



**IN THE MATTER OF AN INVESTIGATION INTO AN INJURY  
DURING AN ARREST OF A YOUTH ON MAY 18, 2019**

**FINAL REPORT OF THE CIVILIAN DIRECTOR  
OF THE INDEPENDENT INVESTIGATION UNIT**

IIU File Number:	2019-0024
Final decision made by:	Zane Tessler, Civilian Director
Final report prepared by:	Roxanne M. Gagné, Civilian Director
Date of Release:	October 3, 2023

## **Introduction:**

On May 18, 2019, the Winnipeg Police Service (WPS) notified the Independent Investigation Unit of Manitoba (IIU) of an incident regarding an injury sustained by a youth during an incident this same date.

The written notification disclosed the following information:

*“At approximately 2:50 p.m. WPS received a 911 call indicating their female daughter was intoxicated and out of control at the residence... The female was making threats to a school and acting violent. Officers arrived on scene and attempted to arrest the female. One handcuff was applied and a struggle ensued. The arrested person attempted to assault officer(s), turned on her back causing an arm injury. The female was transported to hospital and later determined to have a broken arm above the elbow. She was treated, released from hospital and served a promise to appear for criminal charges.”*

On May 21, 2019, the WPS sent an amended notification to the IIU, which included the following information:

*“At approximately 6:15 a.m. WPS received a 911 call indicating their female daughter was intoxicated and out of control at the residence... The female was reported to be assaulting family members and out of control. Officers arrived on scene and while escorting the female out of the residence, the female became violent and started punching, kicking and biting officers. The female was arrested for assaulting officers, following the arrest the female complained of soreness to her arm. The female was transported to hospital and later determined to have a broken arm above the elbow. She was treated, released from hospital and served a promise to appear for criminal charges.”*

As this matter concerned a serious injury as defined under the IIU regulations, the IIU assumed responsibility for this investigation in accordance with section 66(4) of the *Police Services Act* (PSA). IIU investigators were assigned to this investigation.

The civilian director designated one subject officer (SO) and one witness officer (WO1).

IIU investigators obtained the following information from the WPS, among other items:

- Arrest report for affected person (AP)
- CAD History
- Narrative report
- Notes of WO1
- Niche reports
- 911 Audio Calls (x2) and WPS Radio Transmission

## **Facts and Circumstances**

*This document is the property of the IIU and is not to be distributed to any other party without the written consent of the IIU.*

## **Civilian Witnesses (CW)**

### **CW1**

On May 28, 2019, IIU investigators obtained a statement from AP's mother (CW1). She stated that on May 18, 2019, her daughter had been drinking and fighting with her boyfriend. She tried to take the bottle of liquor away from AP, and AP punched CW1 in the eye. CW1 went back upstairs and at about 5:30 a.m. CW1 woke up to the sounds of screaming and glass breaking downstairs. CW1 observed three smashed picture frames. AP attacked CW1 again but CW1 pushed AP down to the ground. CW1's son (CW2) grabbed AP by the neck, pushed her into the garage and he then locked the door. CW1 stated her son let AP out but she continued to flip-out so CW1 called the police. A few minutes later police officers arrived. AP came downstairs with a backpack and told the police officers she did not know what they were doing there, she did not do anything wrong, and was leaving. CW1 said the police officers told AP that they wanted to talk to her. AP started kicking and fighting, the police knocked her down to the ground. While AP was on the ground, WO was next to her left arm and the SO had her right arm. SO repeatedly yelled at the top of his lungs to stop kicking the police. SO had his knee onto the back of her right arm and AP screamed out in pain saying her arm was hurt. Police wrestled with AP while she screamed, then they handcuffed her and threw her into the back of the police car.

