

# ***FINAL REPORT: IIU concludes investigation into death following detention and arrest by WPS officers***

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On August 2, 2019, Winnipeg Police Service (WPS) notified the IIU that a male (later identified as the Affected Person (AP)) was transported to St. Boniface Hospital (St. B) following an interaction with WPS officers, where he later died on August 4.

The salient portion of the written notification read as follows:

*On Friday, August 2, 2019 at approximately 12:37 a.m., police were contacted in respect to a domestic assault in progress...At approximately 12:55 a.m., police attended to the scene on Consol Avenue. Upon arrival, officers observed the domestic assault in progress within the residence and subsequently forced entry to aid the victim. AP, upon observing police enter the residence, fled on foot east bound on Consol Avenue. Officers gave chase and were able to locate AP in front of another residence on Consol Avenue.*

*During the course of the arrest, at approximately 1:00 a.m., a Taser was deployed, after which officers requested the attendance of an ambulance. Despite being handcuffed, AP continued to struggle with officers by kicking at them with his legs. A senior police officer attended to the scene at this time and retrieved a pair of shackles from his police unit. These were applied to AP's ankles in an effort to control him. At this point, the accused suddenly stopped struggling at which time officers placed him in the recovery position. Officers observed that the accused's breathing was shallow; he appeared unresponsive and was perspiring profusely.*

*Winnipeg Fire and Paramedic Service (WFPS) personnel attended to the scene at which time AP was turned over to their care. The accused was subsequently transported to the St. B. in critical condition...*

As this matter now concerned the death of a person, which may have resulted from the actions of a police officer(s), IIU assumed responsibility for this mandatory investigation in accordance with section 65 of The Police Services Act (PSA). A team of IIU investigators was assigned to this investigation.

Further, in accordance with section 70(1) of the PSA, the IIU was required to seek the appointment of a civilian monitor as this matter involved the death of a person. IIU requested the Manitoba Police Commission to appoint a civilian monitor.

WPS and other information obtained by IIU investigators, included:

- WPS officers' notes and narrative reports;
- WPS call history;
- WPS forensic identification reports and photographs;
- WPS radio transmissions recordings;

- Air1 video;
- Conductive Energy Weapons (CEW) download reports;
- Major crimes summary report;
- Autopsy report respecting AP.

Following the review of the agency information, three WPS officers who were directly involved in the detention and arrest of AP, including the officers who used CEWs, were designated as subject officers (SO1-3). The civilian director also designated three additional WPS officers as witness officers (WO1-3). IIU investigators interviewed five civilian witnesses (CW1-5) and five WFPS members (PW1-5). Members of the WPS Forensic Identification Section (FIS) processed the scene of AP's arrest, where a discharged CEW cartridge, three CEW probes and medical waste from the paramedics who treated AP, were located.

### **Facts and Circumstances**

#### **Civilian Witnesses:**

CW1 was the victim of the domestic assault. CW1 stated that AP suffered from schizophrenia, bipolar disorder and paranoia and would take prescribed medication infrequently for those conditions. Additionally, AP was a regular user of marijuana. CW1 stated that they became embroiled in a physical altercation during which AP assaulted her, resulting in the call to 911 for assistance. CW1 stated that when the police arrived at the residence, they forced the door open and told AP not to put his hands on her. CW1 stated that AP, who appeared very angry and agitated, ran out of the residence. CW1 stated that the police pursued him. CW1 stated she did not see AP's arrest and that the next time she saw AP was at the hospital. CW1 stated that AP had bruising on his face that was not present when he initially ran from the residence.

CW2 resides on Consol Avenue. CW2 stated that he observed two WPS officers chasing a male. CW2 stated that he believed one of the officers subjected the pursued man to a CEW deployment. CW2 stated this male was able to get up and continue to run eastbound on Consol Avenue. CW2 stated that the police helicopter and other WPS vehicles arrived on scene. CW2 stated that he did not see the arrest of the male.

