

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

On September 3, 2018, Winnipeg Police Service (WPS) contacted the IIU to notify it of an injury incurred during a physical altercation between WPS officers and a male (later identified as the Affected Person (AP)) in an apartment in Winnipeg, Manitoba. According to the notification, during this altercation AP armed himself with a hammer and tried to hit officers with it. As a result of the struggle with the police officers, AP was injured and arrested then transported to Health Sciences Centre (HSC) by ambulance. AP was diagnosed with a fractured orbital bone and a laceration to the left side of his head. He was kept in hospital for monitoring and for treatment of a pre-existing condition. On September 4, a written notification was forwarded to IIU outlining the following facts (reproduced below):

- *On September 2, 2018 at 6:53 pm, a male (not AP) contacted police via pay phone to report that a female possibly high on meth was throwing pieces of a chair at him when he was walking by an address on Sargeant Avenue. He requested police to check on the female well-being.*
- *At 7:14pm, two WPS officers attended to the suite and found it in a state of disaster, damage to walls, graffiti, items strewn around and a general sense of a meth house.*
- *Upon searching the suite, officers observed AP under sheets in a bed. AP jumped out of the bed and came at officers in an aggressive and hostile manner. A physical altercation occurred between officers at which time AP armed himself with a large claw hammer. AP raised the hammer in a threatening striking position towards officers and attempted to strike one of the officers. Tasers were discharged with no effect. AP was subsequently disarmed and brought to the ground until such time other units attended to assist. It should be noted that AP appeared to be on meth and continued to fight until exhaustion took hold.*
- *AP was taken to HSC and was subsequently treated for a fracture orbital bone and a laceration to the left side of head. Initially AP was being held at hospital until morning when the Plastic Surgeon made his rounds. After his morning assessment, the Surgeon stated that surgery will not be done. Arrangements were being made to have AP released into police custody but emergency staff determined that AP would remain in hospital as a pre-caution to monitor a pre-existing condition that may have flared up as a result of the incident (drug use and or altercation).*
- *As of today, September 4 at 8am, officers are arranging a bail hearing to be done at the hospital whereas AP will be released in the custody of correction officers. It should be noted that upon arrest, AP gave a false name...*

As this matter concerned injuries that included a fractured orbital bone (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;
- Audio recording of 911 call;
- WPS call history;
- WPS CAD message history;
- Identification reports;
- Prisoner log sheets;
- Audio recordings of WPS radio transmissions;
- Taser reports;
- Medical reports respecting AP.

Two WPS officers were designated as subject officers (SO1-SO2) while nine WPS officers were designated as witness officers (WO1 – WO9). Following review of received material from WPS, it was determined that only six witness officers would be interviewed by IIU investigators. 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 one civilian witness (CW).

WPS Identification Report

The apartment walls were damaged, furniture items were noted as broken and strewn in the living room, a refrigerator was overturned, and there was blood spatter and pepper spray staining the walls in the eating area and northwest bedroom. Taser probes and identification cartridges were located on the floor in both the dining area and kitchen. Knives were located next to a mattress on the floor in the common area between the bedrooms. A photograph of the hammer was included in the report.

Audio recording of the 911 call

On September 2 at 6:49 p.m., a call for service at an apartment on Sargent Avenue was received by a 911 operator. A male caller telephoned from a pay phone and reported that he “...needed an ambulance, she's going crazy, smashing things.” The caller stated that he just walked by the apartment and a woman tried to throw things at him even though he did not know her at all. He said she threw a bin and pieces of wood from a chair at him. The male caller also stated that it “...looks like she's on meth.” The caller identified himself by name. The 911 call did not report the presence of a firearm at the residence.

Audio recording of WPS radio calls

At 6:54 p.m., a call for service was broadcast over the police radio requesting a General Patrol (GP) unit to check on the well-being of a female at the apartment on Sargent Avenue. The broadcast noted that the female was:

- throwing a piece of a chair at a complainant as he walked by;
- possibly high on meth;
- described as Caucasian, approximately 38 years of age, small build, light orange and long hair, with a sweater tied around her waist.

