

FINAL REPORT: IIU concludes investigation into serious injuries during interaction with WPS officers

On October 26, 2020, the Winnipeg Police Service (WPS) notified the Independent Investigation Unit (IIU) of serious injuries sustained by a male (later identified as the affected person (AP)) during an interaction with police.

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

“On May 26th, 2019, at approx. 2:08 a.m., WPS officers were traveling south bound on Salter Street, crossing Mountain Avenue, when they observed three males in an altercation. Two of the males appeared to point firearms at each other. Officers stopped and detained two of the males as the third fled. During the arrest officers utilized force to restrain [AP] on the ground.

In June of 2019, [AP] contacted the Law Enforcement Review Agency (LERA) regarding his arrest. On October 26, 2020, LERA forwarded medical records to the Professional Standards Unit indicating that [AP] attended to Seven Oaks Hospital (SOGH) after the arrest and stated his injury occurred during the detention by police. Medical records indicate two broken ribs.”

In that notification, information was provided to suggest that AP had sustained broken ribs as a result of his encounter with police. As broken ribs are defined as serious injuries under Independent Investigation Regulation 99/2015, this matter was a mandatory investigation, 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:

- Call history
- WPS radio transmissions
- Report summaries
- WPS use of force report
- Witness officer notes
- Copy of LERA complaint
- Audio interview of AP by WPS
- AP’s medical records from SOGH
- LERA file material

Based on the information received by IIU, the civilian director designated two WPS officers as subject officers (SO1-SO2). The civilian director designated seven WPS officers as witness officers (WO1 – WO7). IIU investigators also met with and interviewed AP and two civilian

witnesses (CW1 – CW2). A potential third civilian witness (CW3) could not be located by IIU investigators and could not be interviewed.

Facts and Circumstances

Affected Person:

AP stated he was by himself repairing a bike inside the garage in the front driveway on Salter Street when his neighbor, CW2, came over and pointed a 9mm pistol at him and demanded he give up everything he had. AP stated he could discern CW2 was brandishing a pellet gun. AP stated he was mad and grabbed a sling shot to protect himself. AP stated CW2 ran off and that he gave chase. AP stated that after chasing him for approximately a half a block, he saw CW2, now on the other side of the street, and he was now brandishing a knife. AP stated that police cruisers drove by and police officers confronted him. AP stated that the police officers were pointing their firearms at him while telling him to “*drop it, put the weapon down*” and “*get down to the ground*”. AP stated that he dropped his slingshot and laid down on the sidewalk on his stomach with his hands above his head. AP stated the police rushed at him and gave him “*a good beating, including a black eye and everything*”. AP stated he believed that seven police officers kneeled on his neck and another stepped on his back. AP stated he was not resisting the police. AP stated police placed the handcuffs on him but they were on so tight that he could barely move his hand. AP stated the police told him to shut up and one of them (who he could not identify) hit him in the face with a gun. AP stated he began to lose consciousness and was bleeding excessively. AP stated he could identify the police officer that stepped on his back. AP stated no police officer offered to take him to the hospital to be checked out. AP stated he called his daughter who attended immediately and drove him to SOGH. AP stated he was diagnosed as sustaining three broken ribs, had broken his top and bottom dentures, received four stitches to left side of his face and suffered a black eye. AP stated CW1 witnessed the police officers beating him.

AP’s Medical Records:

LERA investigators obtained medical information pertaining to AP and forwarded the records to IIU investigators. AP had attended Seven Oaks General Hospital and was examined on May 26, 2019.

The SOGH report read:

Summary of Initial Assessment:

- *X-rays = at least 3 right rib fractures*
- *The laceration was cleaned with copious saline, and frozen with xylocaine 1% without epi. A total of 2 polypropylene sutures were used to close the wound. (Facial Laceration)*

Provisional Diagnosis:

- *SHOULDER, RIGHT*
- *There is some elevation of the humeral head consistent with chronic rotator cuff syndrome. No fractures or dislocations are identified.*

Diagnostic Imaging Report Procedure ... identified:

- *RIBS, RIGHT SIDE, CHEST*

- *There are fractures of the right 7th and 9th ribs anterior laterally. No other rib fractures are identified. The heart mediastinum and lungs are other wise unremarkable.*

Civilian Witnesses:

CW1 was AP's landlord. CW1 stated he knew there was a scuffle and that police had attended. CW1 stated he was walking in the vicinity when he saw police stop on Salter Street, near where AP was working. CW1 stated there were about four or five police cars and at least 8 to 10 uniformed police officers present. CW1 stated he heard police yell at two males "You're under arrest, put it down, get down on the ground." CW1 stated police had told him to stay back from his own safety. CW1 stated he recognized that one of the males being arrested was AP, his tenant. CW1 stated, "They were trying to arrest him and he was putting up a little scuffle, trying to resist arrest or something or maybe he resisted arrest and I don't know." CW1 stated AP, who was now in a police car, was yelling at him, saying "did you see that". CW1 stated he responded "I didn't see nothing." CW1 stated AP was complaining that he got hurt, that the police hit him and that the handcuffs were too tight. CW1 stated that he replied, "Maybe you're not listening to what they are telling you." CW1 stated he then said, "I can't say I saw them hit you if I didn't see them hit you." CW1 stated he did not see any physical interactions between AP and any police officer. CW1 stated all he saw was a couple of police officers arresting AP.