CW3 resides on Consol Avenue. CW3 stated she observed police pursuing a male eastbound on Consol Avenue. CW3 stated hearing someone say "*Freeze*", and then believed the police officers deployed a CEW, at least two times, on this male. The male was able to get to his feet and continue to run eastbound on Consol Avenue. CW3 stated that the police officers eventually caught up to the male. CW3 recalled hearing the police officers telling the male to stop resisting "... *at least ten times.*" CW3 stated that a police officer said "*Drop him, just leave him, he's dead, we'll be back for him, let's go after the next guy*". CW3 stated that the police rolled the male onto his stomach and placed handcuffs on him. CW3 stated she also saw police officers performing chest compressions on this male for three to four minutes before the arrival of paramedics.

CW4 resides on Consol Avenue. CW4 stated that he was sleeping on a couch when, at approximately 1:00 a.m., he was awakened by the light from the overhead WPS helicopter. CW4 stated that he looked out a window and observed a person delivering four to six knee strikes to a male lying on the ground. CW4 stated that the knee strikes were delivered to the male's back.

CW4 stated that the male appeared to be in handcuffs, with his hands behind his back. CW4 stated that the male was not struggling. CW4 stated that a marked police vehicle drove up from the west and a person got out. CW4 stated that person started to strike at the male lying on the ground, in the head. CW4 stated that he believed this person struck the male on the ground between five and ten times. CW4 stated that the male was sat up, but was limp. CW4 believed that the male was unconscious.

CW5 resides on Consol Avenue. CW5 stated she was awakened by sound of voices outside her home. CW5 stated that she observed between two to four police officers dealing with a male on her front lawn. CW5 stated that the male was lying face down on the ground and had been handcuffed. CW5 stated that the police officers turned the male onto his back. CW5 stated that she observed the police officers put their hands on this male, but it was “...*nothing too aggressive.*” CW5 did not see any police officers strike or hit this male.

### **Witness Officers:**

WO1 states she responded to a call for assistance issued by SO1 and SO2. When WO1 arrived on scene, she observed SO1, SO2 and SO3 standing around a male, later identified as AP, who was handcuffed, lying on the ground and had a RIPP™ Hobble<sup>1</sup> secured to his legs. AP was having difficulty breathing, and was moved into a recovery position awaiting the arrival of an ambulance. WO1 did not see anyone strike AP and none of the other officers present said anything about hitting or striking him prior to her arrival.

WO2 was partnered with WO1 and recalled that SO3 radioed for assistance with a combative male located on Consol Avenue. Upon arrival, WO2 observed a male, later identified as AP, in the recovery position, with SO1, SO2 and SO3 standing around him. WO2 stated he was uncertain if AP was handcuffed, but did remember that he had on a RIPP™ Hobble. WO2 stated that he did not see anyone strike or hit AP nor did anyone discuss the level of force used in the interaction with him.

WO3 is a tactical flight officer for the WPS Air1 helicopter. WO3 had a telephone conversation with SO3 after the incident. While he could not recall specifics of the conversation, he speculated that it might have concerned obtaining Air1 video footage of the arrest.

### **WFPS Members:**

PW1, a paramedic with WFPS, arrived on Consol Avenue as CPR was performed on AP. PW1 stated that he did not see the police use any force on AP. PW1 believes he asked police officers if there had been any blunt trauma, such as punches, delivered to AP. PW1 stated that all officers responded in the negative.

PW2 is a senior member with WFPS. PW2 stated that WFPS was called to Consol Avenue to deal with a male who had been subjected to a CEW deployment. Upon arrival, PW2 recalled seeing a male lying face down on the ground, with restraints on his wrists and ankles. There were CEW wires leading from this male, and there were two or three police officers standing around him. PW2 stated that another member of WFPS assessed the male and found that he had no pulse. As a result, one of the police officers removed the restraints to allow WFPS personnel to perform CPR. PW2 did not see any other physical contact between police and the male.

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<sup>1</sup> A restraining device used primarily to secure the legs and ankles of an individual.

PW3 is a member of WFPS. PW3 stated his unit was initially dispatched to remove “Taser darts” from a person. However, PW3 stated the call was upgraded to urgent while they were en route. On arrival, PW3 stated that he observed a male, in handcuffs and shackles, lying facedown on the ground. PW3 stated that four to five WPS officers were standing around the male. One of the police officers was undoing the restraints, which was the only physical contact between the male and police that he observed. PW3 recalled CEW probes being present when he arrived, but he could not remember how many.

