

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

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On May 5, 2022, the Winnipeg Police Service (WPS) notified the Independent Investigation Unit (IIU) of a serious injury sustained by a male (later identified as the affected person (AP)) during his arrest by police.

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

*“On Thursday May 05th 2022 at 9:11 a.m., Winnipeg Police Officers were dispatched to the area of University Crescent and Pembina Highway regarding a male beating another male with a rod.*

*Upon arriving at the scene, it was determined that the complainant of the weapon assault (a female) was robbed by a male armed with a long metal rod and a wrench that was tied off with a rope. The male subsequently threatened to kill the female and chased her out of the bus shelter. The female managed to make her escape.*

*Shortly after, WPS officers observed the male suspect later identified as AP in the area of Pembina Highway and Bishop Grandin Boulevard. AP was observed to be armed with a metal railroad spike and was swinging a rock attached to a string. AP pointed the spike at officers at which time he was ordered to drop the weapons.*

*A use of force encounter occurred and AP was handcuffed. Shortly after, officers summonsed an ambulance for AP as he had swelling on his left elbow.*

*AP was conveyed to the Victoria General Hospital where he was examined however an exact determination could not be made on the extent of the injury due to the swelling. The initial assessment was that the left ulna may be fractured. A sling was placed on his left arm and AP was instructed to return in a week for further x-rays in hopes of determining a more accurate assessment of the injury. He was released back into police custody.”*

In this notification, information was provided to suggest that AP had sustained a fractured left ulna as a result of his encounter with police. As a fractured bone is defined as a serious injury under Independent Investigation Regulation 99/2015, this matter was determined to be a mandatory investigation for 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
- 911 telephone audio recordings
- WPS radio transmissions
- witness officers’ notes and narratives

- subject officer's notes and report
- prisoner injury report
- use of force report
- AP's medical records and report
- Forensic Identification report

Based on the information received by IIU, the civilian director designated a WPS officer as the subject officer (SO). The civilian director designated four WPS officers as witness officers (WO1 – WO4). IIU investigators also met with and interviewed AP. A canvass of the area did not identify any eyewitnesses or availability of surveillance or other video recordings.

### **Facts and Circumstances**

#### **Affected Person:**

AP confirmed that he was trying to avoid arrest by heading eastbound down Bishop Grandin Boulevard toward a roundabout area. AP stated, *"I had a metal spike in my hand and I had a shoe string tied to a rock and I was swinging it around."* AP stated that three police officers stopped him. AP stated that he screamed at them to back up, wanting them to move away and stop advancing. AP stated that one police officer, holding a conductive energy weapon (CEW) responded saying, *"Stop now or I'm going to taser you"* and another had his *"Glock 19"* drawn and in his hand. AP stated that further confrontation with police was not worth it for just a cell phone so he then threw down his weapons, turned, got down on his stomach and put his hands behind his back. AP stated that he heard a police officer say, *"Winnipeg Police get on the ground"* then they jumped on his back, hit him in the head a couple of times, and knelt on his shoulder blade or his arm. AP stated,

*"I get on the ground and they are trying to get the cuffs on me so it was awkward because I have a big ass backpack on my back so they twist my wrist...I don't know why until it snapped, so they could play with it I guess, because I was in a fighting kind of mood I guess...During his detainment they twisted his wrist until it sounded like a big crunch, like when you bite into a coffee crisp or bite into a piece of celery stick, I thought it was pretty funny at the time."*

AP stated that he was told to stop resisting but he was not. AP stated that he was subsequently examined by paramedics and an ambulance attended transporting him to the Victoria General Hospital where they took X-rays of his arm and elbow. AP stated,

*"There may have been a hairline fracture if anything but it was mostly the elbow, the cartilage...I told the officer I kind of wanted to die that day but I kind of just didn't at the end of it I guessed, I mean I could have just got shot up...They ripped the cartilage inside of my elbow and that affected me now, like long term, not really like broke anything, just ripped the cartilage a little bit and made a little muscle sore...That day I was about four days clean from Meth and I found a pipe full of fentanyl and I tried a little bit of some of that, that's probably another reason why my elbow didn't hurt as much, probably because I was high on opiate and coming down from it pretty wickedly too."*

A review of the prisoner injury report disclosed that AP was taken before a supervisor by the arresting police officers. It was noted that AP had been taken to the ground and handcuffed when

the injury occurred. AP is noted as admitting he was armed and had not complied with instructions to put his hands behind his back. AP describes hearing the sound of a “crack” and attributed it to the large backpack that the officer were trying to work around (pulling arms) during the handcuff process.