At 7:31 p.m., SO1 and SO2, who responded to the original call for service, radioed that: “*We need back up to our location, sooner than later, we have an uncooperative male.*” WO1, WO5 and WO6 requested to be assigned. SO1 and SO2 advised other units to approach the door on the north side of the building. At 7:32 p.m., WO4 requested assistance in gaining entry into the building. At 7:34 p.m., WO4 asked for the suite location. At 7:35 p.m., an unknown officer asked, “*Do you hear us kicking at the door?*” At 7:38 p.m., WO5 and WO6 arrived on scene. WPS Dispatch requested an update when they got a chance and someone advised “*male in custody.*”

AP

AP told IIU investigators he was asleep when he heard WPS officers enter his sister’s apartment and walk straight to his bedroom. Two WPS police officers demanded AP leave the residence. AP replied, “*Okay, I’m leaving my sister’s apartment.*” He didn’t know why he was leaving the apartment but he agreed to leave. AP said he got out of bed and walked into the kitchen area and the two police officers then attacked him. AP described one officer as being taller than the other, approximately 6’4” tall, weight approximately 250 lbs and with blond hair. AP described the other officer as being of medium build.

According to AP, the two police officers cornered him in the kitchen where the taller officer with blond hair ‘*tasered*’ him. AP said he ripped the probes out of the taser. AP stated he saw a hammer and grabbed it for self defense. AP stated that one of the officers pulled out his firearm then said he had a gun. AP stated he threw the hammer on the kitchen table and the medium built officer then tasered him on his arm. Then, according to AP, the blonde-haired officer did a ‘*round house kick*’ with his left foot, striking AP on the right side of his head, resulting in his head striking a wall. AP said he gave up after that and he was only defending himself the entire time. AP stated he was not resisting arrest but rather repelling home invaders from his sister’s home. AP believed he was knocked out. He said he woke up in HSC, strapped to a gurney and started to freak out. He didn’t recall what day this occurred but remembered it happened in the afternoon. The entire incident occurred strictly inside the apartment. AP said the only other witness was CW, who was kicked out of the apartment by the two police officers but was standing at the back door in the kitchen, watching, when they attacked AP. AP stated that he was totally sober and had not taken any drugs that day.

According to medical information received, AP’s injuries included:

- bruises, scrapes and marks all over his body;
- a laceration on his head that required staples to close (AP was not certain if the police officers hit him on the head with a baton);
- fracture to the right medial orbital bone;
- hematoma (*bleeding in the potential space between the skull and the scalp*) over the left parietal bone without fracture (left side of head);
- AP had previous healed fractures of the right medial orbital wall.

Civilian Witness

CW's recollection of specific actions and times jumped back and forth during the interview, which made it difficult to establish an accurate timeline of events.

CW stated the incident occurred around supper time at his mother's apartment on Sargent Avenue.

Earlier that day, CW was at the apartment with his mother, brother and uncle, AP. At some point, his brother left the apartment. Approximately a half hour prior to police attending the apartment, his mother was mad that his brother had left so she started to smash things with a hammer. CW believed the hammer was left in his dresser.

CW believed that at approximately 5:00 p.m., someone telephoned police and reported that guns were inside the apartment. According to CW, there were no guns in the apartment. His mother had left the apartment by this time. AP was in a bedroom sleeping on a mattress on the floor. CW was standing outside the apartment waiting for his cats to come back. When CW returned to the apartment, he was met by two police officers. CW did not hear the police announce their presence but he was standing outside at the time. According to CW, one police officer had a baton. The police officers told CW there was a handgun in the apartment and then they went after AP. The two officers told AP to open the bedroom door, yelling "*you're under arrest, you're under arrest for having a firearm.*" AP barricaded himself in the room and the police tried to force the door open. CW was not sure how the door opened but the police went in through the door and "bear maced" his uncle (known also as "pepper" or oleoresin capsicum spray (OC spray)). CW said he told the officers to get off AP and that he was innocent. The two police officers grabbed his uncle from the room, telling CW to leave. CW left to find his mother.

