

# ***FINAL REPORT: IIU concludes investigation into injuries sustained by male during WPS arrest***

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On December 17, 2017, the Winnipeg Police Service (WPS) notified the IIU of an incident that occurred at a commercial building on Arthur Street (warehouse) in Winnipeg. The notification read in part:

*“17-12-17 at 17:41hrs at [warehouse]. Officers attended to call of B&E in progress. On arrival, [Subject Officer 1(SO1)] and [Subject Officer 2 (SO2)] met with the [Affected Person (AP)] who was armed with what appears to be a 2x4 piece of wood on the 5th floor. Use of force encounter occurred where the [AP] attacked [SO1] with 2x4 and then attempted to throw him down the stairs, threatened to kill him and attempted to disarm [SO1] of his taser. [AP] also bit [SO1] on the leg. [SO2] attended to assist and was also assaulted by [AP] when kicked in the groin. [AP] was taken into custody”*

According to this notification, AP sustained a right eyebrow laceration, an open mandible body fracture (broken jaw), a nasal bone fracture, and a small subarachnoid hemorrhage (bleeding between the brain and surrounding membrane). IIU assumed responsibility for this matter in accordance with section 65(1) of *The Police Services Act* (PSA) as these injuries are defined as a serious injury in accordance with regulation 99/2015. A team of IIU investigators was assigned to this investigation.

Information obtained by IIU investigators included:

- CAD history report;
- police cruiser CAD messages;
- officer notes;
- officer narratives;
- witness statements;
- conductive energy weapon (Taser) download report and sign-out log;
- arrest report;
- prisoner log sheet;
- Forensic Identification Unit report;
- 911 audio;
- radio transmissions;
- laser scan measurements of warehouse;
- scene photographs;
- scene exhibit list;
- CCTV surveillance video footage of warehouse;
- medical reports respecting AP;

- expert opinion on use of force.

The civilian director designated SO1 and SO2 as subject officers. IIU investigators interviewed four witness officers (WO1- WO4). They also interviewed AP and two civilian witnesses (CW1- CW2). At the conclusion of the investigation and following a preliminary review of findings, it was determined that an expert opinion report on use of force would be beneficial and a use of force expert was retained.

## **Facts and Circumstances**

### **Affected Person**

AP stated that he was on his own at the warehouse setting up obstacles to do “parkour” (obstacle course free running) around the building. AP stated it was a game to make it to the top of the building without touching the stairs or floor. AP said that, during a practice run, he was halfway down a set of stairs when a police officer came through the door, said “hey” and then shot him with a taser. AP stated that he did not realize it was a police officer. He collided with the police officer because he was already in mid-air coming down the stairs. The police officer fell onto the ground and yelled. AP said the taser hit his chest and he could not move. AP said he landed on the ground and was screaming, “Ok, ok, I give up.”

AP stated a second police officer came through the door and started to kick him in the back, the ribs, and his face. He stated that the first police officer started to kick him as well. AP said the only thing he could think to do was to grab the first police officer’s leg and bite it. After biting the first police officer’s leg, that officer started to hit AP harder. AP stated he was certain a taser was used a second time. AP said that he was not trying to break into an office. He said he did consume methamphetamine several days prior to this incident. AP stated he has undergone reconstructive surgery to his face, and had a laceration on his left eyebrow, cheekbone and jawbone.

### **Civilian Witnesses**

CW1 was in the warehouse when a co-worker explained that two police officers needed access to the fifth floor. CW1 said the elevators required a swipe card to access the floors on the weekend. CW1 stated he has a swipe card for the third floor, and that he and the police officers had to take the stairs from the third floor to reach the fifth floor. After CW1 opened the fifth floor door, one police officer went to the left and the other police officer went to the right.