**AP’s Medical Records:**

AP provided IIU investigators with a medical release. Medical records from the Victoria General Hospital disclosed that AP attended and was examined on May 5. X-rays were taken and the diagnostic imaging results identified the left elbow showed normal alignment but there was a slight irregularity at the ulna on the oblique suggesting overlying soft tissue swelling. It further noted that an acute fracture would be difficult to identify or exclude in these circumstances. AP was referred to make an appointment in five days at the Pan Am Clinic. AP refused to follow up for medical treatment while in custody at the provincial remand center and by his own admission declined to attend the Pan Am clinic as directed. Accordingly, it cannot be confirmed nor refuted whether AP sustained a serious injury as defined by regulations in this incident.

**Witness Officers:**

WO1 was partnered with SO on May 5 when they were dispatched on a robbery call at a bus stop in the vicinity of Pembina Highway and Bishop Grandin Boulevard. On arrival, WO1 stated that he observed a male matching the suspect description on the north boulevard of Bishop Grandin Boulevard, northeast of the cloverleaf. WO2 had also attended this vicinity and the three police officers approached the male (later identified as AP). AP was rummaging through “his stuff” and was acting erratically. WO1 stated,

*“As soon as sees us, he takes a bladed stance...He’s actually wielding two weapons at the time, in his left hand he’s got a railroad spike about six inches, which is likely what he hit the victim with - he got in his right hand, he’s got a rock kind of tied to a shoe lace wheeling overhead his head...He see’s us, he tells us to f\*\*k off, fu\*\*in leave me alone, takes a couple of lunges towards us and at this point we are still in our cruiser car”*

WO1 stated that he told AP he was under arrest and to drop his weapons. AP did not comply so WO1 stated that he pulled out his CEW. WO1 stated that WO2 had his pistol drawn. WO1 stated that SO did not have any intermediate weapons or firearm drawn. AP was told to turn around and to go down on his knees. WO1 stated that AP partially complied by dropping his weapons. However, AP turned and started to walk northbound. WO1 stated that the police officers took AP to the ground. WO1 stated that he placed his left hand on AP’s right shoulder and his left knee into small of AP’s lower back to shin pin and control him. WO1 stated that he holstered his CEW. AP continued to struggle and not comply with police directions. WO1 was unsure whether AP was still in possession of other weapons. WO1 stated that he was on AP’s right side and SO was on the left. WO1 stated,

*“SO was trying to take hold of his left arm, so we hear a pop, I don’t hear a pop, SO mentions popping sound, and AP screams and immediately gives up, no more struggle...SO say’s hey, I may have hurt his arm”*

SO had cut the straps to AP’s backpack to remove it. WO1 stated that he was able to handcuff AP, cognizant and careful to prevent any further injury. WO1 stated that AP was not hit or struck in any way rather was pinned by police as they attempt to restrain him with handcuffs.

WO1 stated that once AP was handcuffed, he was compliant and they did not have any further issues with him.

The use of force report was prepared by WO1. This report details the behaviour of AP leading up to his apprehension and detention. The report details how WO1 took AP to the ground while holding a CEW then placing a knee onto AP's back. WO1 wrote that he was able to apply a handcuff to AP's right arm, but when SO pulled on AP's left arm a "pop" sound was heard and felt in the elbow. SO reported this injury to WO1 and AP was taken into custody without sustaining any other injuries. A large backpack was cut from AP's person to permit the handcuffing to be completed.