It should be noted that subsequent to meeting with IIU investigators, CW1 passed away. His interview with IIU investigators was recorded on video.

CW2 stated he recalled the incident from May 26, 2019. CW2 stated at approximately 2:28 a.m., he "got in trouble" with police but he never talked with them. CW2 stated that he was by himself when he talked to AP and asked him for a cigarette. CW2 stated a marked police car stopped right across the street from them. CW2 stated the police officers yelled and he ran away from them. CW2 stated he did not see the police exit their cruiser car and did not see any interaction between the police and AP.

Witness Officers:

WO1 was on duty as a street supervisor in the early morning of May 26 when he heard a radio transmission from SO1 and SO2 that there was a firearms incident, where a couple of guys looked like they were about to engage in a shootout. WO1 stated he volunteered to attend this priority call. WO1 stated that on arrival at the scene, he observed SO1 and SO2 on the east sidewalk of Salter Street with a male, who was laying prone and motionless. WO1 stated he made his way over to them. WO1 stated the male (later identified as AP) was handcuffed and SO1 and SO2 were in the process of getting him up. WO1 stated he became aware that a second male was already in police custody at the scene but he had no personal contact with that person.

WO2 and WO3 were partnered on the early morning of May 26. On hearing the radio broadcast of the potential firearm incident on Salter Street, they volunteered to attend the scene. On arrival, WO2 stated he observed that SO1 and SO2 were already present. WO2 stated that SO1 and SO2 had a handcuffed male standing up against a cruiser car. WO2 stated he asked if any assistance was required to which he was advised that everything had calmed down.

WO3 stated that on arrival at the scene, he observed SO1, SO2 and WO1 present on the east side of Salter Street, on the sidewalk with a male. WO3 stated he does not recall the male subject saying anything and in fact, to his recollection, he remembers him being cooperative.

WO4 and WO5 were partnered on the early morning of May 26, 2019. WO4 stated they were assigned to assist other officers in relation to a suspect with a firearm in the area. WO4 stated they arrived on scene within moments but remained there for a short period of time. WO4 stated there were four or five police cruisers already present. WO4 stated a police officer advised that everything was all good and they left.

WO5 stated that on their attendance at the scene there were numerous police cars, with flashing lights, already present. WO5 stated everyone was in custody and nobody was outstanding (that is, being searched for), therefore they were no longer required. WO5 stated that was the extent of their involvement and they left the scene.

WO6 and WO7 were partnered on the early morning of May 26, 2019. WO6 stated he had no involvement with anyone in custody and in fact, had little recollection of the incident.

WO7 stated he recalled that there were five other police cruisers present when they arrived on scene. However, neither he nor his partner exited their vehicle or were involved in any way with any of the individuals in custody.

Subject Officers:

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, both SO1 and SO2 declined to attend for an interview. SO1 did provide a copy of his notes, a copy of his use of force report and a prepared statement to IIU investigators. SO2 did provide a copy of his notes, a copy of his narrative report and a prepared statement to IIU investigators.

The following is a summary of SO1's use of force report:

On 19/05/26 at approximately 0208hrs Unit N302, [SO2] and I were conducting general patrol duties in full uniform while operating fully marked cruiser car, driving Northbound in the number one lane on Salter Street, just North of the intersection of Salter Street/Mountain Avenue...Observed two males in a heated confrontation at the nearing intersection of St Johns Ave/Salter Street. It was completely dark outside, the intersection only illuminated by street lights. Each male had what appeared to be visible firearms in their hands which were pointed directly at one another. A third male was observed walking Southbound Salter on the West sidewalk, away from the confrontation...believed that a "Gun Fight" was about to take place between the two males.

The first male, now known to police as, [AP], was ducking his head and maneuvering his body almost to dodge or brace for return fire from the second male. [AP] kept back peddling east toward the middle of Salter with his right arm outstretched away from his body, holding a dark coloured object that was pointed directly at the second male.

The second male, now known to police as, [CW2], was standing near the West sidewalk of Salter, also holding a dark object pointed directly at [AP].

The third male, now known to police as, [CW3], was continuing to walk Southbound down the West sidewalk of Salter Street... stopped the cruiser car approximately 50-70 feet away from where [AP] and [CW2] were standing with what appeared to be their firearms in their hands...exited the cruiser, firearms pointed down range toward [AP] and [CW2]...identified as Winnipeg Police Officers and demanded that both [AP] and [CW2] drop their weapons and put their hands in the air. [CW3] was also commanded to stop walking and to get on the ground.

[CW2] ignoring officer's demands, fled in a full sprint Westbound St Johns Avenue. [AP] now standing in the middle of Salter Street/St Johns Avenue stopped and turned his body towards officers. [AP] quickly put his hands into the side pockets of his baggy sweater, concealing the object that he had in his right hand. [AP] staring directly...but making zero comments/acknowledgment to unit, then casually walked to the East sidewalk of Salter. Completely ignoring the continued demands made by [police] for him to stop and to make his hands visible.