As CW1 proceeded to leave the fifth floor, he heard a police officer on the left side say, “*Hey what are you doing?*” CW1 said there was a sound of metal tossed or falling. CW1 then stated there was the sound of a struggle and banging in the hallway. At that point, CW1 closed the door and made his way back down to the main floor. CW1 said the police officers eventually came down and asked where the exits were. CW1 accompanied one police officer back to the fifth floor and noticed a male (later identified as AP) crouched at the top of the stairway. CW1 stated he motioned to the police officer to notify him that someone was there. The police officer asked AP what he was doing up there and asked him to stand up. As AP stood, he was observed holding a large wooden doorstopper in his hand. CW1 moved down the staircase to get out of the way. CW1 heard the police officer say, *Stop where you are and drop what you are holding.*” CW1 saw the police officer pull out a taser and discharge it at AP. CW1 stated that he went

down to the lobby to alert the other police officer. After taking the second officer to the third floor, CW1 went downstairs and stayed in the lobby for the rest of the time. CW1 stated that the next time he saw the police officers, they were with a handcuffed AP in the warehouse elevator. CW1 stated that AP was then pulled from the elevator, as he was resisting and refusing to walk and his face was bloodied.

CW2 was working in his studio in the warehouse when he stepped out and took the back stairs. As he tried to push the stairwell door open, he noted there was resistance. A male, later identified as AP, abruptly pushed through the doorway. CW2 stated that AP was sweating and had a metal object in his hand. Although CW2 said he knew most of the people in the building, he did not recognize AP. CW2 stated that AP walked about five feet and tried to pry a washroom door open with the piece of metal. Then, AP moved down the hallway and tried to break into a studio, so CW2 called the police. CW2 heard attempts to break into other studios, and returned to his own studio to protect his property. After some time, CW2 heard someone say to stop running. CW2 stated that he then heard sounds of a struggle in the hallway, with shouting and someone saying *“Get down and put your hands behind your back.”* CW2 stated he heard sounds of a fight and then sounds of a discharging taser. CW2 stated that, within seconds, the fighting started again. CW2 stated that when the fighting stopped a second time, he went out of his studio to see what had happened and to offer his assistance to the police officers. CW2 said he saw AP face down, not moving and there was blood everywhere.

### **Witness Officers**

WO1, working with WO2, heard one of the subject officers’ radio call that additional police units were required to attend the warehouse. WO1 volunteered his unit to assist. When they arrived on scene, SO2 was outside the warehouse. SO2 began to explain what happened when SO1 voiced over the police radio that a male was still inside the warehouse and armed with a 2x4. WO1 stated that he entered the building with SO2. WO2 remained at the cruiser car. SO2 got into the elevator with a staff person who had an elevator key while WO1 remained on the main floor. WO1 stated that the radio communication was silent for several minutes. When the elevator returned to the main floor and the door opened, both SO1 and SO2 came out with AP in custody. WO1 said AP was bleeding from the mouth and an ambulance was called to attend. WO1 stated that SO1 lifted up his pant leg and showed puncture marks on his lower leg. There was no blood visible. According to WO1, SO1 said that AP had bitten him.

WO2 was partnered with WO1. They had volunteered to assist SO1 and SO2 at the warehouse in respect of a commercial break and enter. When they arrived on scene, they met with SO2 who was standing in front of the warehouse. WO2 stated there was another male in the rear of SO2’s cruiser car. SO2 had begun to brief them about this male suspect in the back of their car, when SO1 radioed that he had located a second male suspect on the fifth floor who was in possession of a 2x4. WO2 stated that SO2 and WO1 went inside the warehouse while he remained with the male suspect in the cruiser car. WO2 said a radio broadcast announced that the second male was now in custody and that shotgun shells had been located on him. WO2 made his way to the main floor lobby and, as he entered, he noted SO1 and SO2 exiting an elevator with a handcuffed male. WO2 stated that the male had blood on his face. SO1 said that this male had bitten him.