PW4 is a member of WFPS. PW4 stated that his crew were dispatched to remove “Taser darts” from someone. However, PW4 stated that the call was upgraded to a possible case of excited delirium<sup>2</sup>. On arrival, PW4 stated that he observed a male lying in a partial recovery position, with his wrists and ankles restrained. PW4 stated that there were four police officers present; one was kneeling at and holding the male’s feet and another was next to the male’s upper body. The male was assessed and was found not breathing and had no pulse. PW4 stated that he had one of the officers remove the male’s restraints. PW4 stated that he noted two sets of CEW darts in the male - located in his right shoulder blade and lower back, and the other set in his right hip and waist. PW4 stated that he asked the police officers if they had to use any other force on the male and the response was that they did not.

PW5 is a member of WFPS. PW5 stated that on arrival at the scene, he observed a police officer kneeling by the feet of a male lying on the ground and another officer kneeling by this male’s head. PW5 states that the male was handcuffed and on his back.

### **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, SO1, SO2 and SO3 each provided their respective notes, narrative reports and use of force reports to IIU investigators. SO1, SO2 or SO3 did not agree to participate in an interview with IIU investigators.

SO1 wrote that he and his partner, SO2, responded to a domestic violence call on Consol Avenue. SO1 wrote that he observed AP assault CW1 through a window and forced entry into the residence. SO1 wrote that they attempted to detain AP but he was able to flee on foot. SO1 wrote that they ran after AP, who was yelling threats at them as he ran. At one point during the pursuit, AP stopped and turned to face the police. AP had assumed a fighting stance, to which SO2 drew out his CEW. Because of this aggressive behaviour, SO1 deployed his CEW and was successful in incapacitating AP briefly. However, AP fell to the ground where one of the probes disconnected, and AP got up and ran away.

SO1 wrote that eventually, they were able to grab and pin AP to the ground. A struggle ensued in which AP struck at SO2, and in response, SO2 “...*punched AP in the face and head approximately five times.*” SO1 then wrote,

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<sup>2</sup> Excited delirium, as referenced by Manitoba’s Chief Medical Examiner’s office, is condition supported by:

- 1) Acute onset of bizarre and violent behavior, including paranoia, aggression, incoherence, and extreme strength;
- 2) Severe hyperthermia, with body temperature often over 104 F;
- 3) Sudden cardiac arrest during or usually several minutes after vigorous physical activity (such as wrestling and restraint by police);
- 4) History of mental illness with psychotic episodes (e.g. schizophrenia) and/or chronic use of cocaine or methamphetamine;
- 5) Presence of cocaine or methamphetamine in toxicology testing, often at low levels. This may not be present in schizophrenics

*“SO1 was giving loud directions to AP to stop resisting and to give up his hands. AP was continually grabbing at SO2’s face and trying to punch him. SO2 was using his hands to try and pull AP’s arms away from his face the whole time. SO1 then punched AP once in the right shoulder area to get him to let go of SO2’s neck area. SO1 grabbed AP’s right arm and pulled it away from SO2’s neck.*

*AP continued to fight with the unit and ignore directions to stop resisting.*

*SO1 punched AP once in the right thigh, in an attempt to get him to stop fighting but it was ineffective.*

*AP then lifted his legs up toward SO2’s face and head and tried to wrap them around his head and neck in a head lock/choke hold maneuver. SO1 grabbed AP’s right leg and pulled it away from SO2’s head while telling him to stop resisting.*

*AP continued to struggle and pull away from the unit. SO2 deployed his CEW on AP due to lower levels of force deemed inappropriate and ineffective. The unit was then able to get control of AP’s arms and he was told to put his hands behind his back. AP refused to listen and continued to try and pull his arms away from the unit.*

*SO1 delivered one knee strike to AP’s right thigh to try and gain compliance but he was not affected by it. SO1 and SO2 were able to force AP’s arms behind his back and turn AP onto his stomach. SO2 applied handcuffs to him.*