SO told CW1 that AP was drunk, they would detain her in the drunk tank and she would not be charged. At about 10 a.m. CW1 received a call from the police advising her that they were at Concordia Hospital, and AP had a broken arm, and they were waiting to see if AP needed to have surgery. CW1 was advised that AP was being charged with two counts of assaulting police officers for kicking and spitting in the car at the door. CW1 stated that AP did have surgery on her arm, a plate and screws were put in her arm and she had 45- 50 staples from top to bottom.

### **CW2**

On May 28, 2019, IIU investigators obtained a statement from AP's brother. He stated that he woke up at 4 a.m. to AP crying and screaming. He went to see what was going on and saw her sitting on the floor in her room crying. He said he went back to bed, and then woke up again at around 6 a.m. to glass shattering, he went downstairs and observed AP trying to get at his mom (CW1). CW2 said he grabbed AP with his left arm, dragged her, she bit his arm, so he threw her in the garage (she fell on her buttocks) and then he called the police. When the police arrived, he went upstairs because he did not want to see what was going on. CW2 said when he came back downstairs the officer was on top of AP. They were screaming and yelling, when the male officer (SO) threw AP to the ground, she said, "*you are going to break my arm*" and then SO was yelling loudly to not hit the police. They handcuffed AP one officer was on either side of her when they picked her up by her shoulders, and then she was taken outside.

### **CW3**

On May 31, 2019, IIU investigators obtained a statement from AP's boyfriend (CW3). He stated that it was his birthday and he went to see his girlfriend (AP). When he arrived, he saw a 60oz bottle of Captain Morgan rum on the counter. He was drunk and could not remember why, but

*This document is the property of the IIU and is not to be distributed to any other party without the written consent of the IIU.*

AP got mad and started freaking out. Afterwards she took the bottle of rum and went to the road in front of her house. He said they just walked and talked. Afterwards they went back to her place and talked some more to figure out why she was angry. CW3 said they hopped in the shower and then AP threw-up. CW3 said he passed out and when he woke up he heard screaming and went to see what was going on. He said AP was screaming at her mother (CW1). Afterwards he heard fighting so, he went and grabbed AP by her arms, and CW1 pushed her on to the ground. CW3 stated that her brother (CW2) put her in a headlock, she bit his arm, then he threw her into the garage and she was fine. CW1 called the police. AP left the garage and went upstairs to get clothes because she was going to leave. CW3 stated that when the police officers arrived, AP told them to “*fuck off.*” The officers took AP to the ground. The officers told her that she was under arrest, she resisted, was spitting and she kicked SO a couple times. SO stood and spoke with AP. SO grabbed her arm (just above the elbow by her bicep) and told her to stop resisting. He held her arm behind her back with one hand by her elbow and he grabbed her by the wrist with his other hand. CW3 stated that AP said it hurts, don’t push anymore it’s going to break, stop doing that you are going to break my arm, you are going to break my arm. CW3 said AP stopped kicking and then cussed while asking SO to stop. CW3 did not realize her arm was broken until he heard her screaming. The officers cuffed her and then they took her outside. He stayed inside with CW1 and CW2; he did not see what happened while she was in the police car.

### **Affected Person (AP)**

On May 29, 2019, IIU investigators obtained a statement from AP. She stated that on May 17, 2019, she “*got a 60*” (of rum) and she was taking shots with her boyfriend (CW3). She said everything was fine until he did something to make her angry. She took several more shots and then things escalated. AP stated she took her alcohol and went out for a walk, she spoke with her boyfriend on the side of the road for a bit then went back to the house. AP said she remembered being upstairs fighting with him and thinks she was packing bags. Her mother (CW1) came to her room, screamed at her and told her to leave. AP said she went downstairs and smashed glass in picture frames, and remembered being on the floor by the stairs, kicking her mom. She recalls her brother’s (CW2) arm around her throat, she bit his arm and then he dragged her into the garage. She said she remembers seeing a glimpse of the police officers, one male (SO) and one female (WO). When she was trying to leave the house, they were grabbing her, she thinks she shoved them. Then all of a sudden, she was on the ground, her right hand was back and she was screaming, “*you are going to break my arm.*” AP stated that WO was just standing there and SO was on her right side. She remembers being in excruciating pain but could not remember if SO was on top of her. She remembered they handcuffed her, stood her up and walked her outside. AP stated she got in the police car, she screamed, begged for water and wanted to go to the hospital. She was kicking in the back of the police car to try to get the door open when they were parked, because she needed water. The SO said she was screaming and swearing at the officers, calling them, “*shitty people.*” She stated she was spitting because she could barely breathe and was angry, she did not spit on anybody.

