

FINAL REPORT: IIU concludes investigation into serious injury during arrest by WPS officers

On September 29, 2020, the Winnipeg Police Service (WPS) notified the Independent Investigation Unit (IIU) of a serious injury sustained by a female (later identified as the affected person [AP]) during her arrest by police.

The notification, provided to IIU (edited for clarity), read in part:

“On July 11, 2020, at approx. 2:30 a.m., WPS officers were in front of an address on Balmoral on an unrelated matter when they were informed of a fight on the front street, officers observed a large group of people with one individual punching and yelling at another person, the aggressor was subsequently identified as AP, age 20 years. AP was handcuffed and detained for assault. Record checks revealed that AP was listed as a missing person from a group home. AP was returned to her group home where she later reported a sore arm to staff. The staff took AP to Health Science Centre (HSC) where she was found to have a fractured right humerus. AP advised hospital staff that this was as a result of involvement with police. The Law Enforcement Review Agency (LERA) was contacted by the group home staff, LERA then advised WPS of the reported injury”

In that notification, information was provided to suggest that AP had sustained a fractured right humerus as a result of her encounter with police. As a fractured bone is defined as a serious injury under Independent Investigation Regulation 99/2015, this matter was a mandatory investigation, which IIU was statutorily required to assume responsibility. A team of IIU investigators was assigned to this investigation.

WPS file material and other information obtained by IIU investigators included:

- incident history report
- WPS radio transmissions
- witness officers’ notes and narratives
- missing person report
- copy of LERA complaint
- AP’s medical records

Based on the information received by IIU, the civilian director designated two WPS officers as subject officers (SO1-SO2). The civilian director designated three WPS officers as witness officers (WO1 – WO3). IIU investigators also met with and interviewed AP and three civilian witnesses (CW1 – CW3). IIU investigators also consulted with two medical practitioners for opinions on the potential cause of AP’s injury (PW1-PW2).

Facts and Circumstances

Affected Person:

AP stated that she could not remember when the incident happened but knows that the police arrested her and broke her right arm above the elbow. AP stated she was having a couple of “*Rockstar*” drinks at around 1:00 a.m. at a commercial premise on Balmoral Street by herself when she was arrested and taken to a group home at St. John’s Avenue. AP stated she was going to run away because she did not want police to “*...kill her mood*” but there were four officers present. AP stated that police were holding on to her because she was “*...probably drunk and giving them problems*”. AP stated that her arm did not feel right so she went to the hospital by herself where X-rays were taken. AP stated she was advised that her arm was broken and a cast was placed on it. AP stated that the police placed handcuffs on her and put her in the back seat of a cruiser car. AP stated that she told the police that her arm was hurting and to “*...make the handcuffs looser*”. She stated the police did not do anything until they got to the group home where they took the handcuffs off. AP stated that she asked the police what she did and that they told her that they “*...needed to make sure she was safe and take her home to her group home*”. AP stated she never asked the police to take her to the hospital and she never told them of her arm pain except to loosen the handcuffs because they were too tight. AP stated that she told a group home worker that her arm was sore. AP stated that she went to a walk-in clinic at HSC on her own. AP also stated that as her arm “*...really hurt and she did not know what to do*”, group home staff took her to a doctor.

AP’s Medical Records:

AP provided IIU investigators with a medical release. Medical records from HSC disclosed that AP attended HSC and was examined on July 11, 2020 and the following was her diagnosis:

CLINICAL HISTORY:

RIGHT HUMERUS

There is some residual mild medial and mild to moderate anterior displacement of the humeral shaft fracture. The degree of anterior displacement is 7 mm.

Humeral fracture. Rule out other injuries. No elbow fracture is identified. There is also no evidence of a forearm fracture. The distal humeral fracture demonstrates quite severe posterior angulation¹. There is a transverse fracture through the image to distal shaft of the humerus with slight, 5mm medial displacement. The glenohumeral² articulation appears intact.