WO2 stated that SO and WO1 were the primary unit to respond to the call for service when a male (later identified as AP) was observed walking eastbound on the north side ditch of the westbound lane of Bishop Grandin Boulevard. WO2 stated that he was alone in a marked WPS vehicle and on his arrival he observed AP to be armed with two weapons. AP was pointing a railway spike at police officers and was swinging a rope with rock attached in a threatening manner. WO2 stated that the three police officers approached AP. WO2 stated that he drew out his firearm telling AP to get on the ground and place his hands behind his back. AP did not immediately comply with these directions and just stood in a fighting stance. WO2 stated that AP did eventually drop his weapons as which point police officers moved in on him. AP was uncooperative when SO took him to the ground and was on the left side with WO1 on his right side. WO2 stated that police were constantly giving AP commands to get his arms out and put his hands behind his back. Despite that, AP kept his arms underneath his body and would not produce or place his hands behind his back. WO2 stated that as it was unknown whether AP could access other weapons, the police officers had to get AP's arms out. As they were in process of doing so, AP then complained about his left arm. WO2 stated that police were successful in freeing AP's arms and handcuffing him. AP was eventually transported to hospital for an examination. WO2 stated that he did not have any physical contact with AP but noted that his incident would have been avoided if he had put his arms behind his back as directed.

WO3 was partnered with WO4 when they were dispatched to the vicinity of Pembina Highway and Bishop Grandin Boulevard to assist in the transport of a robbery suspect. On arrival, WO3 stated that he observed three police officers already on scene and a male (later identified as AP) was handcuffed and in their custody. Following a briefing, WO3 stated that he took custody of AP and escorted him to his police cruiser. WO3 stated that they drove to the location where WO1 and SO had parked their WPS cruiser and transferred AP back into their custody. WO3 stated that when AP was exiting his cruiser car he appeared to be in pain. WO3 stated,

*"I asked him what happened and he said he was fine and all good. I asked him if he needed medical attention and he said no he was fine"*

WO3 stated that he told WO1 and SO that there was something wrong with AP's left arm and that was when they left.

WO4 stated that he and his partner, WO3, were dispatched to assist other police officers on a robbery call. On arrival, WO4 stated that he saw WO1, WO2 and SO with a handcuffed male (later identified as AP) on the boulevard grass by a vehicle. WO4 stated that he and WO3 took custody of AP and transported him to WO1 and SO's vehicle. WO4 stated that he did not pay attention to what AP was doing in the back of the cruiser car.

**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 a copy of his notes and reports to IIU investigators. The following is a summary of SO's notes:

*At 0916 hrs when AP observed Police he got into a fighting stance holding a rusty railway spike six inches long, in his left hand and spun a rock on a string with his right hand. AP was verbally non-compliant and repeatedly yelled, "F\*\*k you! Get the f\*\*k away from me!" WO2 had his firearm out, WO1 had his taser out and SO was reaching for his firearm. AP was given direction to drop the weapons and he dropped both. AP was pushed to the ground facing away with SO on the AP's left side and WO1 on the AP's right side. AP turtled his arms and was verbally non-complaint while resisting. SO was able to get an arm out and was moving AP's left wrist toward the right arm that WO1 was holding and felt a "pop." SO told WO1 that AP's arm may have broken. SO cut off the AP's large blue backpack and at 0921 hrs assisted AP up and an ambulance was requested.*

**Conclusion**

This investigation must consider whether the actions of SO caused, or in any way contributed, through action or inaction, to his injury, and if so, should criminal code consequences flow therefrom.

The following facts and circumstances have been established:

- SO was on-duty, lawfully placed and in lawful execution of his duties at all material times;
- AP was armed with weapons and had used the weapons in assaulting and robbing another person;
- AP admitted to threatening the police officers with his weapons in an attempt to avoid arrest;
- AP dropped his weapons but refused to comply with directions to bring his arms and hands out and placed behind his back;
- Police struggled with AP to detain and handcuff him as he continued his non compliance with directions;
- AP sustained an injury to his left elbow during the course of the police attempt to handcuff him;
- AP refused to follow up with medical assessments and accordingly IIU cannot confirm nor refute whether he sustained a serious injury as defined by regulations;

Section 25 of the Criminal Code of Canada is germane to this investigation.

**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.**

*(emphasis added)*

Based on the various accounts, I am satisfied that the actions of SO, a police officer in the lawful execution of his duty, in arresting and detaining AP by application of handcuffs, were authorized by law, reasonable and necessary in the circumstances and fall within the ambit of section 25 of the Criminal Code of Canada. Accordingly, I am not satisfied that reasonable grounds exist to justify the laying of any criminal code or other statutory offence against the subject officer.

The IIU investigation is complete and this file is closed.

**Final report prepared by:**

Zane Tessler, civilian director  
Independent Investigation Unit  
December 28, 2022

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