*AP was still kicking his legs and thrashing his upper body around as the unit was still telling him to stop resisting. SO1 tried to hold AP’s legs but he was able to kick SO1 a few times. SO1 punched AP once in the left thigh to get him to stop kicking but that was ineffective and AP continued to kick.*

*The unit voiced that they had AP in custody and requested an ambulance due to the CEW deployments.*

*SO3 arrived and shackled AP’s legs as he was still kicking. AP then was able to wrap the chain from the shackles around SO1’s left leg and began to squeeze the chain tight around his ankle. SO1 was able to free his leg from the chain but it took off his shoe and caused him to fall on the sidewalk.*

*AP continued to struggle by kicking his feet and thrashing his torso and still was not listening to the unit’s commands to stop resisting.*

*SO1 held AP’s legs while SO2 held his upper body to stop him hurting himself or the unit.*

*AP appeared to be on drugs or possibly suffering from excited delirium as he had extra strength/stamina and was sweating profusely all over his body.*

*AP then stopped struggling and became unresponsive with shallow/laboured breaths. [They] quickly realized that AP was now in a medical emergency state and no longer posed a threat so the handcuffs and shackles were removed. WFPS crews arrived and assisted the male before they transported him to St. Boniface Hospital for treatment.”*

SO2 wrote that he and his partner, SO1, responded to a domestic dispute on Consol Avenue. SO2 wrote that they attempted to arrest AP for assault, but he ran out of the house. SO2 then wrote,

*“I chase after male. Male turns right as he gets off the steps E/B on Consol. Voice foot pursuit. Male continues to E/B on south sidewalk where he turns around and takes a fighting stance with his fists clenched and I pull out CEW and arc it to coerce. Tell male to get on the ground and stop resisting. Male turns around and starts to run away again E/B on the south sidewalk. Male was yelling continually while he was running that he was going to kill us. SO1 caught up to the male as he had distanced himself a bit where I heard what I recognized as a CEW deployment. But, as the lighting was poor and sporadic due to the trees and street light placements, I did (not?) see where exactly the male was. Male then came out across the street and continued running. Male went between a few cars that were parked on the street when he falls in the middle of the street and rolls. Male gets back up and goes on the south sidewalk where he’s trying to stay on his feet, off balance. I grab his left wrist and upper shoulder area when I get to him and force him to the ground where he rolls over to his back and starts grabbing at me. I still have male’s left arm. I see male’s right fist swinging at me punching me. I punched male 5-6 times in the face still continually yelling at male to stop resisting and give up his hands. Male is yelling that he’s going to kill us and that he wants to fight one on one. I still have male’s left arm but can’t get him prone. Male is still pulling and kicking still refusing to stop. I pull out CEW and deploy to his left torso. I noted male reacted to the deployment enough to get him rolled and hand cuffs on. After male was cuffed, he continued to kick and struggle. I continued to try to pin male to stop him from kicking and hurting himself or police. Male kicked SO1 a few times. SO1 voiced male I/C and req EMS. SO3 attend O/S and gets shackles for male. SO1 still holding male’s legs. Male gets shackles chain around SO1’s leg. I see SO1 fall back and his shoe come off. Male still kicking with shackles on. Male still thrashing around with us trying to hold him from hurting himself. Male had hi stamina and hi strength. Unsure if Excited Delirium or drug inclined. Male all of sudden stopped kicking and thrashing. We rolled him over to check and noted shallow breathing/laboured. Placed male in recovery position. SO3 req rush on EMS. Handcuffs and shackles were removed.”*

SO3 wrote that he was dispatched to assist SO1 and SO2 on a domestic violence call on Consol Avenue. While en route to the scene, he heard, over the radio, that a male had fled the residence and was being pursued by officers. SO3 also heard on the radio that a CEW had been deployed, and an ambulance was requested to remove probes. SO3 then wrote,