WO3 was working as a member of the K9 unit. He was dispatched to the warehouse in response to a commercial break and enter in progress, and advised that a male attempting to break into

offices while armed with aluminum molding used to pry doors open. While en route, he heard a radio broadcast that SO1 had located a male armed with a 2x4. On arrival, WO3 attended inside the warehouse where WO1 was holding the main floor. WO3 stated that an employee took him upstairs. WO3 stated he observed a yellow police taser on the landing of the fourth floor and picked it up. WO3 said he made his way up to the fifth floor and observed AP face down and handcuffed on the landing of the fifth floor. WO3 said he observed that SO1 and SO2 each appeared to be exhausted, out of breath and covered in sweat. WO3 said AP had blood around his face, there were taser wires entangled around him, and he was thrashing his body while on the ground. WO3 observed a piece of 2x4, cut in the shape of a wedge, on the staircase. WO3 stated that he handed the taser that he picked up earlier to SO1.

WO4 was dispatched to the warehouse on a call regarding a male attempting to break into offices, armed with aluminum molding and trying to pry doors open. WO4 said that SO1 had radioed that the male was armed with a 2x4. On his arrival, WO4 met with SO1, SO2, WO1 and WO2. WO4 stated that the male suspect was on the ground and handcuffed. WO4 stated there was a second male in custody and in a cruiser car, but it was unknown if he was involved.

### **Forensic Report and Review**

IIU investigators received and reviewed a forensic report, exhibit list and taser download data. The following are summaries of those findings. The forensic report included photographs of SO1 and SO2's uniforms, which each appeared to have blood substances on them. The report also noted that both subject officers had blood substances on their boots. The forensic report included references to the clothing worn by AP. AP was wearing two separate hooded sweaters that were seized at the scene. In one of the sweaters, a taser prong was lodged in the neck area of the sweater. The prong did not penetrate the fabric. A Taser wire with two prongs attached was recovered and matched to SO2's Taser. It was determined that two Tasers were deployed but only one set of wires and prongs were recovered.

### **Taser Data Analysis**

SO1's assigned taser was armed and discharged twice and pulse logs indicated that the electricity did not make a connection with a conductive surface.

SO2's assigned taser was armed and discharged eight times and pulse logs indicated that electricity was making a connection with a conductive surface.

### **CCTV Footage Summary**

CCTV video surveillance show the events that occurred from the time SO1 and SO2 enter the warehouse, meet with CW1, and are taken by elevator to the third floor. It also captures when other members from WPS arrive. AP is observed being escorted, in custody, from the warehouse. AP's face cannot be seen in the surveillance footage. AP appears to be staggering as he is escorted from the warehouse. None of the video surveillance footage depicts any interaction between AP and SO1 and SO2 during the time force was used.

## Subject Officers

Pursuant to the provisions of the PSA, a subject officer cannot be compelled to provide his or her notes regarding an incident nor participate in any interview with IIU investigators. In this case, both SO1 and SO2 declined an in-person interview during this investigation. SO1 and SO2 each provided a prepared statement and copies of their notes to IIU investigators.

SO1 wrote in his prepared statement that he and SO2 were dispatched to a break and enter in progress on the fifth floor of the warehouse. There was no description of the suspect. On arrival, CW1 advised them that he had elevator access to only the third floor and so they would have to use the stairs to gain access to the upper floors. SO1 wrote that CW1 escorted him and SO2 to the stairwell from the elevator. SO1 stated that he exited the stairwell door on the fifth floor, walking west down a hallway while SO2 walked east. SO1 wrote that he observed AP standing 20 feet away and holding a metal object in his left hand. SO1 called over to ask what he was doing, at which point AP threw the metal object and ran down another hallway. SO1 stated that he gave chase while calling out, "*Stop, Winnipeg police.*" SO1 ran after AP, down the stairs and to the main floor. SO1 was not able to capture AP. SO1 then rejoined SO2 in the lobby, and went outside with CW1 to check the exits. SO2 then radioed SO1 to return to the lobby. When SO1 met with SO2, SO2 was standing with an unknown male. SO1 said he felt he had reasonable grounds to detain him for questioning. SO2 placed this male into his cruiser car.

