

# ***FINAL REPORT: IIU concludes investigation into serious injuries related to WPS arrest***

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On September 22, 2020, at 12:20 p.m., Winnipeg Police Service (WPS) notified the Independent Investigation Unit of Manitoba (IIU) of the circumstances of a traffic stop, conducted late the previous evening that resulted in the use of a Conductive Energy Weapon (CEW) and consequent injuries sustained by a male suspect (later identified as the affected person (AP)). An excerpt of the written version of this notification read, in part:

*“On Monday September 21, 2020 at 11:06 p.m., Police conducted a traffic stop of a 2012 Nissan Versa that was being operated by the registered owner, AP. Officers subsequently informed AP that he was being placed under arrest on drug related charges and to exit the vehicle. AP refused to comply with police commands to exit the vehicle but rather sped away.*

*Police engaged in a traffic pursuit which was terminated at Assiniboine Avenue and Kennedy Street when AP exited the vehicle and fled towards the river.*

*During the foot pursuit, AP lifted his right hand up with what appeared to be a silver object. AP was apprehended by a police officer who had to deployed two rounds from his taser (CEW) to gain his compliance. The first deployment caused AP to fall face first onto the gravel river path.*

*Winnipeg Fire and Paramedic Services (WFPS) attended to remove the probes and during their assessment, AP complained of a wrist injury. He was taken to Health Sciences Centre (HSC) where he is presently being treated for his injuries...”*

In that notification, information was provided to suggest that AP had sustained a broken wrist, possible broken rib and stomach pain as a result of his encounter with police. As a broken wrist and broken rib are defined as serious injuries under Independent Investigation regulation 99/2015, this matter was a mandatory investigation for which IIU was statutorily required to assume responsibility. A team of IIU investigators was assigned to this investigation.

The civilian director designated two WPS officers who were involved in the pursuit and the arrest of AP as the subject officers (SO1-2). Seven additional WPS officers were designated as witness officers (WO1 – WO7). IIU investigators also met with and interviewed AP and four members of WFPS (PW1-4).

Information obtained and reviewed by IIU investigators, included:

- CAD dispatch records
- WPS radio transmissions
- NICHE reports summary
- narrative reports and notes of WPS officers
- CEW data download

- WPS Prisoner Injury Report for AP
- use of force report authored by SO1
- cell phone video provided by AP
- AP medical information (provided with the consent of AP)

**AP:**

AP stated that on September 21, 2020, at approximately 11:00 p.m., he was operating his motor vehicle in the vicinity of Portage Avenue and Kennedy Street, when he was stopped by police. AP stated that two police officers approached his vehicle and told him to step out as part of a drug investigation. AP stated that he denied having any drugs and started to record his interaction with police with his cell phone. AP stated that a police officer on the driver's side smashed out the vehicle's window, while the police officer on the passenger side was unsuccessful in smashing out that window. AP stated that he got scared and drove off down Kennedy Street to Assiniboine Avenue, where he stopped, exited his vehicle and ran. AP stated that the police officers "tasered" him two or three times in his back, causing him to fall face first onto the ground. AP stated that police officers then hit or kick him in the face and torso. AP stated that one of the police officers kicked him in the testicles. AP stated that an officer stood on his right wrist causing it to break. AP stated that he did not see which police officer was hitting and kicking him nor who had "tasered". AP stated that the police officer who kicked him in the testicles was the same person who accompanied him in the ambulance from the scene to HSC. AP stated that he believed there were three or four police officers involved in this incident. AP stated that at no time was he ever told he was under arrest.

**AP Medical Information:**

WFPS provided IIU investigators with a copy of medical records that were generated by members who attended this incident. A review of these records discloses that upon arrival, it was noted that AP was restrained by police. AP was complaining of soreness to his right wrist. Police informed WFPS personnel that AP had run from them after his vehicle was pulled over. AP told WFPS personnel that a police officer had stood on his right wrist. AP's right wrist was described as swollen, with no obvious deformities apparent.