CW stated he returned with his mother and found six to eight police officers present. CW said the police officers smashed AP's head into the wall twice. There was blood on the wall. CW went to the front of the apartment and saw that AP's face was bloody and the police officers placed him in a cruiser car. CW told police to call the ambulance because his uncle was hurt. The ambulance came and police took AP out of the police car.

Witness Officers

None of the witness officers observed any physical force between the subject officers and AP--such as punches, kicks or strikes--or saw any intervention tools, such as batons, being displayed or used. None of these officers found or observed a firearm in the apartment nor did they have any knowledge of a firearm being located.

WO1 was the acting supervisor. WO1 did not record any notes or narrative report, as he arrived at the apartment after the incident with several police officers already on scene and AP in handcuffs. When he first walked up to the front door of the apartment, he noticed the door was breached and the smell of OC spray was in the air. Both SO1 and SO2 were visibly out of breath.

WO2 and WO3 were partnered that day. Neither witness officer made any notes or prepared a narrative report. WO2 stated his involvement was very limited and unless he is involved in specifics he typically does not make any notes. WO2 heard WPS operators dispatch the original call for service regarding a female throwing furniture at someone. He believed it was a person in a mental health crisis or on meth. Both WO2 and WO3 heard a call over the police radio from

SO1 and SO2 requesting back up. They attended the apartment and met with other police officers at the front door. They heard a scuffle from inside the apartment with people yelling and things being thrown around. As a result, the officers breached the front door.

WO2 saw several police officers dealing with AP, who was on the floor. He noticed the smell of OC spray in the air. He heard AP yelling and swearing and, in his opinion, AP appeared to be on “meth.”

WO2 described AP as a bigger, heavy set male, well over 200 lbs. AP had some blood on his face. A female, believed to be related to AP, was yelling and screaming, trying to enter the apartment. WO2 dealt with her until the other police officers escorted AP to an ambulance. WO2 stated that furniture, including a fridge, was over-turned, and there was spray paint on the floor. WO2 saw “taser” probes lying around but did not see wires or any tasers present.

WO3 was either the first or second back-up police officer to enter the apartment. He saw SO1 and SO2 taking AP into custody. AP was face down on his stomach. SO1 and SO2 were attempting to apply handcuffs to AP. WO3 assisted by holding AP’s arm and latching the handcuffs. WO3 then escorted AP to an ambulance. According to WO3, the apartment was in shambles, as if somebody had trashed the place. WO3 observed a hammer on the floor. WO3 described AP as a large, heavy set male. A female, who was behaving erratically and appeared intoxicated by some type of drug, arrived on scene. She was not making any sense and was not listening to the police officers. At the scene, both SO1 and SO2 told WO3 that AP had attacked them with a hammer. They also said that AP was going for their intervention tools, firearms and other weapons on their belt and he would not stop resisting. WO3 stated both officers appeared scared after being attacked.

WO4 heard SO2 call on the police radio asking for back-up because they were dealing with an uncooperative male. WO4 arrived on scene soon after the call for assistance and met with other police officers at the front door of the apartment. The door was locked and was breached. By the time WO4 entered the apartment, AP was on the floor, with officers trying to control him. WO4 described AP as very large and last saw him in an ambulance getting medical treatment. WO4 briefly spoke with a female outside the apartment in an effort to keep her away from AP who was being treated. The apartment was in complete disarray, with the fridge knocked over and furniture strewn about. SO2 told her that AP attacked her and SO1 with a hammer. WO4 picked up the taser identification cartridges, wires and probes from the floor and saved them because she knew they would be evidence. WO4 later turned these items over to SO2 outside the apartment. WO4 was feeling the effects from OC spray. WO4 did not complete any notes or narrative report, believing her involvement in this incident to be minor and that she did not do anything that required it to be noted (note: despite seizing evidence from within the apartment).

