

FINAL REPORT: IIU concludes investigation into injuries to male during arrest by WPS

On February 13, 2018, Winnipeg Police Service (WPS) contacted the IIU to notify it of an injury incurred the previous day during a physical altercation between WPS officers and a male (later identified as the Affected Person (AP)) in an apartment in Winnipeg, Manitoba. The notification read in part:

On February 12 at approx. 10:46 AM, uniform officers were called by family members to (an apartment on Magnus Avenue) in response to a male identified as AP, who was reported to be high as a result of crack cocaine and methamphetamines. The family indicated he was damaging property and suicidal as a result of the drug use. Officers attended and arrested AP. During the course of the arrest, AP was handcuffed. WFPS (Winnipeg Fire and Paramedic Service) attended and further medically restrained the accused and transported him to HSC (Health Sciences Center). He was admitted and treated for a spiral fracture to his left arm.

As this matter concerned a spiral fracture of an arm (which is a serious injury as defined by IIU regulation 99/2015), IIU assumed responsibility for this mandatory investigation in accordance with section 66(2) (b) and (4) of *The Police Services Act (PSA)*. A team of IIU investigators was assigned to this investigation.

Among the information obtained and received by IIU investigators was:

- WPS arrest report;
- WPS officers' notes and narrative reports;
- witness statements;
- Computer Assisted Dispatch (CAD) report;
- audio recording of 911 call;
- WPS call history;
- prisoner log sheets;
- audio recordings of WPS radio transmissions;
- WFPS report;
- medical reports respecting AP.

Two WPS officers were designated as subject officers (SO1-SO2) while four WPS officers were designated as witness officers (WO1 – WO4). IIU investigators met with and interviewed AP, who also provided his written consent for the release of his medical information and reports. IIU investigators also met with and interviewed three civilian witness (CW1- CW3). A fourth civilian witness did not respond to multiple requests for an interview with IIU investigators.

AP

AP stated that on February 12, he was smoking what he thought were two pieces of crack cocaine. However, the person he bought it from sold him something quite different. After smoking the drug, AP said that was he was hallucinating and incoherent.

AP said his family became scared and called for an ambulance. AP said the paramedics, on arrival, called the police. AP stated that when he saw the police coming it “freaked him out.” AP said he asked the police officers who they were and asked them for their badges. AP said that is when they grabbed him, tackled him to the ground, and started to hurt him. AP said the police started kicking him, kneeing him, and pulling at his arms to get them out from underneath his body. AP said the police kept going until his shoulder popped out, his ribs broke, and then his arm snapped. AP said his arm was just “flopping around” when a police officer handcuffed him. AP stated he was scared and was being combative when paramedics came in and sedated him and took him to the hospital.

Note: Medical reports received confirmed AP sustained a spiral fracture of the left humerus. There was no evidence of AP sustaining broken or fractured ribs.

Civilian Witnesses

CW1 is related to AP and was present when he was arrested by police and sustained the spiral fracture to his arm. CW1 stated that she awoke at about 11:30 a.m. and heard banging from upstairs. CW1 believed someone was fighting. She said she went upstairs and observed AP hanging out of the kitchen window, screaming for help. CW1 said she told AP to calm down and get back inside the house. CW1 said AP was screaming, acting suicidal, appeared paranoid and was ripping things off the walls. She knew AP had bought drugs earlier that morning but did not know what type. CW1 telephoned 911 for help and “*they came to the rescue.*”

According to CW1, when the police arrived, they went upstairs. CW1 heard police chasing AP upstairs and believes he was tackled to the ground. CW1 said she went upstairs and witnessed AP on the kitchen floor and struggling with the police officers as he tried to get up. CW1 said the police officers were having a hard time controlling AP and that police, firefighters and paramedics were all in the kitchen. CW1 said one of the police officers asked if AP had a fractured arm to which she said no. CW1 thought AP might have hurt himself while he was hanging out the kitchen window.

CW1 said she heard AP yelling “*get away from me,*” “*I don’t know you, and you are scaring me.*” CW1 said she heard the police officers saying, “[AP], *you are okay, you are with the Winnipeg Police.*” CW1 said AP was so high that he insisted there were bugs crawling around. CW1 said the police officers pretended to squish the bugs to help with calming him down.

CW1 stated that shortly afterwards, WFPS carried AP out on a tarp and then conveyed him to hospital. CW1 did not witness anyone throwing punches or kicking. CW1 did not see police use any additional restraint once AP was outside.

CW2 is related to AP and was present when AP was arrested by police. CW2 stated that AP was “*acting high,*” and “*tripping out*” that morning. CW2 did not want AP in the residence in case he became violent. CW2 said she asked CW1 to call 911. She said the police officers arrived and went upstairs.

