

FINAL REPORT: IIU concludes investigation into injuries following WPS use of Taser

On April 12, 2018, the Winnipeg Police Service (WPs) notified the IIU of an incident where police used a Conductive Energy Weapon (CEW) while confronting an armed male suspect on April 11, resulting in injuries to the male.

The salient portion of the written notification read as follows:

This incident was reported to WPS at 4:40 p.m. The information reported by the reporting person was that a tenant of the block (the rooming house), later identified as the affected person (AP), was agitated and threatening others while in possession of a broom handle. It was reported that the broom handle had been taken away.

WPS members attended the rooming house. It was upon arrival that the members encountered AP, who was standing on a second floor landing area of a staircase. At this time, AP was still agitated and was armed with a hammer. AP was not compliant, was subsequently tasered, fell down the flight of stairs and injured. Winnipeg Fire and Paramedic Service (WFPS) were called and attended to AP. He was conveyed to Health Science Center (HSC) in unstable condition, his vital signs were said to be good and he was moving his extremities. The scene was held pending a medical update.

The assessment of HSC medical staff indicated that AP has sustained two fractures to his neck or upper spine. However, subsequent information indicated that the fractures were of a minor nature but that AP would be admitted for further treatment/observation. The injuries were categorized by medical staff as non-life altering. AP's condition was upgraded to stable. He was discharged at 4:00 a.m. and processed on criminal charges.

Of note, the incident was captured on video, which was seized for its evidentiary value. Ident was also notified and attended.

The injuries, which included fractures of the neck/upper spine and hospitalization of AP, both meet the definition of a serious injury as defined in IIU regulation 99/2015. As a result, IIU assumed responsibility for this mandatory investigation in accordance with section 66 of *The Police Services Act* (PSA). A team of IIU investigators was assigned to this investigation.

The IIU civilian director designated the WPS officer, who deployed his CEW at AP, as the subject officer (SO). The other WPS officer who attended the scene with SO was designated as a witness officer (WO). An additional eight WPS officers were designated as witness officers, but as will be discussed further in this report, did not witness any interactions with AP or have contact with AP. IIU investigators met with and interviewed AP. IIU investigators also interviewed three civilian witnesses (CW1-3). IIU investigators also interviewed three members of WFPS, but as will be discussed further in this report, did not see any interactions between

police and AP. IIU investigators also interviewed a WPS subject matter expert on the use of CEWs (SME).

WPS and other information obtained by IIU investigators included:

- WPS General and Supplementary Reports;
- WPS officers' notes and narrative reports;
- Scene photos;
- Surveillance video of AP's arrest;
- AP medical reports;
- Audio recording of 911 call;
- WPS radio transmissions;
- CEW downloads;
- CEW Use of Force Deployment Form;

Facts and Circumstances

Affected Person:

AP states that he recalls being in his room at the rooming house, drinking beer and waiting for a hockey game to start on the television. AP states he believed he consumed seven or eight bottles of beer. AP states that he was also trying to fix the door of his suite with a hammer, when he heard someone call out to him from downstairs, saying it was the police. AP states that he believed that someone was playing a prank on him. AP states that the next thing he remembers was waking up in HSC. AP states that he does not recall being subjected to a CEW deployment nor falling down the stairs. AP did claim that while in hospital, a male plainclothes police officer attended his room and broke AP's ribs and vertebrae.

Medical report concerning AP:

AP signed a release authorizing HSC to provide medical records to IIU investigators. Those records included an emergency treatment record, which contained the following notations:

*46 year old male, here post fall down 1 flight of stairs, adm to meth use today
taser X1 to U chest by police
LOC @ base of stairs*

Another record supplied by HSC was an Assessment and Resuscitation form, which was found to have the following:

Tasered by RCMP @ top of stairs, fell down ~15 stairs, head first. ~ 15 second loss of consciousness witnessed by RCMP then awake. EMS brought to hospital. Per RCMP ETOH use tonight, was yelling when RCMP arrived

Documentation supplied by the hospital described the AP's injuries as follows:

- *Right 6th rib fracture, non-displaced*
- *6 and C7 spinous process fractures*
- *Fracture of T7 vertebral body*

IIU investigators attempted to interview the attending emergency room physician for comment on a possible mechanism of injury in relation to the aforementioned fractures. The doctor declined to be interviewed by IIU investigators.

Civilian Witnesses:

CW1, who resides on the main floor of the rooming house, states that he heard a police officer tell someone to stop three times.

CW2, who resides on the second floor of the rooming house and next door to AP, states that he saw AP holding a hammer in his hand when the police arrived on scene. CW2 states that four to six officers attended and told AP, at least six or seven times, to put the hammer down. CW2 states that AP did not comply with any of the requests and that the police officers used a “taser” on him, causing him to fall down the stairs.