WO5 and WO6 were partnered that day. Both WO5 and WO6 completed notes regarding the incident. Both WO5 and WO6 heard SO2 voicing over the police radio that assistance was needed. WO5 and WO6 attended the front door to the apartment, then waited for other police officers to attend. Neither recalled hearing any noises from inside the apartment. The front door was breached and police officers entered. SO1 and SO2 were struggling and trying to handcuff AP. The other police officers who entered swarmed around AP and he was handcuffed. AP was

turned over to the custody of WO5 and WO6. While AP was in the rear of the police car, WO5 noticed that AP's face was covered in blood and he was not giving appropriate responses to their questions. An ambulance was called to provide assistance. SO2 advised WO6 to seize a hammer located between the kitchen and living room area inside the apartment. WO5 and SO1 rode in the ambulance with AP to HSC, where AP yelled and was belligerent toward HSC staff.

WO5 described AP as a heavy set male, with short hair and a beard, 5'9" to 5'10" tall, with blood in his hair, beard and on his face. WO5 believed AP was under the influence of something more than alcohol and was acting consistent with his experience dealing with people under the influence of meth. WO6 said he did not detect any liquor on AP's breath but believed his behaviour, ramblings and "super power" strength was consistent with typical meth drug use.

WO5 described the apartment as a disaster, a mess, with clothes strewn around and a table on its side.

WO6 noted that SO1 and SO2 were tired and exhausted from struggling.

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 but did not consent to be interviewed by IIU investigators. The following is a summary of SO1 and SO2's reports:

At 7:10 p.m., SO1 and SO2 were dispatched to a "well-being check" and referenced the call history for specific details. At 7:14 p.m., SO1 and SO2 arrived at the apartment and approached the front door in the lobby of the building. Loud music was blaring from inside the apartment and there was no response to their repeated knocks at the door. SO1 and SO2 exited the building, went to the ground level (patio) entrance to the apartment at the north side of the building and announced their presence. That door was unlocked and open. Music was still blaring from a stereo close to the door. The apartment was in a state of disaster, with graffiti on the floor, furniture strewn about and a mattress in the living room--all of which resembled a "meth flop" suite. The police officers entered the apartment to determine the wellness of any occupants. Both SO1 and SO2 saw a large framing hammer in the kitchen and noted there was damage to the walls. SO2 announced "*Police*," which was unanswered. A male in his late teens or early twenties entered the apartment via the patio door but the police officers sent him on his way.

At 7:28 p.m., while checking the apartment for occupants, SO2 saw a person attempting to hide under a blanket on a bed in the north-east room of the apartment. SO2 announced, "*Winnipeg Police*." The person replied, "*Get the f*** out of here you pigs, I f***ing live here.*" SO2 pulled the blanket back which revealed a large male, later identified as AP. SO2 advised that they were summoned to the apartment to ensure all parties inside were fine. AP yelled, "*You don't need to know my name you goof!*" AP stood up on the bed and assumed a fighting stance, with his fists clenched and raised. AP then attempted to punch SO2 in the face. SO2 then struck AP in the face, causing him to fall back against a wall. SO2 told AP to get on the ground. However, AP ran towards and grabbed SO2, pushing him back into a wall. AP then fled down a hallway and pushed past SO1, then ran into the kitchen. SO2 was behind AP and grabbed the back of AP's shoulders. AP attempted to strike SO2 in the face again.