SO1 wrote that CW1 once again escorted him upstairs. As CW1 began to unlock the door to the fifth floor, CW1 looked back at SO1, pointed up the stairwell, and said, "*There he is.*" SO1 said he looked up the stairwell and identified the male as the one that ran from him earlier. AP was standing on the sixth floor landing and holding a 2x4 piece of wood. SO1 yelled to AP "*It's Winnipeg police, drop the wood!*" and deployed his taser. He then radioed to SO2 to return as AP was armed and in the building.

SO1 wrote that AP was hopping around like "*...a monkey in a cage.*" SO1 repeatedly asked AP to drop the wood. SO1 wrote that he was very fearful of AP. SO1 wrote that AP said, "*I'm going to make you famous,*" and then began walking down the stairs towards him, armed with the 2x4. When AP was approximately eight to ten stair widths away, SO1 yelled, "*Stop, police*" and again deployed his taser. SO1 stated that both probes appeared to strike AP because his body clinched and the 2x4 fell to the ground. AP then rushed down the stairs at SO1 and they collided. SO1 believed that AP had wrapped his hands around SO1's body and was pushing him towards the fifth floor landing. SO1 was protecting his firearm out of fear that AP would try to disarm him.

AP continued to push SO1 and stated, "*I'm going to...kill you.*" SO1 said he feared for his life. SO2 then came running up the stairwell. At that point, both SO1 and SO2 were standing with their backs to the stairs. SO1 wrote that AP put his head down and charged at them. SO1 stated that SO2 distributed several blows to AP's face and brought him to the ground. SO1 wrote that SO2 delivered one to three drive stuns to the back of AP. SO2 kicked AP while SO1 administered numerous knee strikes and punches to AP's upper body while yelling at him to stop resisting and to put his hands behind his back. SO1 noticed a taser lying on the fourth floor landing and it appeared to him that AP was trying to get it. SO2 delivered a series of drive stuns into AP's back with no effect. SO2 then deployed his taser several times to gain control of AP. AP then bit SO1's left calf. SO1 punched AP's thigh and back area, while SO2 punched, kned and deployed his taser on AP. SO1 kicked AP between five to ten times, until AP stopped biting

and struggling. AP's face was covered in blood. SO1 did not appreciate the seriousness of the injury to AP as he was face down. SO1 received treatment for his bite wound while at HSC.

SO2 wrote that he and SO1 were dispatched to a break and enter at the warehouse. Upon arrival, CW1 escorted them to the third floor. SO2 wrote that once they were on the fifth floor, he went right and SO1 went left. SO2 heard SO1 yell "*Winnipeg Police*" and then heard a metal object hit the floor. SO1 then ran down the stairs, followed by SO2. SO2 stated that he radioed for assistance. SO2 stated that a male exited the stairwell, however this male was not the person they were chasing. That male was placed into their cruiser car where SO2 remained as SO1 went back inside.

SO2 then stated that he went back inside because SO1 needed backup. SO2 wrote he heard the sound of SO1's taser being deployed. When SO2 arrived on the fourth floor, he saw SO1 being held by his uniform and violently shoved by AP. SO2 stated that he ran up the stairs and pushed SO1's back, to prevent him from falling down the stairs. Then, AP charged at both officers. SO2 punched AP two to four times in the face. Nevertheless, AP continued to fight, swinging his arms violently and trying to push the police officers to the stairs.

SO2 stated they both shin pinned AP. SO2 observed taser wires, however SO1 was not holding his taser. SO2 wrote that he yelled *Give me your hands, stop resisting.*" AP ignored his directions and pulled his arms away while he thrashed his body around. As SO2 was not able to control AP, he punched AP's ribs three to five times and again said, "*stop resisting.*" SO2 punched AP two to three times in the face yelling, "*Stop resisting. Winnipeg Police.*"

SO2 wrote that SO1 pulled his taser from under AP and passed it to SO2. SO2 threw the taser towards a corner so AP could not get it. However, AP, with both SO1 and SO2 on top of him, began to crawl towards the taser. SO2 stated he punched AP four to five times in the face. When AP reached for the taser, SO2 kicked him two to three times in the face, telling him not to go for the taser. SO2 then drove his knee into AP's jaw. AP crawled towards the stairs and began to grab at SO1's legs. SO1 yelled that AP was biting him. SO2 was able to deploy his own taser several times at AP. Eventually, SO1 and SO2 gained control of AP, were able to handcuff him, dragged him to the elevator and then to the lobby.