AP's medical records from HSC were also obtained by IIU investigators. In the initial assessment notes concerning AP, the following was written:

*Patient brought in by Winnipeg police. Ran from police, tackled and dry tased per Winnipeg police officers. Complaining of right wrist and forehead pain. Also complaining of right testicular pain and difficulty urinating. Has been drinking lots of water. Not knocked out. No amnesia. No nausea or vomiting.*

The attending physician later recorded the following:

*24-year old man signed over to me having been tasered and tackled by the Winnipeg police service in the course of an arrest.*

*He has a [sic] undisplaced right wrist radial styloid fracture that is intra-articular without significant gap or step-off. Orthopedics has been consulted for this who recommended a back slab and a 1 week follow up with orthopedics.*

*He had some testicular pain after a kick and was unable to void. Subsequently he has voided over 700 ml with 300 ml residual by scan. On exam his right testicle is swollen and tender ... The ultrasound of his scrotum showed 2 small hematomas around the right testicle without further injury to the testicle and no other issue.*

### **Witness Officers**

WO1 stated that he and his partner, WO2, were directed to attend HSC and relieve officers guarding AP. WO1 stated that upon arrival, they took over guarding AP. WO1 stated that AP was complaining of pain to his wrist, head, ribs and testicles, and said his injuries had been caused by police.

WO2 stated that he and WO1 attended HSC and relieved two police officers, taking over the guarding of AP. During that time, WO2 stated that AP complained of pain to his testicles that he said was caused by the actions of police, but was not more specific than that.

WO3 was alone in a supervisor vehicle on September 21, when at approximately 11:00 p.m., he heard of the pursuit involving AP over the police radio. WO3 stated that arrived at the scene of the arrest at 11:10 p.m. and observed SO2 walking up the stairs from the Riverwalk. WO3 stated that SO2 advised that SO1 remained down the stairs with AP. WO3 stated that he made his way down the stairs and found AP lying on the ground at the base, with his head towards the Assiniboine River. WO3 stated that AP was handcuffed behind his back, laying on his stomach and was not wearing any footwear. WO3 stated that he observed SO1 standing approximately three feet away and was holding a CEW that appeared to have discharged both its cartridges. WO3 stated that he observed a probe from the CEW in AP's back. WO3 stated that AP was complaining of a sore back and wrist. WO3 stated that neither SO1 nor SO2 made mention of the physical force used on AP.

WO4 stated that he attended the scene, at Kennedy Street near the Riverwalk, after the pursuit of AP had ended. WO4 stated that SO2 was searching a small car. WO4 stated that SO2 had advised that he and SO1 had chased AP on foot to the Riverwalk, but said no more about the arrest. WO4 stated that he attended the Riverwalk and located SO1 and WO3 who were both with AP. AP was laying face down on the ground, was handcuffed and had a taser probe in his back.

WO5 attended the scene at the Riverwalk after the arrest of AP had taken place. WO5 stated that he was assigned to complete a pursuit report as a result of this matter and met with SO1 and SO2 later at HSC when they were guarding AP. WO5 stated that AP had said that the two officers had broken his wrist. WO5 stated that in turn, the two officers advised that they had to taser AP.

WO6 stated that he and his partner, WO7, attended HSC to relieve SO1 and SO2, who were guarding AP while he awaited medical treatment. WO6 stated that he did not recall any conversation with either SO1 or SO2 regarding how AP came to be injured. WO6 stated that AP did not provide any information regarding his injuries.

WO7 stated that she and WO6 attended HSC at 3:35 a.m., to take over guarding AP. WO7 stated that AP was complaining about sore testicles and his wrist, but did not provide any information about how the injuries took place. WO7 stated that neither SO1 nor SO2 provided any information regarding AP's injuries.

**WFPS Paramedics:**

PW1, a primary care paramedic, stated that she and her partner, PW2, arrived on scene to find AP, seated on a curb and handcuffed behind his back. PW1 stated that AP was complaining of wrist pain that he said was caused by the police. PW1 stated that she did not see any force being used on AP in her presence.

PW2 stated that he and PW1 were dispatched to the call involving AP. On arrival, PW2 stated that AP was seated on a sidewalk and was handcuffed behind his back. AP was being treated by two other WFPS members. PW2 stated that he was advised by police that AP had been tasered.

PW3, a firefighter with WFPS, stated that he attended the Riverwalk in response to a call from WPS that a male had been subjected to a CEW deployment. On arrival, PW3 stated that he observed AP in the company of two police officers. AP was seated, was in handcuffs and was complaining that his wrist was sore. PW3 stated that he was advised by the two police officers that AP had run from them and that they had tasered him. PW3 stated that neither police officer said anything about the force used in the arrest nor did AP advise how his wrist had been hurt. PW3 stated that he examined AP and concluded that he had sustained a broken wrist.

