



**IN THE MATTER OF AN INVESTIGATION INTO AN INJURY
DURING A WINNIPEG POLICE SERVICE ARREST ON DECEMBER 19, 2019**

**FINAL REPORT OF THE CIVILIAN DIRECTOR
OF THE INDEPENDENT INVESTIGATION UNIT**

IIU File Number:	2019-0082
Final decision made by:	Zane Tessler, Civilian Director
Final report prepared by:	Roxanne M. Gagné, Civilian Director
Date of Release:	September 24, 2023

Introduction:

On December 19, 2019, the Winnipeg Police Service (WPS) notified the Independent Investigation Unit of Manitoba (IIU) of an incident.

The written notification disclosed the following information:

“On December 19, 2019 at approximately 5:44 a.m., WPS members, subject officer (SO) and witness officer (WO), were dispatched to ...Ellice Avenue to investigate a 911 hang-up call.

Prior to their arrival, additional information was received indicating that a female from the suite, later identified as CWI, was requesting medical assistance for her friend, the affected person (AP), who had just snorted some prescription medication.

Responding officers arrived shortly before Winnipeg Fire Paramedic Service (WFPS), and immediately attended to the suite where they were met by CWI. Shortly thereafter, WFPS arrived at the suite and made an assessment that AP required further examination at hospital, due to the type of prescription drugs that he had consumed.

AP was not pleased with WFPS's assessment and became belligerent with the attending crews. The subject officer (SO) attempted to handcuff AP resulting in a physical altercation. During the ensuing struggle, AP attempted to grab SO's handcuffs, which resulted in him being taken to the floor. Once on the floor, AP managed to take hold of one of SO's handcuffs. SO and the WO attempted to regain control of AP, by administering several knee strikes to his shoulder, but these too had no effect. AP attempted to get back to his feet, but both officers prevented him from doing so.

AP refused to comply with any verbal direction, refused to let go of the cuff and continued to display defensive resistance. During the ensuing struggle, SO punched AP twice in the face to gain compliance, and control of the handcuff, at which time he released the handcuff. AP continued to struggle with officers, but was eventually handcuffed and taken into custody.

AP was subsequently transferred to the Health Sciences Center (HSC) for medical treatment. It was later learned that he had also sustained a fractured orbital socket.

AP was admitted to hospital for observation.”

As this matter concerned a serious injury as defined under the IIU regulations, the IIU assumed responsibility for this investigation in accordance with section 66(4) of the *Police Services Act* (PSA). IIU investigators were assigned to this investigation.

The civilian director designated one subject officer and one witness officer. IIU investigators interviewed the witness officer (WO) as well as two paramedics (professional witnesses PW1-2).

Facts and Circumstances

Affected Person (AP)

On January 3, 2020, IIU investigators interviewed the AP. He told investigators that he had ingested a small quantity of drugs, causing friends to call 911 as they thought he had

This document is the property of the IIU and is not to be distributed to any other party without the written consent of the IIU.

overdosed. Two police officers attended his residence and were rushing him to go to the hospital, but he refused to go and as a result got into an altercation with them on a bed, where they punched and kned him. AP said the police kned him in the face and gave him a black eye, then handcuffed him, ratcheting the handcuffs tightly onto his wrists. He claimed he was taken to the hospital by police, who told him he should have listened to them.

The AP, who was interviewed on January 3, 2020, stated the incident took place on January 16.

Civilian Witness (CW1)

On December 27, 2019, IIU investigators interviewed CW1. She stated she called 911 because she believed AP had overdosed and was in need of medical attention. Two police officers arrived first, followed approximately five minutes later by paramedics. The officers attempted to get AP dressed because he was naked. An altercation between the police officers and AP started in the kitchen of the apartment when the officers swung him to the floor. At that point, CW1 stated she turned around because she did not want to see what was happening, but she heard the police saying, “*Why are you resisting?*” CW1 did not hear the police tell AP he was under arrest, but added she could not really remember what officers said to him. CW1 admitted to being a frequent user of crystal methamphetamine and was unable to recall if she had been using on the day of the incident.