CW3, also a resident of the rooming house and a friend of AP, was present during the entire interaction. CW3 states that he had some beer with AP, who was not acting like himself that day. According to CW3, AP was getting “...loud and obnoxious...” and was arguing with a maintenance person, so the owner called police. Two uniformed WPS officers arrived, and CW3 states that he heard them say, “[AP], drop it. Drop the hammer [AP]. Drop the hammer [AP].” CW3 states that the police “...shot him with a taser”, which caused AP to fall down the stairs and strike his head. CW3 states that he did not see any police officers strike or hit AP while he was lying on the ground after the CEW deployment.

Witness Officers:

WO states that he and his partner, SO, attended the rooming house in response to a disturbance complaint. WO states that when they arrived, they could hear unintelligible yelling coming from upstairs in the building. WO states that both officers went up the stairs. WO states that SO called out that the male had a hammer. WO states that he observed a shirtless male subject, later identified as AP, at the top of the staircase and holding a hammer in his right hand. WO states that in response, he drew out his service pistol and SO drew his CEW. WO states that AP was ordered multiple times to drop the hammer and not come any closer to the officers. WO states that notwithstanding these orders, AP took a step forward and raised the hammer in a striking position. WO states that SO deployed his CEW, with the probes striking AP in the left chest and groin area. WO states that AP stiffened, dropped the hammer and fell down the stairs. WO states that AP was taken into custody, handcuffed and the officers commenced first aid, calling for an ambulance to attend. Following the attendance of WFPS members, AP was transported to HSC. WO states he and SO attended HSC as well. WO states that at no time did a male plainclothes officer attend the hospital and break AP’s ribs and vertebrae. WO states that additionally, at no time did he see anyone strike or use physical force on AP in his presence.

During the course of AP’s one-day stay at HSC, six additional police officers, aside from WO and SO, guarded him. These six police officers were interviewed in the course of this investigation. All six stated they were not visited by a plainclothes male police officer as alleged by AP nor did they see any physical force directed towards AP while they were in his presence.

IIU investigators also obtained statements from three WFPS personnel and two WPS officers who attended the scene following the CEW deployment, to ascertain if anyone observed force being directed towards AP after he came to rest at the bottom of the stairs. None of these five individuals witnessed any use of force directed at AP.

Subject Officer:

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, SO declined to attend for an interview, but did provide his notes to IIU investigators.

In his notes, SO wrote that he and WO attended a rooming house in response to a threat complaint. Upon arriving at the rooming house, they started to walk upstairs, where they encountered AP standing at the top of a stairs holding a hammer in his right hand. SO wrote that he believed that AP was under the influence of drugs or liquor, as he was yelling incoherently. SO then wrote that upon seeing the hammer, he and SO began to retreat down the stairs while they commanded AP to drop the hammer. SO wrote that WO drew his sidearm while he drew his CEW. SO then wrote,

“AP then suddenly raised the hammer with his right hand above his head with his hand at the end of the handle and in a striking manner. AP began to descend down the stairs and approach this unit. At this time, he was only about 10-12 feet from the writer. Due to the close quarters, the fact that he had a hammer in his hand in a striking position, this unit feared grievous bodily harm to ourselves or others in the building and believed the situation had escalated to a lethal force encounter. As there was now a complete threat assessment, the writer attempted to use a lower level of force rather than using lethal force and discharged the CEW. CEW probe struck AP in the upper left chest and his right groin area. The CEW deployment was effective and resulted in full NMI [neuro-muscular incapacitation]. AP proceeded to fall head first down approx. 12 feet of stairs, landing on the bottom couple stairs of the staircase and sliding onto the main landing area where this unit was standing. We immediately attend to him and observe that he is unconscious. I immediately voiced for an ambulance... on a rush. WO placed the AP in handcuffs and then in the recovery position and proceeded to provide first aid to him.

SO's notes made no mention of any other use of force being directed at AP, nor is there any reference to a plainclothes officer visiting them while he and WO were guarding AP at the hospital.

Video Surveillance Footage:

A video camera inside the rooming house captured part of the interaction between AP, SO and WO. Footage from the camera, situated on the main floor facing the stairwell of the building, shows the two WPS officers arriving on scene and advancing up the stairs. Several seconds later one officer, believed to be WO, is observed to draw his service pistol. Both officers began to back down the stairs, at which point the other officer, believed to be SO, is observed to be holding a CEW. Both officers retreated to the base of the stairwell, when SO discharges the CEW up the stairs. A hammer is seen falling down, followed by AP, who lands hard on his back at the bottom of the stairwell. There was no sound on the video.