CW2 saw the police officers wrestling with AP and witnessed the officers standing over him but did not see how they got him to the floor. CW2 did not see anyone throwing punches or kicks.

CW2 said that after AP was on the ground, a police officer asked her if AP had a broken arm or shoulder blade; she answered no. CW2 said more police officers and fire and paramedic personnel arrived. CW2 did not see police officers do anything that she felt was wrong or inappropriate.

CW3 was present at the residence the morning when police arrested AP and he suffered his fractured arm. CW3 did not see much of the incident but did hear AP screaming for help. CW3 said she ran upstairs and saw AP hanging half-way out the window, trying to jump. According to CW3, AP was screaming, throwing things around, hallucinating, and claiming that someone was after him. CW3 said that police were called. CW3 said she did not see when the police officers made contact with AP but it sounded like he was trying to fight or resist the officers when they were trying to control him.

Witness Officers

WO1 stated that on February 12 at approximately 10:46 a.m., he and his partner, WO2, were dispatched to an apartment on Magnus Avenue. WO1 stated they arrived at 10:52 a.m. and assisted SO1 and SO2 who were already on scene. WO1 said he could hear AP yelling from inside. As he entered the residence, he saw SO1 and SO2 both holding AP down on the kitchen floor. WO1 said AP was thrashing around, repeatedly talking about a female and yelled out, “*there it is.*” WO1 stated that SO1 and SO2 appeared to be struggling with AP. WO1 said he involved himself by holding and controlling AP’s left leg and assisted SO1 and SO2 in putting handcuffs on AP. WO1 said that SO1 and SO2 advised that AP’s left arm might be injured and to be careful with it. WO1 stated AP continued to yell and his face was purple. WO1 called for an ambulance. WO1 said a WPS street supervisor arrived and placed AP’s legs in a Ripp Hobble (a device made from polypropylene webbed belting that sometimes has a brass snap at one end and a jawed alligator clip hold permanent loop in place for quick use on ankles, knees and elbows for shackling and de-cuffing. It is employed to prevent injuries to the subject and the officers). WFPS administered a sedative to AP to control his high.

WO2 stated that he and his partner, WO1, were dispatched and arrived on scene at Magnus Avenue. WO2 said he entered the residence through an east side door and could hear AP yelling from inside. SO1 and SO2 were already in contact with AP and were holding him down. WO2 stated that AP was hallucinating and in an agitated state. WO2 said he took hold of AP’s legs and that a Ripp Hobble was called for to restrain AP. WO2 stated he was unaware when AP’s arm was injured as he was focused on the legs. He did not see any use of force applied to AP’s upper body.

WO3 was partnered with WO4 on February 12. WO3 said he heard over the police radio that a few units were on scene at Magnus Avenue and were having an issue with AP. WO3 said they volunteered to assist. When they arrived on scene, WO3 saw that AP was in the kitchen, on the ground, and was screaming. SO1, SO2, WO1 and WO2 had control of AP and were holding him down on the ground. WO3 did not recall if AP was face down or on his back. The police officers kept AP controlled and they waited for paramedics and medical supervisors to attend.

WO4 stated he and his partner, WO3, volunteered to assist at Magnus Avenue. WO4 believed that AP was high on meth, was smashing property and was hanging out of a window.

Subject Officers

Under 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, SO1 and SO2 provided their respective notes and narrative reports and also did consent to be interviewed by IIU investigators.

SO1 stated that on February 12, he and his partner, SO2, were dispatched to attend Magnus Avenue in response to a call about a suicide threat. En route, SO1 noted that AP was wanted in respect to unrelated criminal matters. SO1 stated that when they arrived on scene, he observed AP through an open window on the upper level, pacing in the kitchen. SO1 said they verbally identified themselves as Winnipeg police officers and directed AP to come downstairs and open the door. SO1 said he was concerned about AP's well-being. SO1 said that while they were walking up the stairs, they announced "*Winnipeg Police*" numerous times. AP was located in the kitchen. SO1 said SO2 advised AP that he was under arrest and took control of his left arm. SO1 stated that AP immediately attempted to break free from them, then AP requested that they show him their badges. SO1 said he pointed towards his shoulder flash which says "*Winnipeg Police*" and AP started to act paranoid and sweat profusely. SO1 said AP appeared to be having a psychotic episode and was hallucinating. While AP stared blankly at the wall, he yelled "*they are after me, I am being followed.*" SO1 said that he and SO2 attempted to control AP's arms while yelling "*Get on the ground, you are under arrest, stop resisting.*" SO1 stated the fight then continued across the kitchen floor and that is when he attempted an ineffective leg sweep on AP's left leg. SO1 stated that AP attempted to grab SO2's conductive energy weapon (CEW – also known as a "taser") with his right hand. SO1 said he wrapped his right arm around AP's back as SO2 swept at AP's right leg. As a result, AP fell down and onto his stomach. SO1 said he maintained control of the left side of AP's body and left arm. SO1 stated that SO2 applied a shin pin to AP's back and had control of his right arm.

