WO5 saw any strikes or blows delivered to AP.

### **Subject Officers**

SO1 provided his reports and notes to IIU investigators. SO1 wrote that after AP's vehicle became stuck in the snow, he and SO2 approached the truck with their service pistols drawn. SO1 ordered AP to shut off the truck and to put his hands up. SO1 opened the driver's door of the truck and noted a knife inside, between the centre console and driver's seat. AP was instructed not to move, but "... quickly lunged from the vehicle." AP's hand moved towards the knife and SO1 responded by punching him in the head one or two times, then dragging him out of the truck and onto the ground. As SO1 dragged AP from the truck, SO2 called out that AP had a knife.

SO1 noted that SO3 and WO1 arrived to assist. AP was on the ground with both hands concealed under his stomach, near his waistband. SO1 attempted to control AP's feet as he was kicking at officers. SO2 repeatedly told AP to stop resisting and put his hands behind his back. AP continued to fight to keep his hands concealed. WO1 told SO1 to deploy a "Taser" in an attempt to end this resistance and prevent the accused from possibly accessing a weapon. SO3 and WO1 were able to gain control of AP's arms and place him in handcuffs. According to SO1, police located a pair of scissors from the snow where AP was arrested. The knife was still in the truck.

SO2 provided a prepared statement to IIU investigators. According to SO2, he and SO1 were partners as part of an arrest team in a drug investigation. They were advised via a WPS radio transmission that AP's truck had been involved in a drug transaction on Chancellor Drive and they were dispatched. SO2 wrote that he observed a police cruiser car driven by WO1 try to pull in front of AP on Chancellor Drive. SO2 then noted that the truck accelerated quickly, fishtailed and collided with the passenger door of WO1's vehicle. The truck drove over the median on Chancellor Drive and entered a snow-covered field where it became stuck.

SO2 noted that he drove near where AP was stuck. He and SO1 exited their vehicle, with their service pistols drawn. SO1 then commanded the driver (and sole occupant) to turn off the vehicle and show his hands. SO2 wrote that the driver initially complied, turning off the truck and holding up his hands as ordered, and SO1 opened the driver's door. Once the door was opened,

SO1 said he could see a machete in the truck. SO2 noted that he saw a knife stuck between the driver's seat and centre console, next to the driver. SO2 instructed AP not to touch the knife. AP started to jump out of the truck and his right arm moved towards the knife. SO2 believed AP was reaching for the knife. SO2 wrote that he grabbed AP by the collar and punched him a couple of times to the left side of his face. AP was dragged out of the truck and onto the ground. AP pulled his hands under his body and a struggle ensued in an effort to gain control of his arms. SO2 wrote that he did not strike AP while he was lying on the ground. SO2 also wrote that he did not see any other officers strike AP, but was subsequently made aware, from reports on the WPS file, that SO3 hit AP in his upper back and shoulder area. SO2 then wrote that someone called for a conducted energy weapon to be deployed, at which point AP relaxed his arms and handcuffs were applied. SO2 also noted that AP had swelling around his eyes and turned him over to other officers for transport to hospital for medical treatment.

SO3 provided his prepared report to IIU investigators. He noted that at 10:58 p.m. a radio transmission was received to stop a black Ford F150 and arrest the occupant. The truck was observed driving west on Chancellor Drive. To prevent the truck from having a means of escape, SO3's police cruiser car (driven by WO1) manoeuvred over the median and stopped in the westbound lane in front of the truck. The truck was estimated to be traveling at less than 10 km/hr, and was still some 20 feet away, giving the driver ample time and opportunity to stop. SO3 exited from the police cruiser car. Suddenly, the driver accelerated the truck at a high rate of speed. The truck fishtailed, causing it to slam its rear passenger side into the passenger side of the police cruiser car. The truck slammed SO3's door into his right leg and right hand. The truck then drove south over the median, then across the eastbound lanes, mounted the curb and drove through a three-foot-high snow bank, continuing southbound through a field. The truck then became stuck in deep snow behind 2077 Pembina. SO3 and WO1, together with SO1 and SO2, took AP into custody.

IIU investigators reviewed WPS radio transmissions relating to AP's arrest. A male voice can be heard yelling at someone to stop resisting, on at least two occasions, over a period of approximately 57 seconds.

### **Issue and Review**

The relevant issue in this matter is whether, at any time, did SO1, SO2 or SO3 subject AP to unnecessary and excessive force during the course of apprehending and arresting him.

Section 25 (1) of the Criminal Code of Canada provides that:

*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, 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.*

Any force that is in excess of that which is necessary in the circumstances is not justified and may constitute an assault in law.

Section 265 (1) (a) states:

*A person commits an assault when (a) without the consent of another person, he applies force intentionally to that other person, directly or indirectly*

The completed IIU investigation file was forwarded to Manitoba Prosecution Services requesting that it be reviewed and advice provided respecting the identified issue.

Following a thorough review of this file, Manitoba Prosecution Services provided advice to this office that there is no reasonable likelihood of a conviction in respect to either SO1, SO2 or SO3 and no charges would be authorized against any of them.

Accordingly, and based on this advice, none of SO1, SO2 or SO3 will face any Criminal Code charges arising from this matter.

This investigation is complete and the IIU will close its file.

**Final report prepared by:**

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Independent Investigation Unit  
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