[Police] still had their firearms pointed down range in the direction of [AP]. [SO1 and SO2] continued to challenge [AP] who was still closing the gap between himself and officers. [AP], still not complying with [police] commands to stop and show his hands, started to walk south on the East sidewalk of Salter Street towards officers, his hands still concealed in his sweater's pockets. A patron, who was walking Northbound directly beside [police] on the East sidewalk of Salter Street, had to be pulled out of harm's way by [SO2], in order to ensure his safety.

[Police] now being approximately 15 feet away from [AP], again demanded at gun point that [AP] slowly take his hands from out of his sweater pockets and to slowly get onto his stomach. [AP] slowly went onto his knees and laid onto his stomach. [SO2] voiced via radio for extra units and kept cover of [AP], who had his fingers interlocked on top of his head. [AP] kept his arms tight to the sides of his body. [SO2] commanded that [AP] lay his arms out away from his body, in order to put [AP] in a better position of disadvantage. [AP] refused to heed to the commands and kept his hands on top of his head, his arms still tight against the side of his body.

[SO1] ran towards [CW3] who was now trying to walk away between 378 Salter Street and 380 Salter Street. [CW3] was put into handcuffs for Officer Safety and conveyed to the rear of the cruiser car.

[SO1] ran back to where [SO2] was covering [AP]. [SO1] took over cover and [SO2] made quick contact with [AP] on his left side. [SO2] shin pinned [AP] with some force as the potential firearm was still outstanding, causing [AP] to strike the right side of his cheek against the concrete. This was done so as to gain control of [AP]'s hands and place him into handcuffs. When [SO2] had control of [AP]'s left hand and it was placed into handcuffs, [SO1] made contact by shin pinning [AP]'s right side. [AP] attempted to role his body weight onto his right side, keeping his right hand away from both [SO1] and [SO2]. [SO1] demanded that [AP] give control of his right hand.

[SO1] gained control of [AP]'s right hand and [SO2] was able to fully place both [AP]'s left and right hands into handcuffs.

A search of [AP]’s person was conducted. A red coloured sling shot was located in [AP]’s right jacket side pocket.

[AP] was then escorted to the rear of the cruiser car.

The following is a summary of SO2’s narrative report:

On 19-05-26, shortly before 0208hrs, we were travelling north bound on Salter St. crossing Mountain Av. As we approached the intersection of St. John's and Salter we observed the 3 males on the south west corner of the intersection. 2 of the males ([AP] and [CW2]) appeared to point firearms at each other and were about to engage in a gun fight.

We stopped our cruiser car and engaged the males. [AP] and [CW3] were taken into custody. A slingshot was found on [AP]’s person. Please refer to [SO1]’s use of force report for details.

I spoke with [CW3] who was in the rear of our cruiser car. He advised that he was walking south on Salter when he saw [AP] and [CW2], both of whom he knows as casual acquaintances. [CW3] advised that he did see a hand gun and believed that [AP] had the gun. He advised that when he saw our cruiser car he began to walk away. [CW3] advised that [CW2] lived across the street and pointed to 378 Salter. [CW3] declined to provide a statement in regards to a firearm being pointed at him.

I then cautioned [AP] for assault with a weapon for pointing the slingshot at [CW3]. [AP] advised that he did not point anything at [CW3] and that [CW2] had in fact pointed a hand gun at him just as we arrived.

[AP] pointed out...where [CW2] lives. He advised that he was unsure if he wanted to proceed with charges against [CW2] and did not wish to provide a statement at this time.

Conclusion

This investigation must consider whether the actions of any or all of the police officers who were involved with AP at his residence 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:

- SO1 and SO2 were on-duty, lawfully placed and in lawful execution of their duties at all material times;
- AP was armed with a sling shot and was chasing CW2 in response to an earlier confrontation, where CW2 was in possession of a pellet gun;
- There was a confrontation between AP and CW2 on Salter Street that resulted in a call for service alleging two males were in possession of firearms and that a gun fight was imminent. This would be reasonably classified as a high priority call for service;
- SO1 and SO2 were on scene quickly and took AP and CW3 into custody;
- AP alleges he was repeatedly beaten and threatened by a number of police officers which resulted in him sustaining x3 broken ribs, broken dentures, x4 stitches and a black eye;

- AP's medical report from SOGH confirms that he sustained two fractured ribs and received x2 sutures to his face. There is no mention of broken dentures or a black eye;
- AP identified CW1 as an eye witness to the entire incident, specifically in relation to his allegations of police abuse and excessive force. CW1 denies seeing any excessive force or violence by police on AP.

Based on the various witness accounts, I am not satisfied that reasonable grounds exist to justify the laying of any criminal code or other statutory offence against any or all of the subject officers.

The IIU investigation is complete and this file is closed.

Final report prepared by:

Zane Tessler, civilian director
Independent Investigation Unit
November 29, 2021

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