## **Subject Officer**

On July 3, 2019, the SO provided a copy of his handwritten notes and his Use of Force Summary Report via an email through his Counsel. He stated that he and WO were dispatched to a family trouble incident. Information relayed during dispatch was that both CW1 and CW2 had been assaulted by AP, and that she was suffering from mental health issues with suicidal ideations.

SO wrote that he and WO arrived and talked to CW1 who told them she would like her daughter (AP) removed from the home because of her violent behaviour and her intoxication. AP came downstairs and began swearing and yelling at her family. SO and WO tried talking to AP, he observed her to be intoxicated and appeared as though she was going to leave. She posed a danger to herself so she was advised that she was going to be detained and would be taken to the drunk tank.

SO wrote that AP screamed, yelled, and her behaviour became erratic and unpredictable. SO grabbed AP by the right arm and WO grabbed her by the left arm area and guided her to the ground, onto her stomach. They were able to secure her right hand in handcuffs. She screamed at them and flipped her body onto her back trapping her right arm under her body. AP punched WO in the chest area and tried pulling away with the cuffed hand, which could potentially be used as a makeshift weapon. When WO tried to gain control of her arm, AP tried biting her while continuing to thrash around on the ground and kick at both of them and striking SO in the lower legs.

SO wrote that he was able to roll AP over on her front and assisted WO with gaining control of her left arm using soft empty hand control. They helped her to her feet, then she kicked WO's right knee causing her to lose her grasp of AP who then fell to the floor. SO yelled for her to stop kicking police. She was brought back to her feet and out to the cruiser car. She was searched and placed in the rear of the cruiser car without incident. It was later determined that she had a broken right upper arm and needed medical attention.

## **Witness Officer**

On July 15, 2019, IIU investigators obtained a video-recorded interview of WO. She and SO were dispatched at 6:10 a.m. to a family trouble incident. The 17-year-old daughter in the home was "*acting crazy, was very intoxicated, and was being violent.*" Sounds of banging and screaming were heard through the dispatch and multiple calls were received for this incident including one from CW1 and CW2. WO and SO arrived and met with CW1, CW2 and CW3. WO said that CW1 advised them AP had been drinking and fighting with everyone all night, she wanted her removed and taken for a psychological assessment. WO said CW3 told them he could not control her, CW2 showed them a bite mark on his bicep from AP and told them she smashed picture frames and kicked CW1 in the face.

WO stated she and SO explained that AP could be taken to drunk tank and not a psychological assessment given her state of mind. They were told to be ready for a fight with AP. AP came down, screaming at police saying they were wasting time with her family while looking for her shoes. AP was loud and belligerent with police. She was agitated and refused to calm down. WO stated she and SO attempted to calm her down. They told her she was going to be detained. When they went to grab her from either side, she was fighting and refusing. WO stated she went

to grab AP as she continued to scream and pulled away. WO said she was on the left side of AP and SO was on her right side. By using soft empty hand control, they took her to the ground and onto her stomach, she continued fighting and screaming. Of note, the use of force continuum describes Soft Empty Hand Control as:

1. Physical control techniques that have a low potential for injuring a person.
2. These techniques are primarily used to gain control of a person presenting passive resistance.
3. Example could include holding an arm, joint locks without hypertension or hyper-flexion, and pressure point control techniques.