SO1 said AP continued to resist by pulling his arms towards his body while screaming, "*I'm hot, I'm hot.*" SO1 said SO2 was able to pull AP's right arm from beneath him and then applied a shoulder lock in an attempt to handcuff AP. AP continued to resist while yelling, "*No!*" SO1 said AP was exhibiting "superhuman strength," was sweating profusely, was insensitive to any pain and appeared to be hallucinating. In SO1's opinion, AP displayed all symptoms of excited delirium¹. SO1 stated both he and SO2 recognized the situation was a medical emergency. SO2 maintained control of AP's shoulder and delivered four to five knee strikes while yelling, "*Give*

¹ Also known as **agitated delirium**, a condition that presents with psychomotor agitation, delirium, and sweating. It may include attempts at violence, unexpected strength and very high body temperature. Complications may include rhabdomyolysis or high blood/potassium levels.

us your arm, stop resisting.” SO1 stated the knee strikes were an appropriate response given the circumstances.

SO1 stated that he yelled, “*Give us your arm, stop resisting!*” multiple times, while pinning AP’s left shoulder. AP continued to flex and pull away when SO1 heard a loud pop sound from AP’s left arm. WO1 and WO2 then arrived and assisted by applying shin pins to AP’s legs. SO1 stated a Ripp-Hobble leg restraint and shackles were applied to AP’s ankles to prevent him from kicking. AP was ultimately transported to HSC where it was later learned that he sustained a fractured left humerus.

SO2 stated that he and SO1 were dispatched to Magnus Avenue in response to a suicide/threat call. SO2 said AP’s actions caused his family to call police. SO2 stated that upon arrival, they could see AP through a window. SO2 stated they identified themselves to AP as police officers and AP immediately moved from their line of sight.

SO2 said they went upstairs to AP’s suite and announced their presence several times to which they received no response. They located AP in the kitchen and again identified themselves as WPS.

SO2 said they approached AP and advised him of his arrest regarding unrelated matters. SO2 said AP was calm and smiling at that time as each police officer took hold of an arm. SO2 stated there were several knives and other kitchen utensils within reach, which were an immediate concern for them to get AP into custody.

SO2 said AP dropped down and started pulling his arms away, trying to break from their control. AP asked to see their badges. AP was staring straight ahead as if he was hallucinating. SO1 pointed to his shoulder flash to show AP who they were, however AP continued to make nonsensical comments such as, “*they are after me, I’m being followed.*”

SO2 said AP continued to pull his arms away. AP was very strong, however SO1 and SO2 maintained control of his arms and gave commands to him to get on the ground and stop resisting.

SO2 stated that SO1 attempted an unsuccessful leg sweep. AP then grabbed at SO2’s holster. SO2 stated that SO1 wrapped his arm around AP’s body as SO2 now executed a leg sweep that caused AP to fall on his stomach. SO2 landed on AP’s right side and SO1 was on the left. SO2 stated he applied a shin pin to AP’s back to keep him on the floor and prevent him from continuing to fight them.

SO2 said he gained control of AP’s right arm and pulled it out from under his body to the back in a “cuffing” position (shoulder lock position) to put handcuffs on him. SO2 said they continued giving AP commands to give them his hands and stop resisting. AP continued to refuse by saying, “*No*” several times. SO2 noted that AP was exhibiting superhuman strength. AP’s arms were behind his back and he was able to push both of his arms backwards. AP was sweating profusely, was insensitive to the pain of his arms being behind his back and appeared to be hallucinating/disorientated.

SO2 stated that, through his training, he recognized AP was in a state of excited delirium and that the situation was a medical emergency. SO1 continued giving AP commands to give up his arms and stop resisting. SO1 applied a shoulder lock on the left arm. AP was pulling his arm in

the opposite direction when SO2 heard a loud pop somewhere in AP's left arm or shoulder. SO1 then gained control of AP's arm.

SO2 stated that AP's arm looked like it was broken. AP was transported to HSC where it was confirmed AP had suffered a spiral fracture to his left arm.

