

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

On August 18, 2022, the Winnipeg Police Service (WPS) notified the Independent Investigation Unit (IIU) of an incident in which a male [later identified as the affected person (AP)] sustained a serious injury during his arrest by WPS officers on June 10, 2022.

This notification disclosed the following information (edited for clarity):

“On Friday, June 10th, 2022, at approximately 10:11 p.m., East District General Patrol officers were dispatched to attend a residence on Holborn Place for a dispute incident for a male cutting down a neighbor’s fence with a power saw and hatchet.

Uniformed officers attended the scene and meet with the complainant who advised them that the male from a residence on Sonning Bay had cut a portion their fence down and had been yelling and screaming at the children in their backyard.

The male responsible for the damage was identified and located inside the Sonning Bay residence where he was advised that he was under arrest for Mischief under \$5000.00. The male [later identified as the affected person (AP)] stated “come and get me”, at which time he bladed his body in a fighting stance, throwing several punches and striking one of the attending officers in the head. A use of force encounter occurred with AP who was subsequently handcuff and taken into custody.

AP required medical attention at the scene for assessment due to having a pacemaker. Winnipeg Fire and Paramedic Service (WFPS) personnel ultimately attended to the scene and medically cleared AP. The WPS member did not require medical attention. AP was taken to Winnipeg Police Headquarters where he was processed and later released on an undertaking.

At some point after his release, AP made a complaint to the Law Enforcement Review Agency (LERA). The LERA investigation determined that AP had sought medical attention on June 11, 2022 at the Victoria General Hospital (VGH). Medical records were later obtained (August 8, 2022) indicating AP had a displaced right distal 10th rib fracture. The WPS Professional Standards Unit was made aware of this injury on August 18, 2022, as a result WPS made notification to the IIU”

A fractured rib meets the definition as a serious injury pursuant to the provisions of IIU regulation 99/2015. Accordingly, IIU assumed responsibility for this mandatory investigation pursuant to The Police Services Act (PSA). IIU Investigators were assigned to this investigation.

Among the agency information obtained by IIU Investigators included:

- WPS officers' notes and narratives
- witness statement
- WPS use of force report
- audio recordings of 911 calls
- call history
- audio recordings of WPS radio communications
- video surveillance footage
- WPS arrest report
- medical report concerning AP

Due to the dearth of information at the outset, the civilian director deferred a decision to designate any WPS officer as a subject officer (SO) until the investigation began in earnest. It was not until October 7, 2022 that IIU investigators were in receipt of sufficient information from a review of WPS disclosure materials and interviews with AP that a specific WPS officer was identified as a potential subject officer in this matter. However, IIU investigators were advised that on September 23, 2022, this specific WPS officer was found deceased. As no other WPS officer was identified as a potential subject officer, no designation was made. For the purposes of this report, he will be referred to as the purported SO.

The civilian director did designate four WPS officers as witness officers (WO1- 4). IIU investigators met with and interviewed AP, three civilian witnesses (CW1 - 3) and four members of WFPS (WF1 -4). IIU Investigators received and reviewed video surveillance recordings from AP's residence and from a cell phone belonging to a civilian witness. However, as the interaction between AP and police that likely resulted in his injury was not captured by any video footage.

Facts and Circumstances

AP:

AP resides at a residence on Sonning Bay. CW1 and CW2 also reside at this residence. On the evening of June 10, a party of children and teenagers was taking place at a neighbouring residence. There is a fence that separates the two residences. AP stated that some of the partygoers were making disparaging comments towards him, CW2 and the state of repair of the fence. AP stated that he "...lost his patience" and replied "...Party's over", resulting in him grabbing the fence, shaking it back and forth, causing a large section of it to collapse. Other neighbours attended to the fence and questioned AP as to why he did that. The neighbours attempted to put the section of fence back up again. AP stated he had "...had enough", retrieved a circular power saw from his garage and cut the fence post off.

AP stated that he has a heart pacemaker, which began to "...go off" due to this incident. AP stated that this action was very uncomfortable as the equivalent of 50 volts passes into his chest. AP stated that he went inside his residence to have some water and rest to get his heart rate to come down.