Professional Witnesses (PW1-2)

PW1

PW1 was interviewed January 16, 2020 and again on February 10, 2020. He stated that he and PW2, were dispatched to an overdose call for service at AP’s residence, and when they arrived on scene, two unknown police officers were already in the apartment. AP, who was naked and seated on a bed, refused to engage with them or allow them to assess him. Both officers were attempting to convince him to consent to a medical examination. PW1 stated AP then approached one of the officers and “...*got right up to his face,*” resulting in him being taken to the floor by police. AP grabbed the officer’s handcuffs and would not let go, despite being told to do so. The officer punched AP three times on the right side of his face, resulting in the AP releasing his grip on the handcuffs. Both WPS officers were then able to handcuff AP, who was then assessed and taken to hospital for treatment.

PW1 did not see any other use of force directed at AP by the officers, and stated he did not hear them arrest the AP although admitted that may have been said and he did not hear it. The paramedic added that AP was not able to refuse medical care in the circumstances, as he had allegedly taken an unknown amount of a substance that may have been harmful to his health.

PW2

IIU investigators interviewed PW2 on January 16, 2020 and February 10, 2020. He advised that he and PW1 attended AP’s residence in response to a possible overdose on Suboxone, a drug used to treat people for opioid overdoses. There were already two WPS officers in the apartment when they arrived, along with a female and AP, who was naked on a bed.

PW2 stated their efforts to convince AP to allow them to assess him were unsuccessful. The AP walked into the kitchen to make himself something to eat and the police officers told AP to put the food down and cooperate with the paramedics. In response, the AP turned and got close to the face of one of the officers. PW2 turned to speak with the female, heard a bang and the sound of a blow, and turned back to see AP on the floor throwing punches at police. An officer punched the AP once in the head, and then he sat up and grabbed a pair of handcuffs from police. There was more struggling, with officers telling AP to let go of the cuffs, then police gained control of him and were able to apply handcuffs behind his back. PW2 said he and his partner were then able to medically assess the AP, who was later transported to hospital via ambulance.

PW2 did not remember whether or not police arrested AP prior to the struggle in the apartment.

WO

On January 27, 2020, IIU investigators obtained a statement from WO. He stated he was partnered with SO on December 19, 2019, and said they were dispatched to a medical call at AP's residence regarding a male who had snorted some drugs. They arrived on scene prior to the ambulance, to find the AP in the bedroom of the apartment, unclothed. Two paramedics arrived shortly thereafter and conversed in private with AP, then he exited the bedroom and began to make himself something to eat in the kitchen. WO stated that the paramedics told AP he had to go to the hospital, but he was non-compliant so they threatened to have the police handcuff him.

SO, who took the lead in dealing with AP, tried to convince him to get dressed with no success, then removed his handcuffs, but a struggle resulted when the AP grabbed the handcuffs. WO thought that SO may have informed AP he was being detained prior to this, but he was not sure.

Once AP grabbed the handcuffs, a struggle followed between the officers and AP. WO speculated that SO did a leg sweep on AP to get him onto the floor, and once there, WO said he could see the handcuffs were open with the edge of them facing outwards, posing a threat to the officers.

WO and SO instructed AP to release his grip on the cuffs but he did not comply, resulting in SO performing two to three knee strikes to the side of AP, which were ineffective. The SO then punched AP one to three times in the face with his right hand. At that point, AP released his grip on the handcuffs, which were then used to secure his hands behind his back.

AP was then assessed by paramedics and taken to the hospital by ambulance.