WFPS Report

The WFPS patient report noted that AP had a possible fracture to the left humerus due to an altercation with WPS. The report also states that when AP was asked to sit on a chair to be assessed, he was assisted by the officers. AP became increasingly agitated and aggressive as he attempted to break free from the restraints and lashed out at emergency personnel. AP did not comply and was unable to be verbally de-escalated. The report said that WFPS administered intermuscular sedatives to AP. When AP began to calm he was carried down the stairs, on a tarp, without incident. While on route to HSC, WFPS reported that AP became calmer but was not answering questions appropriately.

Issues and Conclusion

The relevant issue in this matter is whether, at any time, the subject officers applied excessive or unnecessary force to AP, from the time of their initial contact through to his arrest and detention.

The mere fact that AP sustained a serious injury is not determinative of whether the force used was excessive or unnecessary in the circumstances.

A police officer is entitled to arrest a person he finds committing, or has reasonable grounds to believe has committed, an indictable offence. Furthermore, police can arrest anyone to prevent a breach of the public peace.

Pursuant to section 25 of the *Criminal Code of Canada*:

(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.

(2) Where a person is required or authorized by law to execute a process or to carry out a sentence, that person or any person who assists him is, if that person acts in good faith, justified in executing the process or in carrying out the sentence notwithstanding that the process or sentence is defective or that it was issued or imposed without jurisdiction or in excess of jurisdiction.

(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.

(4) A peace officer, and every person lawfully assisting the peace officer, is justified in using force that is intended or is likely to cause death or grievous bodily harm to a person to be arrested, if

(a) the peace officer is proceeding lawfully to arrest, with or without warrant, the person to be arrested;

(b) the offence for which the person is to be arrested is one for which that person may be arrested without warrant;

(c) the person to be arrested takes flight to avoid arrest;

(d) the peace officer or other person using the force believes on reasonable grounds that the force is necessary for the purpose of protecting the peace officer, the person lawfully assisting the peace officer or any other person from imminent or future death or grievous bodily harm; and

(e) the flight cannot be prevented by reasonable means in a less violent manner.

(5) A peace officer is justified in using force that is intended or is likely to cause death or grievous bodily harm against an inmate who is escaping from a penitentiary within the meaning of subsection 2(1) of the Corrections and Conditional Release Act, if

(a) the peace officer believes on reasonable grounds that any of the inmates of the penitentiary poses a threat of death or grievous bodily harm to the peace officer or any other person; and

(b) the escape cannot be prevented by reasonable means in a less violent manner.

Any force in excess of what is necessary is not justified and can constitute an assault (Section 265 of the *Criminal Code of Canada*).

Section 265 (1) (a) states:

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

AP's injuries constitute bodily harm under the *Criminal Code of Canada*.

After a review of the investigative file, the following factors are critical to the analysis of whether the subject officers applied excessive or unnecessary force to AP:

- SO1 and SO2 were lawfully placed and in lawful execution of their duties at the time of their interactions with AP:

- At the time and date of the incident, SO1 and SO2 were on-duty WPS police officers;
- SO1 and SO2 were dispatched on a call for service in response to a suicide/threat call regarding a male at an apartment on Magnus Avenue;
- Information was also obtained that AP was wanted on unrelated criminal matters;
- SO1 and SO2 attended the apartment in a timely fashion;
- SO1 and SO2 entered the apartment to determine the well-being of AP and repeated announcements of “*police*” were met without response;
- When contact was made with AP, SO1 and SO2 identified themselves and the reasons for their presence;
- They were immediately faced with the potential for physical confrontation with AP;
- AP was combative and refused all directions by SO1 and SO2;
- AP used actual violence against SO1 and SO2, displaying “super human strength”;
- SO1 and SO2 recognized that AP was possibly in excited delirium and in medical distress;
- AP was showing signs of hallucinations and paranoia;
- AP refused to submit to the police officers as demanded.

The subject officers applied force to AP:

- in response to AP’s use of force on SO1 and SO2;
- to prevent harm to themselves; and
- to prevent significant harm to AP.

The subject officers employed all means available to disarm and disable the individual and defuse a potentially serious situation. In my opinion, the subject officers demonstrated calculated, crucial and necessary actions to avoid the necessity of resorting to significant or even lethal force.

While AP suffered a serious injury through the application of force, I am satisfied that the force used in this instance was reasonable and necessary in the circumstances and within the ambit of Section 25 of the Criminal Code of Canada.

In conclusion, there are no grounds to justify any charges against either or both of the subject officers.

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

Final report prepared by:

Zane Tessler, civilian director
Independent Investigation Unit
August 02, 2019

Ref 2018-005