SO1 pushed AP against a wall and both police officers gave verbal direction for AP to get on the ground and stop resisting. AP armed himself with a framing hammer and attempted to swing it at SO2. SO1 caught AP's right hand that was holding the hammer. SO2 grabbed AP's left hand and placed it against a wall. AP was attempting to strike SO1 in the head with the hammer. SO2 drew his pistol and aimed it at AP, with both police officers telling AP to drop the hammer. AP continued to attempt to swing the hammer at SO1's head. SO1 was able to disarm AP and threw the hammer to the side. SO1 struck AP with direct contact with the taser on the right shoulder. SO2 transitioned from his pistol to strike AP twice with closed fists. AP was screaming incoherently but was heard to yell, "*I do not agree to that. I'm just going to leave. I f***ing hate you pigs!*" AP kicked SO2 in the chest, which caused him to fall back into a wall. SO1 deployed his taser and the probes struck AP in the chest. However, AP used his hands and pulled the probes from his body. SO2 used his baton and struck AP several times across both sides of his upper arms and legs. SO2 gave AP verbal directions to get on the ground and quit resisting. AP put his head down and charged at SO2, pinning him against a wall. SO2 struck AP numerous times on the back with the baton.

SO2 used knee strikes and hit AP in the face and chest area numerous times. SO1 deployed his taser a second time, with the probes striking AP in the chest. However, AP again pulled the probes from his body. SO1 used his taser a third time and attempted a contact to AP's back. SO2 then sprayed AP in the face with OC spray. AP yelled, "*You can't hurt me you f***ing pigs.*"

SO2 deployed his taser and the probes struck AP. However, AP was unaffected and, once more, physically removed the probes from his body. SO2 deployed his taser a second time and, again, the probes struck AP. Once more, AP overcame the effects of the taser and pulled the probes from his body. SO1 swept AP's legs out from under him, causing AP to fall, face forward, to the ground. SO1 shin pinned AP and told him to give up his hands. AP replied, "*F*** this world.*" SO2 radioed for assistance over the police radio. Finally, when other police officers arrived, SO1, with the assistance of others, was able to apply handcuffs to AP. AP was injured and exhausted from the struggle with police officers. He was possibly under the influence of drugs and did not give any response to anything else said to him.

SO1 seized four taser identification cartridges, five taser probes and taser wires. SO1 reported he was unable to locate three of the eight taser probes.

SO2 recorded that during the entire incident both police officers were focused on dealing with AP and, due to his physical actions, they were unable to call for back-up until the end.

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 to determine the well-being of a female occupant of an apartment on Sargent Avenue;
 - Information gleaned from a telephone call to 911 operators was included in the call for service;
 - SO1 and SO2 attended the apartment in a timely fashion;
 - Loud music was blaring from inside the apartment and there was no response to their repeated knocks at the door;
 - SO1 and SO2 exited the building, went to the ground level (patio) entrance to the apartment at the north door and announced their presence. That door was unlocked and open;
 - SO1 and SO2 entered the apartment to determine the well-being of any occupants and repeated announcements of “*police*” were met without response;
 - The apartment was described as a “disaster” and in complete disarray;
 - 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;
- AP confirmed he armed himself with a hammer and was wielding it at SO1 and SO2, and the potential for serious and grievous harm was escalating;
- Although SO2 produced his firearm and pointed it at AP, it was put away and less lethal means of force were employed by SO1 and SO2 in order to gain control and compliance over AP;
- AP was seemingly unaffected by numerous taser deployments;

- AP was likely under the influence of some drug, likely meth;
- AP was not complying with orders to raise his hands and submit.

The subject officers applied force to AP:

- in response to AP's use of force on SO1 and SO2;
- to prevent AP's use of the hammer to cause potential and serious injury to SO1 and SO2;
- to disarm AP;
- to prevent harm to themselves; and
- to prevent significant harm to AP.

The subject officers employed all means available to disarm and disable an armed individual and defuse a potentially serious and deadly situation. In my opinion, the subject officers demonstrated calculated, crucial and necessary actions to avoid the necessity of resorting to 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 the end, more serious physical harm and the potential for loss of life was completely avoided by the actions of the subject officers.

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
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