

FINAL REPORT: IIU concludes investigation into possible injury of detainee by WPS officer

On August 18, 2017, at 5:00 a.m., Winnipeg Police Service (WPS) notified the Independent Investigation Unit (IIU) about an incident that occurred earlier that morning at approximately 2:30 a.m. According to this notification, members of WPS arrested a female (later identified as the affected person – AP) on an outstanding warrant. AP was transported to the WPS East District Station (EDS) for processing. While in a search room, AP became aggressive, resulting in WPS officers using force on her. Afterwards, AP complained that her shoulder was sore. AP was then transported to St. Boniface Hospital (St. B) where she was examined by an emergency room physician. According to the WPS notification, an x-ray of AP’s shoulder revealed a fracture to her left collarbone. After receiving treatment for her injury, AP was released from hospital and returned to custody.

Although a fractured collarbone does not meet the definition of a serious injury according to Independent Investigations regulation 99/2015, the IIU civilian director determined it to be in the public interest for an independent investigation to determine whether a member of WPS subjected AP to unnecessary and excessive force. A team of IIU investigators was assigned to this matter.

The IIU civilian director designated the WPS officer who used force on AP as the subject officer (SO) and four WPS officers as witness officers (WO1 through WO4), three of whom are referenced in this report.

IIU investigators also received and reviewed:

- file package from WPS including witness officers’ notes, reports, call histories, prisoner log sheet, and prisoner injury report;
- digital copy of 911 call to WPS Communications Center;
- GPS data;
- custody report

IIU investigators were advised there were no video recordings at EDS.

Despite several attempts to meet with AP, she refused to cooperate with IIU investigators and did not attend or participate in any interviews with them.

There were no available medical reports respecting the diagnosis, condition and treatment of AP as she did not attend at IIU nor consent to release that information to IIU investigators. This lack of medical evidence of injury significantly hindered the investigation.

As outlined under *The Police Services Act*, a subject officer cannot be compelled to provide his notes to IIU investigators nor to attend an interview with them. In this matter, SO did not provide her notes and declined to attend an interview.

The following facts and circumstances were determined:

On August 18, 2017, at 1:08 a.m., WO1 and WO2, uniformed WPS officers, were dispatched to attend a residence on St. Mary's Road to deal with AP, who was wanted on a warrant for her arrest. At 1:15 a.m., they arrived at the residence and were directed to AP's room. AP was placed under arrest and was escorted to the marked police cruiser car. According to both WO1 and WO2, AP was cooperative and posed a low threat so she was not handcuffed at this time. At 1:48 a.m., AP arrived at EDS. AP was compliant with police officers' directions and was escorted to appear before the supervising sergeant, WO3. According to WO3, AP knew where she was, did not require any medical attention, did not have any questions and understood why she was at EDS. WO3 confirmed AP was not injured when he viewed her on her arrival at the EDS.

In accordance with normal WPS practice, a female rather than a male officer will search female prisoners. WO1 and WO2 are male WPS officers. SO, a female WPS officer, volunteered to assist with the prisoner search of AP. SO, in police uniform, entered the search room. SO and AP were in an area that could be cordoned off by a curtain. WO1 and WO2 (both male officers) remained in the search room close to, but separated from, SO and AP during the search. WO1 and WO2 could not see through the curtain but they could hear the conversation from behind it. No one else was in this room while the search was being conducted. WO1 and WO2 heard SO repeatedly tell AP to put her hands on the wall and to keep them there. AP responded by swearing at SO several times, which prompted WO1 to open the curtain and check on them. WO1 saw SO standing within a few feet of AP, who was falling towards the floor and then landed, with an audible thud, on her left side. SO gained control of AP by placing her knee on AP's buttocks or back. WO1 and WO2 both assisted SO in directing AP to place her arms behind her back. AP continued to swear and refused to comply. WO2 grabbed one of AP's arms, allowing WO1 to handcuff her. AP was escorted to a holding cell, placed inside and the handcuffs were removed.