AP stated that between 9:15 and 9:20 p.m., two WPS units arrived at his residence and spoke with his neighbours. While AP was in his kitchen, an officer attended and stated, "*Come outside,*

we want to talk to you". Another officer stated, *"We don't have to do this in ...the house".* AP stated that he was very agitated and felt his pacemaker *"...go off"* again. AP stated that this caused him to raise his arm in the air and the other to his chest. AP stated that he believes the police officers assumed this to be an aggressive gesture as they *"...rushed"* him. AP stated that was taken to the kitchen floor. AP stated that he was handcuffed behind his back.

AP stated that five police officers in total were involved in his arrest. One of the officers who came at him had his *"Taser"* in his hand and used the plastic part of it to hit him *"...or stun him"*, just above the left eyebrow. AP stated that CW1 was present and witnessed the entire incident.

AP then stated that while he was on the ground, *"...One officer was stepping on my ankles and another had his knee on my back"*. AP further stated that one of the police officers *"...came down and punched me on the right side as I was on the ground"*, which resulted in the fracture of his rib. AP stated that this police officer said, *"...not so tough now, hey tough guy?"* AP stated that police transported him downtown to the police station where he was fingerprinted, photographed and processed. He was returned to home at approximately 11:40 p.m. AP stated that he was now experiencing pain and was short of breath. CW1 suggested that he attend VGH emergency where he was examined and x-rays disclosed that he had a rib fracture.

Medical Report for AP:

AP provided a signed Consent for Release of Personal Health information to IIU Investigators. Medical information was received from VGH confirming that AP attended the emergency department on June 10. AP was diagnosed with a *"Right Distal 10th Rib Fracture"*, bruising and a large contusion. Pacemaker data and a Pacemaker log for AP was also received and reviewed. The log shows that on June 10, AP had four episodes, between 10:09 p.m. and 10:39 p.m. where the pacemaker had to administer *"shocks"* to his body.

Civilian Witnesses:

CW1 resides at the Sonning Bay residence with AP and CW2. On the evening of June 10, prior to the arrival of police, CW1 stated that she located AP hunched over in the garage. CW1 stated that AP believed his pacemaker had *"just gone off"*. CW1 stated that they then made their way to the kitchen shortly before police arrived. CW1 stated that she answered the door and met with the police who asked if AP could come outside and talk to them. As she turned towards AP, who was still in the kitchen, she stated that he was *"...standing there with one hand on his chest and one hand in the air, shaking"* and believed that his pacemaker had gone off again. CW1 stated that the police charged in and took AP down to the kitchen floor. CW1 stated that she could see AP laying on the floor and a police officer sitting on his chest. CW1 stated that she screamed at the police officer, *"be careful, he's got artificial heart valves, pacemaker-defibrillator and he's on blood thinners"*. CW1 stated that the police officer said that an ambulance was on its way.

CW1 stated that on arrival, paramedics asked her to retrieve AP's medication. CW1 stated that when she handed over the medication, she saw a police officer enter the kitchen, approach AP and say, *"you're a tough guy"*. CW1 stated that police officer, who was holding something in his hand, punched AP on his right side. CW1 stated that the paramedics were present when AP was punched by the police officer. CW1 stated that AP was taken by police and transported to the police station. AP returned home some time later and informed CW1 that he was going to go to

VGH Emergency to get a full assessment. When he came back from hospital, he advised that he had a broken rib.

CW2 resides at the Sonning Bay residence with CW1 and AP. CW2 has been described as having cognitive and memory impairment issues. When asked if he could recall anything from June 10, specifically in relation to the fence, the neighbors, AP and WPS, CW2 stated that his memory of that day is not good. CW2 stated that he had some recollections of an argument with a next door neighbour and issues with a rotten fence post. CW2 recalled that police officers arrived at the residence and that they had an argument with AP at the door. CW2 stated that there was a physical struggle, AP was arrested and the police were “...a little rough with him”.

CW3 is the neighbour who was hosting an evening children’s party at her residence on Holborn Place. CW3 stated that it was still light out when she saw AP shaking their shared fence causing two sections came down on the ground. AP then yelled, “Ok, you brats, the party’s over” followed by a series of profanities. CW3 stated that she made a call to 911 and explained the situation. CW3 stated that at approximately 8:45 p.m. a police car arrived, followed by a second police car and a “supervisor’s truck”. CW3 stated that four police officers approached the front door of AP’s residence where they spoke with CW1. After approximately ten minutes, the police officers entered AP’s residence. Soon after, a fire truck arrived and paramedics entered the residence. After another ten to fifteen minutes had passed, the police came out of the residence with AP, who had his hands behind his back.