¹ deviation from a straight line

² Relating to the glenoid cavity and the humerus.

Civilian Witnesses:

CW1 was working at the group home as a youth mentor and that AP was a resident at this location (due to personal and special circumstances). CW1 stated that AP was reported missing from the group home early the afternoon the day prior. CW1 stated in the early morning hours of July 11, police came to her door advising that they had AP in their custody. CW1 stated that she was advised that AP was “*drunk*”. CW1 stated that she went to the police cruiser and observed that AP was “...*screaming her head off*”. CW1 stated that police advised that when AP was placed in the cruiser car, she started to climb out of the cruiser car’s window, was kicking at officers and that they had to pull her out of the vehicle so they could handcuff her. At one point, CW1 recalled that AP said she had a “*boo boo*” and was “*calling for her mommy*”, which was not normal behaviour for her. CW1 stated that she went to check where AP was hurting and when she touched her hand AP “*freaked out*”. CW1 stated that she asked AP if she wanted to go to the hospital and she said yes. CW1 stated she took AP to HSC. CW1 stated that she believed that AP was under the influence of drugs as she was falling a sleep in the chair when the nurses were asking what happened. CW1 stated that AP said she was not fighting on Balmoral Street but was yelling at a delivery guy trying to scare him.

CW2 owns the commercial premises on Balmoral Street where AP became involved with the police. CW2 that during the late evening and early morning hours of July 11, there were two incidents at his business that the Winnipeg Police Service were called to attend. CW2 stated that when he was speaking to police outside, he noticed a fight in the front of his store that he pointed out to them. This was the reported fight involving AP.

CW3 was a customer of the store and was inside speaking with CW2. CW3 stated he was involved in an incident there resulting in his arrest by police. CW3 stated that he did not see anything occurring in the front of the store as he was in the back of the police car and was crying.

Witness Officers:

WO1 was partnered with WO2 and was on duty in the early morning of July 11 when they attended a commercial premise on Balmoral Street on an unrelated matter. WO1 stated that while at these premises, he noted that a crowd of approximately 10 or more people were outside, were acting rowdy and hostile and many appeared intoxicated by drugs and alcohol. WO1 stated that SO1 and SO2 had also attended to assist in the original dispatched matter. WO1 stated that he did not see either SO1 or SO2 deal with anyone or witnessed any person arrested by them.

WO2 stated that on July 11, 2020 he and WO1 were at a commercial premise on Balmoral Street in response to a call for service. WO2 stated that SO1 and SO2 were assisting them with their investigation and were to take a statement from a victim while they arrested a purported offender. WO2 stated that at one point he noticed that SO1 and SO2 had a female handcuffed and were by their cruiser car. WO2 stated that there was a large group of people in the vicinity and that he out of his cruiser car to make sure all police officers were safe and did not have issues with the crowd.

WO3 was the street supervisor on July 11, 2020 when this incident occurred. WO3 stated that he recalled the incident involving AP’s arrest given the circumstances of the police initial attendances at the commercial premise on Balmoral Street and her detention as a result of an

unrelated incident. WO3 stated that he attended the premise and noted that approximately 15-20 drunken people were milling around, hooting, howling, and swearing. WO3 stated that he then heard a commotion towards the parking lot area on Balmoral Street. WO3 stated that he observed two police officers conversing and engaged with a very drunk, belligerent individual, later identified as AP. WO3 stated that AP appeared to

“...want to fight everybody...almost describe it from my position like a childish temper tantrum, like something you would see in the hall of an elementary school where the kid is kicking at the officers, flailing around with arms going everywhere.”

WO3 stated that SO1 and SO2 took hold of AP by her arms as she was

“kind of flailing around...pushed her down on to the ground, grabbed an arm each and quickly cuff it up despite her resistance”.

WO3 stated that it appeared that SO1 and SO2 were more than capable just placing her in handcuffs so he stood back as they took her to her feet as she was not cooperative.

WO3 observed SO1 and SO2 escort her to the cruiser car and place her in the back of the car.