Subject Officer

The SO provided IIU investigators with a copy of his Use of Force Report, Narrative and notebook entries. In his Narrative report, SO wrote the following:

“The medics again tried to reason with (AP) advising him he needed to go to the hospital due to the type of drug he had taken and further informed him that if he continued to refuse police would put him in handcuffs. AP, in an apparent act of defiance opened the cupboard and retrieved a container of iced tea crystals and then picked up a spoon AP was not at all

receptive to the medics and as such, I intervened and tried to convince him to get himself dressed. AP completely ignored me and continued with his efforts to make a drink. I then explained to him that he would be placed in handcuffs. AP then picked up the pair of pants left for him and held them in a fashion that led me to believe he was going to put them on. However, he looked to think about it for a moment then simply tossed them on the floor before resuming his iced tea mission.

I informed AP that he no longer had the option and that he was being detained and that he was going to be put in handcuffs. At this time, I was standing slightly behind him and to his right. I placed my left hand on his right shoulder and removed the spoon from his right hand. I told him to put his hands behind his back and he relaxed his muscles, almost in defeat, and submitted by lowering his hands and pushing them towards the rear of his body.

As AP seemed compliant, I retrieved my handcuffs with my right hand. At this time, AP quickly turned and I found myself standing face to face with him, only inches apart. I gave clear verbal direction for him to move back and attempted to guide him away from me with my left arm. He ignored my direction, tensed his muscles, and glared at me.

I told him to turn around and put his hands behind his back while I used my left hand to try to guide him to turn around. AP physically resisted this effort and tried to grab my handcuffs with his right hand. I immediately took hold of AP and guided him to the ground onto his back. AP however managed to take hold of one cuff and was trying to pull them from my grip. Constable WO and I attempted to gain control of AP while giving clear verbal direction to let go of my handcuffs and to put his hands behind his back. AP tried to get up which we prevented but he did manage to get himself into a turtled position on his knees. AP continued to try to take my handcuffs from my control and when I looked down I observed that the cuff he had a hold of had opened and the serrated portion was up and the point facing out. I then landed two knee strikes to his right shoulder but due to positioning, they were ineffective. I then secured my grip on the handcuff with my left hand only and struck AP in the face two times with a closed fist.

The technique proved effective. He said, "Okay, okay," and released his grip and laid on his stomach. I was able to secure his right hand in cuffs behind his back but he was still demonstrating defensive resistance when it came to his left hand. WO was eventually able to pull his arm behind his back at which time I secured it in handcuffs.

AP sustained some significant swelling to his right orbital area and had some blood coming from his nose as a result Of note, this call has been determined to be a Medic call for service. It was deemed that the health and safety of AP took precedence and the force used was necessary to ensure he received appropriate medical treatment from healthcare professionals."

Summary of Other Evidence

A medical release was obtained from AP, which indicated he was treated for an acute fracture in the right nasal bone and bilateral medial orbital wall fractures.

This document is the property of the IIU and is not to be distributed to any other party without the written consent of the IIU.

Conclusion

Following completion of the investigation, the full and completed IIU investigation file was referred to Manitoba Prosecution Service (MPS) to seek an opinion on whether any *Criminal Code* charges would be authorized in respect to the subject officer. On March 1, 2021, MPS provided a Crown opinion, which stated:

“Manitoba Prosecution Service has reviewed the IIU investigation of the SO. While it is always in the public interest to hold police officers accountable for any wrongdoing, there must also be a reasonable likelihood of conviction for MPS to prosecute a matter. In this case, after considering all of the evidence, we have concluded that a reasonable doubt exists as to whether the officer’s use of force was excessive and therefore illegal. Consequently, we are not satisfied that there is a reasonable likelihood of conviction. When MPS is consulted for charge authorization in any criminal matter, we employ the same standard for proceeding with criminal charges.”

Given that Manitoba Prosecution Service’s opinion is that they are not satisfied there is a reasonable likelihood of conviction and the standard for prosecuting charges has not been met, the civilian director will not consider authorizing charges that will not lead to a prosecution before the courts.

This investigation is now completed and this matter is now closed.