WFPS Personnel:

WF1 was one of four paramedics dispatched to a residence on Sonning Bay to medically assess an individual. They arrived at approximately 10:30 p.m. and were advised that there was an earlier disturbance where a fence was torn down. WF1 stated that on entering the residence, he observed a male (later identified as AP) on the kitchen floor and restrained by WPS officers. WF1 stated that he instructed his crew to enter, take AP’s vital signs and do their medical assessment. WF1 stated that he did not witness any use of force by police towards AP in their presence. WF1 stated that they were on scene for approximately fifteen minutes after medically clearing AP. An ambulance was not called and they departed the residence.

WF2 was one of the four paramedics dispatched to a residence on Sonning Bay to medically assess an individual later identified as AP. WF2 stated that the crew arrived on scene at approximately 10:50 p.m. WF2 noticed that the fence between the neighbor's property was down on the ground. Upon entry to the residence, WF2 observed AP laying on the kitchen floor. He was handcuffed behind his back and there were two to three police officers were around him. WF2 proceeded to take AP’s vital signs, utilizing a heart monitor and blood pressure cuff. WF2 was aware that AP had a pacemaker. AP was cleared for police transport. WF2 stated that AP was “yelling and agitated”. WF2 did not observe any use of force by police officers.

WF3 was one of the four paramedics dispatched to a residence on Sonning Bay to medically assess an individual later identified as AP. WF3 was aware that there was a disturbance at the residence and police were requesting WFPS to conduct a medical assessment. When WF3 entered the residence, he observed AP on the kitchen floor and handcuffed to the rear. Two other WFPS personnel proceeded to take AP’s vital signs. WF3 did not witness any physical contact whatsoever between AP and the police.

WF4 was one of the four paramedics dispatched to a residence on Sonning Bay to medically assess an individual later identified as AP. They received information that there had been a disturbance at the residence and a neighbor's fence had been torn down. Upon arriving at the residence, WF4 observed AP laying on the kitchen floor. His hands were behind his back and he was handcuffed. WF4 stated that no one was holding AP down or touching him. AP was assessed and all levels were found to be normal.

Witness Officers:

WO1 was partnered with WO2 when they were dispatched to a call to attend to a neighbor dispute at a residence on Sonning Bay. WO3, WO4 and the purported SO also attended to this residence. On arrival, WO1 observed that a five-foot section of the fence was down on the ground. WO1 spoke with CW3 who informed him that they were having a pool party with her daughter's friends and the neighbor, AP, who was abusive towards the children, had started to cut down the fence with a circular saw. WO1 stated that he, WO2 and WO3 approached the front door in order to speak with AP. They encountered CW1 and while talking with her, AP approached from the living room area and told the Police to leave. WO1 stated that AP was advised that he would be arrested for mischief to which he replied, "*come and get me*". WO1 and WO3 entered the residence with AP facing them, who adopted an aggressive bladed stance, had his fists clenched and was ready to fight. WO1 stated that he and WO3 both drew out their conductive energy weapons (CEW) but as they approached, WO1 felt that he was too close to AP to use it safely, so he holstered it. AP then threw a punch at WO1 and missed him, but he did strike WO3 on the top of his head, tearing his earpiece out and tearing open the Velcro on his ballistic vest. WO3, still holding his CEW, hit AP on his forehead with it. WO1, WO2 and the purported SO took hold of AP to get him to the ground and handcuff him. AP refused to show his hands and was actively resisting. The purported SO delivered a punch to AP's stomach causing him to bowl over and allowed police officers to force him to the ground. A struggle ensued and eventually the police officers were able to gain control of AP's arms allowing WO1 an opportunity to handcuff him behind his back. CW1 then told police officers that AP had a "*pacemaker*". WFPS was contacted and requested to send paramedics to check and assess AP. WO1 prepared a use of force report regarding this incident. The only other use of force that he observed was WO3 hitting AP on the forehead with the CEW and the punch to the stomach by the purported SO.