WO3 stated

“In my opinion, being a police officer for 20 years, and involved with use of force encounters, it seemed as though they were being about as patient as they possibly could have based on her behaviour, I think they easily could have been justified in kind of amping it up even more...from my vantage point as a supervisor, I had zero concerns with the level of force that they used...the fact that she had an injury, I don't know where that came from, I certainly didn't see any injuries occurring there, and I didn't hear any complaints.”

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, both SO1 and SO2 declined to attend for an interview. SO1 did not provide a copy of his notes as he advised he had none. SO2 did provide IIU investigators with a copy of his notes and a copy of his narrative report.

According to SO2's narrative report, he and SO1 attended the commercial premise on Balmoral Street to assist WO1 and WO2 on a call for service. SO1 and SO2 had taken a statement for CW2 in their cruiser car on the north side of the parking lot. After completing the statement, CW2 advised them about a fight occurring in front of his business and requested assistance. SO2 wrote that he observed approximately 20 people in front of the premises and a large commotion was ongoing. SO2 noted that an individual, later identified as AP, was yelling and shouting at several other persons and appeared to swing punches several times at an unknown male. SO2 wrote that he was able to intervene between the parties. SO2 wrote that everyone appeared intoxicated and some were consuming beers at the time. SO2 wrote that another male approached him and advised that he was assaulted by AP. SO2 wrote that AP was intoxicated, was slurring her words and was combative. SO2 wrote that he attempted to take an alcoholic beverage from AP's possession when she began screaming obscenities, laid on the ground and began kicking her legs, striking SO1 and SO2. SO2 wrote that AP was taken into custody without incident and arrested for assaulting a Peace Officer. SO2 wrote that when AP's

diminished mental capacity became obvious, it was deemed unnecessary to proceed with criminal charges against her. SO2 wrote that AP was transported to her group home and turned over to CW1 without incident.

Medical Opinions

IIU contacted two medical doctors to obtain opinions on the nature and potential causes for AP's injury.

PW1 provided the following opinion:

"I've reviewed the medical records you provided, and in this case I don't think I can be of much help to you. The fracture is not described as a spiral fracture (a fracture type that indicates a twisting mechanism of injury). However, it remains possible that the fracture could have occurred if her arm was seized while she was in motion. I can't give you any kind of percentage likelihood though"

PW2 provided the following opinion:

"Thank you for inquiry regarding AP. The following is in response to questions you had in terms of my professional opinion.

AP had a humerus shaft fracture. We see this fracture fairly commonly in our orthopedic trauma practice. The possible causes of this type of fracture are either torsional or bending forces, which would exceed the ultimate strength of the bone causing failure. The amount of force required to cause this type of the fracture is the amount of force that overcomes the amount of load that the bone can withstand. These fracture types are commonly occur in falls from a height, direct blows, or twisting injuries to the upper extremities."

Conclusion

This investigation must consider whether the actions of any or all of the police officers who were involved with AP caused, or in any way contributed, through action or inaction, to her injury, and if so, should criminal code consequences flow therefrom.

The following facts and circumstances have been established:

- SO1 and SO2 were on-duty, lawfully placed and in lawful execution of their duties at all material times;
- AP was intoxicated, belligerent and by her own admission, "giving them (the police) problems";
- There was a confrontation between AP and an unidentified male on Balmoral Street that resulted in police intervening and eventually detaining AP;
- AP was kicking and striking police officers;
- Police struggled with AP to detain and handcuff her as she flailed;
- AP's medical report from HSC confirms that she sustained a fractured right humerus;

- Medical opinions suggest that the injury sustained was consistent with the description of the struggles between the police and AP.

Based on the various accounts, I am not satisfied that reasonable grounds exist to justify the laying of any criminal code or other statutory offence against any or all of the subject officers.

The IIU investigation is complete and this file is closed.

Final report prepared by:

Zane Tessler, civilian director
Independent Investigation Unit
May 26, 2022

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