

FINAL REPORT

IIU concludes investigation into in-custody death at Main Street Project

On February 23, 2017, at 12:30 a.m., the Winnipeg Police Service (WPS) notified the Independent Investigation Unit (IIU) about the arrest and detention at Main Street Project and subsequent hospitalization of a 28 year-old male. According to this notification, at approximately 8:53 p.m. on February 22, two members of WPS Cadets responded to a call for service concerning an intoxicated male who was causing a disturbance and accosting members of the public in downtown Winnipeg. The male, later identified as the affected person (AP), was located outside an apartment block on Carlton Street. AP was arrested by the cadets under the provisions of *The Intoxicated Persons Detention Act* (IPDA) and subsequently transported to the Main Street Project (MSP) (an approved detoxication center) for lodging until sober. At 10:15 p.m., during a routine check, AP was found to be unconscious and unresponsive. AP was transported by ambulance to St. Boniface Hospital (SBH).

Subsequent to the initial notification, on February 24, 2017, AP, who remained in an unresponsive state from his admission, passed away at SBH. A formal notification (as required under Part 7 of the IIU regulations) was provided on February 28, 2017 following the resolution of an issue with WPS concerning the mandate of the IIU to investigate this matter.

As this notification involved both an in-patient hospitalization and subsequent death of the affected person following an interaction with police, IIU assumed responsibility for this investigation in accordance with section 65(1) of *The Police Services Act* (PSA).

Furthermore, 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. On February 28, 2017, the IIU formally requested that the Manitoba Police Commission appoint a civilian monitor. On March 1, the IIU was advised a civilian monitor had been assigned to this matter. The initial briefing with the civilian monitor took place on March 15 and the IIU conducted regular monthly briefings with the civilian monitor throughout the investigation.

The issue in this investigation was whether members of the WPS did, or failed to do anything, during their contact with AP that may have contributed to his death.

The IIU civilian director designated the two attending WPS cadets as the subject officers (SO1 - 2). Thirteen independent civilian witnesses (CW1 – 13) were identified and interviewed by IIU investigators. (For the sake of brevity and to avoid undue repetition, summaries of only the most significant and revealing statements by some civilian witnesses are included in this report.). IIU

investigators also received and reviewed the medical records from SBH, GPS records from the police cruiser and an autopsy report (received by IIU investigators on July 4, 2017).

The investigation conducted by IIU investigators included:

- attending and examining the scene;
- canvassing for witnesses and surveillance video;
- reviewing photographs and video from the scene;
- reviewing file materials from WPS;
- reviewing AP's medical records from SPH;
- obtaining statements from 13 civilian witnesses;
- reviewing autopsy report;
- reviewing GPS data;
- regular consultations with the civilian director; and
- preparation of the final investigative report for review by civilian director.

Under the provisions of the PSA, a subject officer is not required to provide a statement or notes regarding an incident. In this case, neither SO agreed to be interviewed nor supplied their respective notes and reports for review.

During the course of its investigation, the IIU determined the following facts:

On February 22, 2017, at approximately 8:15 p.m., AP came to the attention of members of Downtown Watch. CW1 and CW2, employees of Downtown Watch, responded to a disturbance at a liquor store near Ellice Avenue and Hargrave Street. On arrival, they noted an intoxicated male (later identified as AP) who was outside the store and bothering patrons. AP then walked west along Ellice Avenue towards a convenience store, where he attempted to take candy without paying. At 8:24 p.m., CW1 called a WPS non-emergency line to report this behaviour. CW1 and CW2 maintained watch of AP.

At 8:47 p.m., CW3 and CW4, also employees of Downtown Watch, encountered AP at the intersection of Ellice Avenue and Carlton Street. AP was wandering in and out of traffic and, at one point, tried to open the driver's door of a vehicle stopped at a traffic light. AP then walked north and met up with a friend, CW5. AP and CW5 made their way to a nearby convenience store. AP tried to take a bag of potato chips without paying for them. AP was followed outside by a store employee who was able to seize the chips. CW5 told IIU investigators that AP was trying to "act up on people." CW5 separated from AP after the incident at the convenience store. CW5 did not see AP arrested by police, nor did he see AP engage in any physical altercation with anyone that evening.

CW3 called 911 at 8:53 p.m. to report AP's actions. CW3 and CW4 kept a watch on AP as he walked to an apartment block on Carlton Street and began to relieve himself. CW6, a resident of the apartment block, confronted AP and told him to go away.

At 9:08 p.m., SO1 and SO2, in a marked police vehicle and responding to a call for service, located AP outside of this apartment block on Carlton Street. AP was placed under arrest pursuant to the IPDA. CW3, CW4 and CW6 watched the arrest as AP was escorted to the cruiser car, searched, handcuffed and placed in the rear of the vehicle. They did not observe any physical struggle between AP and SO1 and SO2, and described AP as cooperative throughout.