A few minutes later, when WO1 attended the holding cell for a check, he noted AP was crying and holding her left shoulder and stated it was sore. WO3 directed that AP be transported to St. B for evaluation and treatment. SO told WO1 that she needed to take AP to the ground to overcome her resistance while searching her and that, as a result, AP complained of soreness to her shoulder. SO did not say how she took AP to the ground.

IIU reviewed the Prisoner Injury report received from WPS. Under the heading "*EXPLANATION GIVEN BY ARRESTING MEMBERS*", it stated:

AP was in the search area and refused to follow verbal direction by SO to place her hands on wall to facilitate the search. AP was yelling and swearing and not following verbal directions. SO grabbed AP's hands and placed them on the wall. AP abruptly swung her

arms down and spun around, in an attempt to hit SO. SO grabbed AP's arms and pushed her to the floor, falling on her left shoulder. AP continued to be non-compliant by pulling her arms under her body. AP's arms were grabbed and she was handcuffed. AP was lifted up to her feet and leaned against the wall to complete the search. AP complained of pain to her left shoulder and was taken to hospital.

During AP's evaluation at St. B, WO2 heard AP tell medical staff that she fell during her search. An emergency room physician told WO1 that AP had been diagnosed with a fractured left clavicle and her left arm was placed in a sling. AP was subsequently cleared by medical staff and then transported to the downtown WPS Headquarters where she was processed.

ISSUES AND CONCLUSION

The relevant issue in this matter is whether, at any time, SO subjected AP to unnecessary and excessive force in the course of her search at EDS.

Sections 25 (1), Section 26 and Section 265 of the Criminal Code of Canada are relevant 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, 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.

26 Every one 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.

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

Effectively, the question is whether SO's actions were reasonable and justified in the circumstances. Reasonableness of an officer's use of force must be assessed in regards to the circumstances at the time the force was used, particularly when considered in light of the dangerous and demanding work and the need to react quickly to emergencies. Police may be

required to use force and various levels of interventions in their law enforcement role. While the authorizations outlined in Section 25 of the *Criminal Code* established protections from liability for a police officer who, in the course of enforcing the law, finds it necessary to use force, the particular facts and circumstances, training and assessments must be appropriately considered to determine whether that use, the method(s) employed, and the degree of use were justified.

I am satisfied that AP was in the lawful custody of the police at the time of her search. I am satisfied that SO was in the lawful execution of her duties at the time she searched AP. I am satisfied that SO was required to take all necessary steps to carry out her search of AP. I am satisfied that AP was less than cooperative with SO when the search commenced.

Because of a dearth of medical information, I cannot ascertain, with any clarity, the extent of the injury sustained by AP. While it appears she suffered a possible fracture of her left collarbone, in the absence of access to St. B records, access to the attending physicians or access to subsequent medical examinations which could confirm the initial diagnosis, I am unable to confirm whether this injury did exist. Similarly, I cannot confirm whether or not this injury, if it did exist, was a result of a pre-existing condition. I am unable to call for or rely on any expert opinion that may have assisted in determining whether the cause of the injury was consistent with a fall to the ground, particularly in light of the minimal evidence on how AP fell.

Additionally, due to the lack of cooperation by AP and the absence of any other direct evidence concerning the interaction between SO and AP and, specifically, the manner of force used by SO on AP, the IIU investigation was extremely hampered. I cannot determine the extent of and the reasons for SO's decision to use force. There is no available evidence to assist me in determining whether the injury was a foreseeable or intentional consequence of the use of force. Many of those decisions would require speculation on my part rather than relying on appropriate factual underpinnings to support those conclusions.

In light of the absence of convincing evidence on critical aspects of this investigation, I am unable to conclude whether reasonable and probable grounds exist to believe any offence occurred to justify any charges against SO.

Accordingly, IIU has completed its investigation and this matter is now closed.

Final report prepared by:
Zane Tessler, civilian director
Independent Investigation Unit
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