PW4, a firefighter with WFPS, stated he was partnered with PW3. On arrival at the base of Kennedy Street, on the Riverwalk, he observed AP seated on the stairs and was handcuffed behind his back. AP had a CEW probe in his back and was complaining about a sore right wrist.

**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 declined to attend to an interview with IIU investigators but did supply them with his notes and narrative report. As noted above, IIU investigators were also provided with a use of force report authored by SO1. SO2 did not provide any information, written or otherwise, to IIU investigators and never responded to requests to attend for an in-person interview.

SO1's narrative report was of little use in explaining the use of force encounter with AP, as it simply referred to the use of force report. However, SO1's notebook entries contained some details regarding his interaction with AP:

*As I'm coming down stairs to river path with taser out, [AP] seen standing behind cement pillar approx. 10' from me.*

*I give loud commands to show his hands and stop running. [AP] lifts left hand up with shiny object (silver) with right hand low behind pillar.*

*I immediately deploy taser fearing for my safety believing [AP] armed with object, striking [AP] in upper torso area causing him to fall face first onto gravel path.*

*[AP] had left arm slung out to side with right hand tucked underneath him. I approach while giving loud commands to place hands behind back.*

*[AP] lay motionless breathing.*

*I place left boot on [AP] right hand/arm controlling it with foot pin, preventing him from trying to tuck back into waist band area.*

*I kneel down to get control of [AP] left arm to apply handcuffs, where he tenses up and attempts to pull his left arm tighter underneath him towards his waistband.*

*I continue giving loud verbal commands to stop resisting and place hands behind his back, which he is non compliant.*

*I deploy 2nd taser to [AP] upper back yelling for help for [sic] SO2.*

*Hold taser for 5-7 seconds prevent [AP] from reaching towards waistband.*

*SO2 attends to my aid, assist with handcuffing [AP].*

*I observe [AP] bleeding from left cheek area with abrasions from falling to ground.*

### **Use of Force Report:**

SO1's use of force report detailed the encounter with AP that began when his vehicle was noted to have a burned out light while driving on Portage Avenue. AP's vehicle was eventually stopped by SO1 and SO2. SO1 then wrote the following:

*"Based on the totality of the traffic stop (Manner of driving- taking long time to pull directly over, R/O flagged as drug dealer and gang associate, nervousness and argumentative nature), SO2 verbally notified the [sic] AP of his arrest for possess for the purpose of trafficking drugs or some similar offence and requested he turn the vehicle off and exit.*

*AP immediately rolled up his window and began recording police interaction as an attempt to intimidate officers as well as refusing to comply with police orders and direction (PHYSIOLOGICAL INTIMIDATION [sic], VERBAL NON-COMPLIANT, DEFENSIVE RESISTANCE [sic]). AP continued being verbally aggressive to police as he was eluding [sic] to the fact that officers simply pulled him over based on his race (PHYSIOLOGICAL [sic] INTIMIDATION). AP was given loud verbal commands to shut the vehicle off and exit the vehicle as he was under arrest for drug trafficking, however he continued recording and refusing to comply stating "what drugs, I have no drugs" [sic].*

*This unit once again gave verbal direction to AP to roll down the window, otherwise officers would have to physically extract him, which met with negative results. As AP continued to record and yell, he grabbed the gear shift with his right hand while he recorded with his left. It was at this point the writer while holding my flashlight, struck the window one time with my flashlight, attempting to break the window to prevent AP from fleeing and to effect his lawful arrest. The writer was unsuccessful with breaking the window, having AP to [sic] quickly reach towards the gear shifter putting the vehicle into drive. SO2 was able to successfully break the driver side window with his service issued baton, as AP was putting the vehicle into drive, however AP immediately took off at a very high rate of speed, continuing southbound Kennedy through Graham Street (ACTIVE AGGRESSION [sic]). The writer immediately voiced this unit was in pursuit and that the AP was arrestable for drug related offences.*

*AP was observed travelling southbound Kennedy at a very high rate of speed (in excess of 80 kmph), driving through 3 controlled intersections, failing to stop at the red lights at St. Mary, York Avenue and Broadway.*