*“The writer subsequently located SO1 and SO2 in the front yard on Consol Ave, struggling with a male in a white shirt and shorts. The male was already handcuffed to the rear as the writer approached, and due to the male kicking and struggling to break free, the writer retrieved a pair of leg shackles from cruiser car and applied them to the male suspect’s ankles in an effort to control him. As the writer [with SO1 and SO2] was controlling the male suspect, he suddenly stopped struggling at which time he was placed in the recovery position. The male appeared to have shallow breathing and was not responsive, and was sweating profusely throughout his entire body. The writer immediately voiced for dispatch to put a rush on EMS in addition to a EMS Supervisor for advanced care, as it was possible that the male suspect was high on some sort of substance or suffering from excited delirium.*

*[WFPS] attended and the writer briefed them as to the condition of the male suspect. The handcuffs were removed, and the writer removed the leg shackles for better access for medical treatment.”*

### **Air1 Video:**

The Air 1 video was found to show snippets of a struggle between two WPS officers and a subject on the south boulevard of Consol Avenue. Fine details of the struggle were difficult to discern, as the video was recorded on an infrared camera. Efforts were made to enhance the video footage with limited success. No strikes or physical blows could be seen being delivered to the subject by the two police officers.

### **Pathology and autopsy report:**

An autopsy was performed on AP and while there were bruises noted on his body, a cause of death could not be determined at that time. On May 25, 2020 (nine months after the autopsy was performed), an Autopsy Report was received by the IIU from the Office of the Chief Medical Examiner (CME). The report stated that AP’s immediate cause of death was:

*“Complications of Anoxic Brain Injury” (a lack of oxygen to the brain), due to “Probable Arrhythmia” (a problem with the rate or rhythm of the heart), due to “Excited Delirium”. Other significant conditions that contributed to the death were listed as “Physiologic stress of physical struggle and restraint.”*

The pathologist further wrote,

*“During the autopsy minor superficial abrasions and contusions were noted over the decedent's body...No abnormalities were identified within the decedent's heart at the time of autopsy...The brain displayed early hypoxic ischemic injury consistent with a period of anoxia followed by resuscitation. Post mortem toxicology identified olanzapine within the decedent's system.*

*In the context of the reported history, the likely cause of death is complications of anoxic brain injury due to an arrhythmia due to excited delirium. **The contribution, if any, of the electrical conductive device cannot be determined (emphasis added).** Olanzapine has potential to alter the conduction timing of the heart increasing the risk of developing an arrhythmia especially in a situation involving a struggle.”*

The CME was contacted by IIU investigators to enquire about excited delirium as a cause of death without drugs or alcohol present. The CME confirmed that AP suffered from bi-polar condition and schizophrenia. AP also had a history of poor medication compliance. Uncontrolled and un-treated bi-polar and schizophrenia can be a cause of excited delirium. The presence of drugs is not always a factor.

### **Conductive Energy Weapon Downloads:**

The download logs showed that SO1’s CEW had been deployed twice - at 12:55:27 a.m. and at 12:55:32 a.m. SO2’s CEW was used once in arc mode at 12:54:40 a.m., and fully deployed at 12:58:20 a.m.

**Conclusion:**

This investigation must consider whether the actions of any or all of the subject officers who responded to the call for service caused, or in any way contributed, to the death of AP.

Following the completion of this investigation, the civilian director forwarded the IIU investigative file to Manitoba Prosecution Service (MPS) and requested an opinion on whether any Criminal Code charges will be authorized against any or all of the subject officers.

Following the review of the IIU investigative file, MPS provided the civilian director with a written opinion, in which it was stated:

*Manitoba Prosecution Service (MPS) has reviewed the IIU investigation of SO1, SO2 and SO3. While it is always in the public interest to hold police officers accountable, there must also be a reasonable likelihood of conviction for MPS to prosecute a matter. In this case, after considering all of the evidence expected to be admissible, we have concluded that a reasonable doubt exists as to whether the officers' use of force could be determined by the trier of fact was excessive. Consequently, we are not satisfied that there is a reasonable likelihood of conviction. When MPS is consulted for charge authorization in any criminal matter, we employ the same standard for proceeding with criminal charges.*

Accordingly, MPS will not authorize any criminal code charges against any or all of the subject officers as there is no reasonable likelihood of conviction in this matter.

Accordingly, this file and investigation is now closed.

**Final report prepared by:**

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Independent Investigation Unit  
December 09, 2020

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