

FINAL REPORT: IIU concludes investigation into injuries to youth during arrest by WPS officers

On June 20, 2019, the Winnipeg Police Service (WPS) notified the IIU of an incident that occurred during the arrest of a male youth in Winnipeg. The notification read in part:

“On Thursday June 20th, 2019 at 6:51pm, [WPS officers] attended to the bus loop in front of Kildonan Place Mall in regards to a male in possession of a hatchet and acting in an aggressive manner. Call History indicated that a medical call was received for a 15 year old male that was assaulted. Further information that the injured male was still on scene with hatchet, was fighting with another male...ambulance waiting for police.

Upon arrival, officers located the male (later identified as the Affected Person (AP)) who had concealed the hatchet in his pants. The male was placed under arrest at which time he resisted and had to be physically restrained. The accused was found to have an injury to his right elbow and was subsequently conveyed to the Children's Hospital where he was treated for a bone chip to the right elbow. He was released after the arm was cast as a precautionary measure (Avulsion Fracture).

The accused was processed and was subsequently released to his father.”

AP's described injuries constituted a serious injury as defined by regulation. IIU assumed responsibility for this matter in accordance with section 65(1) of *The Police Services Act (PSA)*.

Information obtained by IIU investigators included:

- arrest report;
- call history;
- witness officers' notes and reports;
- WPS radio communications;
- unit history reports;
- use of force report;
- photographs of AP;
- security video footage from Kildonan Place;
- transit video;
- medical report from Health Sciences Centre (HSC);
- diagnostic imaging report;
- prisoner injury form.

The civilian director designated one WPS officer as a subject officer (SO) and one WPS officer as a witness officer (WO). IIU investigators met with and interviewed AP. IIU investigators met with and interviewed one civilian witness (CW).

The following facts and circumstances were determined:

AP

AP was 14 years old at the time of the incident. AP stated that he injured his arm when police officers threw him down, bent his arm backwards, and stepped on it a couple of times. He also said he was kicked in the face by one of the police officers. AP said he and his friends were hanging out at the Kildonan Place bus loop. AP stated he was holding onto a hatchet for a friend of his. He said that when police arrived, he decided to leave, find his friend and return the hatchet. According to AP, the police officers walked towards him and called him back. AP stated he was going to pull the hatchet out and hand it over to police, but that the officers patted him down, felt the hatchet in his inside jacket pocket, grabbed him and took him down to the ground. According to AP, the police officers pulled his right arm back and stepped on it. Then, the police officers pulled his left arm back and handcuffed him. AP stated he was escorted to the police cruiser, complained about his arm and was transported to HSC.

AP did not provide the names or contact information of the friends he claimed were present during his arrest. IIU investigators asked AP to contact his friends and connect them with the investigators but, to date, no one has contacted IIU.

Medical Report

AP's right elbow was injured during his arrest and handcuffing. The HSC emergency room examining physician believed AP had sustained an 'avulsion fracture' of the elbow. An avulsion fracture occurs when a fragment of bone tears away from the main mass of bone as a result of physical trauma. This injury can occur at the ligament and is often caused by a fall or a pull.

A radiologist reviewed an x-ray of AP's elbow and concluded he did not sustain an avulsion fracture but rather sustained a soft tissue injury.

Civilian Witness

CW was the individual who called 911 for an ambulance for the boy who was injured. CW told the 911 operator that one of the kids present had a hatchet in his coat. According to CW, two police officers arrived before the ambulance attended. CW stated she was speaking to the officers and told them one of the kids had a hatchet. A male youth, later identified as AP, started walking away, at which point the police officers yelled to him. Though CW could not hear what was said, she did observe that the police officers were talking to AP, patted him down, located the hatchet and then took him to the ground. CW stated that AP was struggling while on the ground and she saw an officer put a knee on AP's head. CW stated that AP was handcuffed and dragged to the police car.

Witness Officer

WO was partnered with SO when they were dispatched to the Kildonan Place bus loop regarding an injured male and a male with a hatchet. On arrival, SO first attended to an injured male and a female. WO then went to a second group of teenagers. WO spoke to AP who initially denied any knowledge of a hatchet. WO returned to meet up with SO. SO then advised him that AP had the

hatchet. WO observed that AP had started walking towards Regent Avenue. WO and SO called out to AP to stop. According to WO, AP turned and walked towards them. WO noticed a bulge in AP's jacket and AP was touching it as he walked. SO told AP that he was under arrest for a weapons investigation and grabbed AP's left arm. At this point, WO stated, he noticed the handle of a hatchet was protruding from an inside pocket of AP's coat. According to WO, AP moved his hand to grab the hatchet. In response, WO pulled AP to the ground and applied a shin pin on AP's left side. WO stated that SO was located at AP's right side. WO handcuffed AP's right hand first, then his left hand. The hatchet was seized from the inside pocket of AP's coat. AP was searched and placed into the police cruiser car. WO stated that AP complained his right arm was sore and attending paramedics examined it. When the paramedics said they believed the arm may have been broken, they transported him to the hospital. WO stated that he did not strike AP but SO did.

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 to participate in any interview with IIU investigators. In this case, SO declined an in-person interview but did provide IIU investigators with a copy of his notes, narrative report and use of force report.