WO2 stated that he and WO1 were dispatched to a call for service at a residence on Sonning Bay as there had been a neighbor dispute regarding a shared property fence. They were met on scene by WO4 and the purported SO. WO3, a WPS street supervisor, also attended. On arrival, WO2 stated he spoke briefly with a CW3 who provided background information to the dispute. The five police officers approached the front door and started speaking with CW1. WO1, WO3 and the purported SO were permitted to enter the residence and encountered AP in the kitchen area. WO2 stated that he heard AP say, "*F*ck You, I'm not talking to you guys*". WO2 stated that he then observed WO1, WO3 and the purported SO quickly take AP down to the ground and handcuffed him. WO2 stated, "*...there most certainly would be strikes administered with the take down of AP in that type of situation*" but that he did not observe any strikes himself. While AP was on the ground, he told police officers that he had a pacemaker. Police officers requested WFPS to attend and assess AP to ensure he was ok and could be transported. A WFPS crew arrived shortly, took vitals and provided an assessment that AP was ok and could be transported.

WO3 was working as a WPS Street Supervisor on June 10 when a call regarding a neighbor dispute at a residence on Sonning Bay was received. WO3 made his way to the residence arriving around the same time as WO1, WO2, WO4 and the purported SO. WO1 and WO2 spoke with CW3 to obtain further background on the dispute. WO3 stated that all the police officers approached the front door and encountered CW1. Shortly afterwards, AP appeared from the living room area, screaming “F*ck you”. WO3 stated that he told AP to come out and talk with them or they would have to come in, to which AP replied, “The f*ck you will, come and get me”. WO3 stated that he and WO1 entered the residence. AP was in a bladed stance facing them and appeared ready to fight. Both WO3 and WO1 drew their CEW’s and had them in their hands by their side. WO3 stated that AP charged at him, striking him on the left side of his head. WO3 stated that he hit AP on the side of his head with the CEW. AP grabbed on to WO3’s vest and ripped off his radio mic and earpiece as well as separating the Velcro panels. As WO3 went to gather his equipment, the other officers pulled AP into the kitchen area and took him to the ground. When WO3 entered the kitchen, he observed AP laying on the ground with his hands tucked underneath his body and refusing to let police officers grab his arms. WO3 stated that he “shin pinned” AP with his knee, which allowed the other police officers an opportunity to retrieve his arms. The police officers were able to get AP’s hands from underneath him and he was handcuffed. CW1 advised the police officers that AP had a pacemaker so WFPS were called in order to do a medical assessment and ensure that he was suitable for transport. WO3 stated that the purported SO advised that he had delivered a punch to AP’s stomach area in order to gain compliance when AP was not giving his arms to police officers. WO3 stated that there were no CEW deployments at the residence.

WO4 stated that he and the purported SO responded to a call for service regarding a neighbour dispute at a residence on Sonning Bay. WO1, WO2 and WO3 were already on scene with they arrived. WO4 stated that police approached the front door and some of the officers were conversing with CW1. The police officers entered the residence. WO4 stated that he heard yelling and commotion as the other police officers were dealing with AP in the kitchen. He heard police officers telling AP to “Stop resisting”. WO4 stated that he stayed in the living room while the other officers were in the kitchen with AP. WO4 stated that he did not observe any use of force by the police officers nor did he observe any physical altercation by AP.

Conclusion

In normal circumstances, the purpose of this investigation was to consider whether the actions of a subject officer to use force on AP was reasonable, necessary and justified by law.

Sections 25 (1) 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.

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.

Due to the death of the purported SO, before he was formally designated and had any involvement in this investigation, the role of the IIU at this stage has been materially affected. In usual circumstances, based on the nature and quality of the evidence that has been gathered and reviewed, the most that would have occurred would have been to forward this file to Manitoba Prosecution Services requesting an opinion on whether the evidence would support a reasonable likelihood of a successful prosecution. In these circumstances, that decision is moot as the purported SO is deceased and no criminal code charge would be authorized to proceed.

In the end, IIU has completed its investigation to the best of its abilities and has produced all the salient facts surrounding this matter. Given the fact that the purported SO is deceased, there is no further role for IIU to continue in this regard.

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

Final report prepared by:

Zane Tessler, civilian director
Independent Investigation Unit
February 8, 2023

Ref 2022-0040