### **Use of Force Expert Opinion**

Following a review of the investigative file, the IIU civilian director requested an external opinion from a use of force expert to assist in assessing this incident. A use of force expert with the Vancouver Island District RCMP was retained. A 27-page report was produced in which an opinion was offered that the actions of SO1 and SO2 were required to bring a violent person into custody. SO1 and SO2 had followed the WPS Resistance Continuum. The expert stated that similarly trained police officers in an identical circumstance, following their training and risk assessments, would use "...equivalent levels of force."

## **Conclusion**

Sections 25 (1), Section 26 and Section 34(1) of the Criminal Code of Canada are applicable to this analysis:

*25 (1) Every one 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.*

*34. (1) A person is not guilty of an offence if*

*(a) they believe on reasonable grounds that force is being used against them or another person or that a threat of force is being made against them or another person;*

*(b) the act that constitutes the offence is committed for the purpose of defending or protecting themselves or the other person from that use or threat of force; and*

*(c) the act committed is reasonable in the circumstances.*

Effectively, the question is whether the decision of the subject officers to deploy their tasers and punch, kick and strike AP was reasonable in the given circumstances.

Reasonableness of an officer's use of force must be assessed in regards to the circumstances, as they existed at the time the force was used, particularly when it is considered in light of the dangerous and demanding work engaged in by police and the expectation that they react quickly to all emergencies. The police officer's actions must be assessed in light of these exigencies.

The allowable degree of force to be used remains constrained by the principles of 'proportionality, necessity and reasonableness' (see *R. v. Nasogaluak*, [2010] 1 S.C.R. 206). In that decision, the Supreme Court noted, at para. 35:

*"Police actions should not be judged against a standard of perfection. It must be remembered that the police engage in dangerous and demanding work and often have to react quickly to emergencies. Their actions should be judged in light of these exigent circumstances."*

Also see *R. v. Power*, 476 Sask. R. 91 (CA), where at para. 35, the court notes:

*"On the basis of the foregoing, a determination of whether force is reasonable in all the circumstances involves consideration of three factors. First, a court must focus on an accused's subjective perception of the degree of violence of the assault or the threatened assault against him or her. Second, a court must assess whether the accused's belief is*

*reasonable on the basis of the situation as he or she perceives it. Third, the accused's response of force must be no more than necessary in the circumstances. This needs to be assessed using an objective test only, i.e. was the force reasonable given the nature and quality of the threat, the force used in response to it, and the characteristics of the parties involved in terms of size, strength, gender, age and other immutable characteristics."*

This investigation has determined:

- SO1 and SO2 were both lawfully placed and acting in the execution of their duties as police officers at all material times;
- SO1 and SO2 responded to a call for service regarding a break and enter in progress at the warehouse;
- AP had no lawful right to be within the warehouse and was acting with intent to unlawfully enter locked studio suites;
- When SO1 came in direct contact with AP, he was armed with a 2x4 piece of wood;
- AP refused all commands to surrender;
- AP threatened SO1 and SO2 with words and actions;
- SO1 was fearful for his own life;
- SO1 and SO2 battled with AP and used all non and less lethal means available to gain control of him.

I am satisfied that all the evidence gathered, in conjunction with the expert opinion on use of force, supports the singular conclusion that, pursuant to both Sections 25 and 34 of *The Criminal Code of Canada*, SO1 and SO2's use of force in this matter was both reasonable and justified in these circumstances.

The IIU investigation is now complete and this file is closed.

**Final report prepared by:**

Zane Tessler, civilian director  
Independent Investigation Unit  
December 10, 2019

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