WO said that SO had AP's right arm and she had her left arm when they were struggling to handcuff her. SO was able to get the handcuff on AP' right arm while she was thrashing around on the ground. AP pulled her left arm away from WO, flipped onto her back and punched WO in the chest. WO said that each time she attempted to grab hold of AP' left arm she tried to bite her.

WO said that SO managed to control AP's right arm and rolled her back onto her stomach to bring her under control so they could apply handcuffs. Once AP was handcuffed and stood-up she kicked WO in the knee causing a minor bruise and some soreness, WO said her injuries did not require any medical treatment. WO said AP fell on the ground and both officers helped her back to her feet. AP continued to scream and kick at SO. WO stated AP was then escorted to the police cruiser car. She sat in the backseat on her own, but then spat all over the back of the cruiser car, kicked the windows, screamed and told the police to fuck off. AP refused to calm down and swore at WO.

AP was taken to East District Station (EDS), she complained of a sore arm and was informed that she would be taken to the hospital. WO stated at the EDS her handcuffs were loosened. AP was taken to Concordia Hospital; she continued to be loud and belligerent in the ER room. WO stated that later on she found out that AP's x-ray showed she had a broken arm.

## **Medical Records**

On May 25, 2019, IIU investigators obtained the consent of CW1 to obtain the medical records for AP. On June 4, 2019, IIU investigators obtained the medical records from Concordia Hospital. The doctor's report indicated the diagnosis as being an injured right arm with a forceful twisting injury resulting in a distal third spiral fracture of the right humerus. This included a large butterfly fragment and displacement.

Dr. John Younes, Chief Medical Examiner for Manitoba was consulted and he described the injury as follows, "*The humerous is the long bone in the upper arm, 'Distal third' indicates the bottom part of the bone, near the elbow. A spiral fracture is a form of fracture that typically occurs following a twisting mechanism of the arm or leg. When the bone broke, a small loose fragment was also created in this case - the butterfly fragment that is mentioned. Displacement indicates that the fracture ends of the bone have been moved apart following the fracture, and had to be re-approximated during surgery*".

*This document is the property of the IIU and is not to be distributed to any other party without the written consent of the IIU.*

### **Applicable Law**

Sections 25 and 26 of the *Criminal Code of Canada* are applicable to this analysis:

*25 (1) Everyone who is required or authorized by law to do anything in the administration or enforcement of the law*

*(a) as a private person*

*(b) as a peace officer or public officer*

*(c) in aid of a peace officer or public officer*

*(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.*

*(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*

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

*26. Everyone 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.*

The police's actions are not to be judged against a standard of perfection. As stated by the Supreme Court of Canada in *R. v. Nasogaluak*, [2010] 1 S.C.R. 206:

*“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.”*

*This document is the property of the IIU and is not to be distributed to any other party without the written consent of the IIU.*

## **Conclusion**

The civilian director assigned to this matter at the time, provided a copy of the IIU investigative file to Manitoba Prosecution Service (MPS) requesting a Crown opinion. On May 14, 2020, MPS provided an opinion that the use of force was justified:

*“The Crown has reviewed all of the evidence provided by the IIU, including the expert medical evidence, and has concluded that officer (SO) did not use excessive force in dealing with (AP). s. 25 of the Criminal Code allows police, acting within their duty, to use reasonable force where necessary. In this case (WO) and (SO) were attempting to arrest (AP); she was actively resisting the arrest. Officers were attempting to use a wrist lock to gain control of (AP) and it was during this time, that (SO) had (AP’s) right arm behind her back, that the arm broke. This type of injury is not uncommon and is consistent with police attempting to gain control of a person by putting their arm behind their back while the person is resisting arrest. The amount of force required to cause such a fracture is relatively low. In this case, the amount of force used by (AP) was not unreasonable or excessive.”*

Given MPS’s opinion that they would not authorize charges, the IIU investigation is now completed and this matter is now closed.