GPS records of the police vehicle were analysed. The data shows the cruiser car arrived at the arrest location at 9:08 p.m. and remained until 9:26 p.m. The vehicle departed and arrived at MSP at 9:33 p.m. The police cruiser remained at MSP until 9:55 p.m.

Records and video surveillance obtained from MSP confirmed that AP was admitted to the facility at 9:45 p.m. The video surveillance showed AP entering MSP with SO1 and SO2, being searched by the cadets, examined by on scene paramedics and transferred into holding cell number 13, all without incident or physical struggle.

Video surveillance of holding cell 13 was also obtained and reviewed. AP was observed entering the holding cell and lying on the floor with his neck against a cell wall. He remained in this position until he was checked by a MSP employee. First responders were then summoned to the holding cell and began efforts to revive AP.

CW7 and CW8 were advanced care paramedics on duty at MSP that evening. They examined AP on his initial arrival and found him fit for lodging. No physical injuries were noted on AP.

A post mortem examination of AP was conducted on February 27, 2017. The attending pathologist noted there was no evidence of any trauma on AP's body. The final autopsy report was received on July 4, in which the pathologist concluded:

"Death in this case is due to the combined sedating effects of ethyl alcohol and alprazolam, as well as a sub therapeutic level of zopiclone. Cardiomegaly [an enlarged heart] is determined to be a contributing factor in that it would increase the likelihood of a fatal arrhythmia in the setting of respiratory depression. Video surveillance of the deceased in his holding cell showed him coming to rest with his chin somewhat depressed into his chest; it is therefore possible that a component of positional asphyxia played a role in causing death."

Issues, Assessment and Conclusions

The relevant issue in this investigation was whether the subject officers did, or failed to do, anything during their contact with AP that may have contributed to his death.

Applicable Law

The following legislation is relevant to this analysis:

Sections 2 and 3 of *The Intoxicated Persons Detention Act (Manitoba)*:

2(1) Where a peace officer finds in a place to which the public has access a person who is intoxicated, he may take that person into custody.

2(2) Where a peace officer takes a person into custody under subsection (1), if there is a detoxication centre in the community, the peace officer may take the person to the detoxication centre and deliver him into the custody of the person in charge of the detoxication centre.

3(1) Where a person is taken into custody under section 2, the person having custody of him shall release him (a) on his recovering sufficient capacity to remove himself without danger to himself or others and without causing a nuisance; or (b) if an application is made sooner by a member of the person's family or by a person who appears to be suitable and capable of taking charge of the person, into the charge of that applicant; but in any case before the expiry of 24 hours after the person was taken into custody.

3(2) Where a person taken into custody under section 2 is in the custody of the person in charge of a detoxication centre, the person in custody may be allowed to remain in, and, with his consent, be cared for in the detoxication centre after the expiry of 24 hours after he was taken into custody.

Sections 25(1) and 26 of the Criminal Code of Canada:

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, or*
- (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 Every one 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.

A police officer is entitled to arrest a person he finds committing, or has reasonable grounds to believe has committed, an indictable offence.

Police can also arrest anyone to prevent a breach of the public peace.

Furthermore, in Manitoba, under the provisions of the IPDA, where a police officer finds a person who is intoxicated in a public place, he may take that person into custody and process him or her in accordance with legislation.

Where it is determined that reasonable grounds exist to believe a criminal offence has been committed, the IIU civilian director may charge the SO accordingly. The determination whether reasonable and probable grounds exists is based on a careful assessment of all the available evidence.

On review of this investigation, I am satisfied that SO1 and SO2 were lawfully placed and were acting in the execution of their duties during their interaction with AP. There is no

evidence of any force used by either SO1 or SO2 on AP during their contact with him. There is no evidence of any physical trauma on AP's person. I am satisfied that AP was under the influence of alcohol and drugs when he was arrested by SO1 and SO2. Furthermore, I am satisfied that an unfortunate series of events led to AP's death, which was completely unrelated and unconnected to anything done or not done by either SO1 or SO2.

In this investigation, the IIU mandate was to determine whether consequences should flow from the actions or inactions of SO1 or SO2, in consideration of all the circumstances and information known to them at the time.

On careful review of the available evidence and material facts obtained in this investigation, together with consideration of the applicable law, I am satisfied that neither SO1 nor SO2 had any role or connection to the death of AP in any way and their actions should not and will not attract any consequences.

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

Final report prepared by:

Zane Tessler, civilian director
Independent Investigation Unit
September 06, 2017

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