According to his notes and narrative report, SO and WO were dispatched to attend the Kildonan Place bus loop following receipt of a report that there was a male present who had been assaulted and there was another male present in possession of a hatchet. On arrival, they observed two groups of youths. SO wrote that a person in one group told them that one of the males in the other group was armed with a black hatchet. He observed the male (later identified as AP) walk away from his group and head south towards Regent Avenue, and he and WO called to this person to come back. As AP turned and started to walk back towards them, SO could see that AP had something in his front inner pocket of his jacket. According to SO, AP lifted an object several times. AP was told to stop and keep his hands by his sides. SO wrote that he placed AP under arrest for a weapons investigation or some similar offence. As SO took hold of AP, he observed the black handle of a hatchet. AP went to grab the hatchet from his pocket. SO wrote that, as a result, he grabbed AP's right arm and WO took hold of his left arm to prevent AP from arming himself. AP immediately pulled away and began to scream. AP then began to turtle his arms towards his chest and towards the hatchet. AP was ordered to place his hands behind his back. AP did not comply with these directions. SO wrote that he aimed a kick at AP's upper right shoulder in an attempt to prevent access to the weapon and end the resistance. However, according to SO, the kick struck AP on the right cheek area. SO and WO were able to force AP onto his stomach. SO was able to pull AP's right arm back and handcuffs were applied by WO. AP then yelled out that his arm hurt. Once AP was off the ground, he was searched and the hatchet was seized.

Surveillance and Transit Video

The Kildonan Place surveillance video shows AP initially walking on a sidewalk with his friends. Moments later, a WPS police cruiser arrives and two police officers (SO and WO) exit. One police officer approaches the group of youths that includes AP and appears to speak with them. Shortly afterwards, that officer leaves to join up with his partner. AP starts walking away from the group and in the opposite direction of the officer. The police officers are next seen

running towards AP as he turns and walks toward them. The officers take AP to the ground. AP is lifted from the ground and escorted to the police cruiser car where AP is leaned against it, appears to be searched and placed in the rear of the car.

The transit video shows the encounter between the AP and the police officers. The police officers arrive on scene. One police officer walks off screen and the other officer approaches a group of people, which includes AP. This police officer then leaves and heads in the direction of the other officer. AP walks away from his group, in the opposite direction of the police officers. Both officers move towards AP, who appears to turn and walk back towards them. AP is taken down to the ground and ultimately walked to the cruiser car.

Neither video showed AP dragged to the police cruiser car. In fact, each video shows AP being walked to the police cruiser car.

Conclusion

Sections 25 (1), Section 26 and Section 34(1) of the Criminal Code of Canada are applicable to this analysis:

25 (1) Every one 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.

34. (1) A person is not guilty of an offence if

(a) they believe on reasonable grounds that force is being used against them or another person or that a threat of force is being made against them or another person;

(b) the act that constitutes the offence is committed for the purpose of defending or protecting themselves or the other person from that use or threat of force; and

(c) the act committed is reasonable in the circumstances.

Effectively, the question is whether the decision of the subject officer to take AP to ground, detain and handcuff him was reasonable in the given circumstances.

Reasonableness of an officer's use of force must be assessed in regards to the circumstances, as they existed at the time the force was used, particularly when it is considered in light of the dangerous and demanding work engaged in by police and the expectation that they react quickly to all emergencies. The police officer's actions must be assessed in light of these exigencies.

The fact that AP sustained an injury because of the subject officer's actions is not itself determinative of whether the force used was excessive in the circumstances.

The allowable degree of force to be used remains constrained by the principles of 'proportionality, necessity and reasonableness' (see *R. v. Nasogaluak*, [2010] 1 S.C.R. 206). In that decision, the Supreme Court noted, at para. 35:

"Police actions should not be judged against a standard of perfection. It must be remembered that the police engage in dangerous and demanding work and often have to react quickly to emergencies. Their actions should be judged in light of these exigent circumstances."

Also see *R. v. Power*, 476 Sask. R. 91 (CA), where at para. 35, the court notes:

"On the basis of the foregoing, a determination of whether force is reasonable in all the circumstances involves consideration of three factors. First, a court must focus on an accused's subjective perception of the degree of violence of the assault or the threatened assault against him or her. Second, a court must assess whether the accused's belief is reasonable on the basis of the situation as he or she perceives it. Third, the accused's response of force must be no more than necessary in the circumstances. This needs to be assessed using an objective test only, i.e. was the force reasonable given the nature and quality of the threat, the force used in response to it, and the characteristics of the parties involved in terms of size, strength, gender, age and other immutable characteristics."

This investigation has determined:

- SO and WO were both lawfully placed and acting in the execution of their duties as police officers at all material times;
- SO and WO responded to a call for service regarding an injured youth and another youth who may be in possession of a weapon (a hatchet);
- AP had possession of a hatchet that was concealed in the inside pocket of his coat;
- When SO came in direct contact with AP, AP was still in possession of a concealed weapon;
- Though AP maintained he was in possession of a hatchet on behalf of a friend, he did not disclose its existence to police when first contact was made;
- AP walked away from the police officers following his first contact;
- When AP was called to return, SO and WO noticed an object in AP's coat;
- AP was touching and grabbing at this object as he walked towards the police officers;
- It was reasonable for SO and WO to conclude that a hatchet was present, that AP appeared to be in possession of a concealed hatchet, that AP appeared to be manipulating the hatchet and that AP could produce the hatchet;
- It was reasonable to conclude that AP posed a real risk and threat to the police officers and others in the vicinity;
- AP refused all requests to comply with directions;

- SO used all reasonable means available and necessary force to gain control of AP and prevent use of the hatchet.

I am satisfied that all the evidence gathered supports the singular conclusion that, pursuant to both Sections 25 and 34 of *The Criminal Code of Canada*, SO's use of force was reasonable and justified in these circumstances.

The IIU investigation is now complete and this file is closed.

Final report prepared by:

Zane Tessler, civilian director
Independent Investigation Unit
January 30, 2020
Ref 2019-039