The time stamp on the video footage indicated the interaction between police took place between 5:22 and 5:24 p.m. Subsequent investigation determined that the surveillance camera's time stamp was thirteen minutes fast, confirming that the interaction between the three was between 5:11 and 5:13 p.m. IIU investigators also noted that the captured video by the camera was recorded in sequential clips, and that there were some short time gaps between the clips.

WPS radio communications:

IIU investigators reviewed radio communications between the WPS Operational Communication Centre (WPS OCC), WO and SO. The results are contained in the following table:

Time: 4:44:30 p.m.:

Transmission from WPS OCC

Require a unit to attend 405 Agnes, unit 6, between St. Matthews and Ellice, for a threat made by the complainant's male tenant. He's approaching others in a threatening manner.

Time: 5:00:28 p.m.:

Transmission from WPS OCC

Echo 101 attending 405 Agnes, unit 6, near St. Matthews and Ellice, for a male tenant, who's intoxicated approaching others in a threatening manner. Had been armed with a broom handle. Complainant has since taken it away.

Time: 5:11:09 p.m.:

Transmission from WO

... the male with the hammer, he's been tasered. He uh, fell down the stairs headfirst, he's unconscious, and he's about 45 years old.

CEW Downloads and Analysis:

Investigators also accessed a download report and pulse logs of SO's CEW. It showed that the trigger on the officer's CEW was depressed at 5:10:43 p.m. and was activated at 5:10:51 p.m.

In order to interpret information from the CEW download, IIU investigators interviewed SME, a WPS Master Taser Instructor. After reviewing the downloaded information, SME states that the CEW was deployed for five seconds after the trigger was depressed at 5:10:43 p.m. SME further states that the probes fired from the CEW made contact with a conductive surface. SME states that a human body is considered a conductive surface. SME states eight seconds later, at 5:10:51 p.m., the person operating the CEW pressed the ARC button on the unit. SME explained that the ARC button does three things:

- it re-energizes the wires already deployed;
- it could energize the unit for a drive-stun deployment; or
- it could be used to cycle to another probe cartridge held in the CEW, allowing the person to deploy the CEW again in quick succession.

In this case, SME states that the operator (SO) depressed the button for 0.6 of a second and the CEW produced electricity for 1/19 of a second before shutting off. SME states that WPS officers are trained to cycle the CEW to the second probe cartridge by lightly feathering the ARC switch. He added from his experience on use the ARC switch, many in high stress situations pressed the switch too hard, causing it to re-energize the wires as opposed to cycling to the next cartridge as intended.

Conclusion:

The relevant issue in this matter is whether, at any time, SO used excessive or unnecessary force on AP at the time of the confrontation. In particular, was the deployment of the CEW appropriate or excessive in these circumstances?

Subsection 25(1), section 26 and subsection 265(1) (a) of the *Criminal Code of Canada* are relevant 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.

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

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

Police may be required to use force and various levels of interventions in their law enforcement role. Section 25 of the *Criminal Code of Canada* establishes protections from liability for a police officer, who, in the course of enforcing the law, finds it necessary to use force. The facts and circumstances, coupled with training and assessments must be considered in their entirety to determine whether the use of force, the method(s) employed and the degree of force used were necessary and justified in law.

The available intervention options may be considered individually or in combination. The type and use of intervention methods and tools is a dynamic process. This allows appropriate decisions to be made and assessed in light of the requirements of the specific circumstances. The dynamic nature of the choice and implementation requires continual evaluation by the police officer and recognition that the particular strategy may change at any stage.

A CEW is an intervention tool and use of force method. Proper training, control, assessment of the situation and consideration of all other forms of reasonable options are factors to be reviewed to determine appropriateness and authorization.

In these circumstances:

- SO was in the lawful execution of his duties when attending on the service call;
- The use of the CEW is an appropriate tool to control and neutralize suspects in potential violent and lethal situations;
- AP was armed with a hammer, held in a strike position;
- AP refused to comply with all directions to drop the hammer;
- SO issued a release command once AP1 and AP2, respectfully, stopped resisting;

- SO's decision to deploy and engage the CEW was successful in neutralizing the threat posed by AP;
- AP's fall down the stairs and injuries sustained were a consequence of the use of force to neutralize the threat he posed;
- AP's claim that significant force was used on him by a plainclothes police officer at the HSC is fanciful and not supported by any available evidence.

I am satisfied that SO's use of the CEW was appropriate in the circumstances and employed to neutralize the threat in a non-lethal response. I am satisfied that SO's use of the CEW was appropriate, measured and justified in these circumstances. Fortunately, the injuries sustained by AP were not life threatening. They were an unavoidable consequence of the use of the CEW. There was no further or excessive force used on AP.

I am not satisfied that any reasonable grounds exist in these circumstances to justify the laying of any criminal code or other offence against SO.

This matter is now completed and the IIU will close its investigation.

Final report prepared by:

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Independent Investigation Unit
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