*AP narrowly missed 2 civilians walking on Assiniboine Avenue near Kennedy Street, where he slammed on the brakes and fled on foot southbound Kennedy from Assiniboine. While running AP was observed to kick off his sandals and was now running in his socks. As this unit was closing in on AP in our cruiser car, he was observed looking back at this unit over his right shoulder, while gating his stance towards his front waist band area, appearing as he was concealing a weapon or firearm.*

*AP was observed running southbound down a set of stairs which lead to the river trail which runs along the red river [sic] bank just south of Assiniboine Avenue. The writer immediately gave chase while giving loud verbal commands to "Stop Police, get on the ground". As the writer was going down the stairs it was pitch black and surrounded by tree/bush area. I transitioned to my issued Taser due to AP's level of resistance as well as characteristics of an armed person.*

*As the writer was coming down the stairs with the Taser, AP was observed standing behind a cement pillar approximately 10' from the writer, where his hands could not be seen visible [sic]. The writer challenged AP to show his hands and stop running, where he then lifted his left hand up with what appeared to be a silver object in it, while keeping his right hand low behind the pillar. The writer immediately deployed the taser, appearing successful, striking AP in the upper torso area, causing him to fall face first onto the gravel path. AP had his left arm slung out to the side with his right hand tucked underneath him. As the writer approached I continued to give loud verbal commands to place his hands behind his back, where AP lied [sic] motionless however was clearly breathing. The writer held AP right hand/arm under control by placing a foot pin onto AP right hand with my left foot, preventing him from trying to tuck it back into his waistband area. As the writer kneeled down to get control of AP's left arm to apply the handcuffs, he immediately tensed up and attempted to pull his left arm tighter underneath him, reaching towards the waistband area. The writer continued giving loud verbal commands to place them behind his back. It was at this point the writer deployed my second taser deployment to the upper back of AP (approximately 5 to 7 seconds in length), in an attempt to have AP comply and prevent him from further reaching towards his waistband. The writer further requested help from SO2, whom was now running down the stairway to assist me. SO2 attended and assisted in handcuffing AP (refer to use of force report for full details).*

*AP was observed to be bleeding from the upper left cheek area and observed with some abrasions as a result of falling to the ground upon the initial taser deployment. The writer requested Ambulance as the taser prob [sic] was still intact in AP upper back area."*

### **CEW Data Download:**

IIU investigators received and reviewed a CEW data download report showing that SO1's CEW was deployed twice on September 21, first at 11:09:21 p.m. and again at 11:10 p.m. The first deployment, five seconds in duration, did not make contact with any conductive material. The second deployment, seven seconds in duration, had intermittent contact with conductive material.

**Analysis of Cell Phone Video:**

Counsel for AP provided IIU investigators with a copy of cellphone video that was taken by AP when his vehicle was stopped by police. In the video, a male voice, believed to be SO2, tells AP that he is under arrest for “possession for the purpose”. AP, who is filming the interaction with police from inside a vehicle with the driver's window partially rolled down, questions why he is being arrested and what drug is he in possession of. SO2 states that he does not have to explain that right now. AP twice asks, "*What's the reason that you pull me over?*" Police respond by telling AP to roll down his window. A smashing sound is then heard. AP drives away with the video ending several seconds after it comes to a stop and the driver's door is opened. There is no further conversation and the video ends before the arrest of the AP.

**Conclusion**

The entire IIU investigative file was referred to Manitoba Prosecution Service (MPS) with a request that a Crown opinion be provided on whether or not any Criminal Code charges should be authorized on this matter. On June 14, 2021, MPS provided IIU with a Crown opinion in which it was stated that no charges would be authorized against either SO1 or SO2.

In this opinion, MPS provided the following conclusion statement:

Manitoba Prosecution Service (MPS) has reviewed the IIU investigation of SO1 and SO2. While it is always in the public interest to hold police officers accountable for any criminal misconduct, there must also be a reasonable likelihood of conviction for MPS to prosecute a matter. In this case, after considering all of the evidence available, MPS has concluded that there is no reasonable likelihood of a conviction. When MPS is consulted for charge authorization in any criminal matter, we employ the same standard for proceeding with criminal charges.

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

**Final report prepared by:**

Zane Tessler, civilian director  
Independent Investigation Unit  
June 17, 2021

*Ref #2020-0044*