



**IN THE MATTER OF AN INVESTIGATION INTO A SERIOUS INJURY
DURING AN ARREST IN WINNIPEG**

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

Civilian Director:	Roxanne M. Gagné
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Introduction

On September 23, 2023, the Winnipeg Police Service (WPS) notified the Independent Investigation Unit of Manitoba (IIU) of an incident.

The written notification disclosed the following information:

“On September 22, 2023, members of the Winnipeg Police Service received multiple reports of an erratic male, later identified as affected person (AP), wielding and waving around what appeared to be a hatchet, and having smashed a glass bus shack in the area of Portage Avenue and Parkdale Street.

At 5:34p.m, members of the Winnipeg Police Service located a male matching the description in the parking lot of (3300 block) Portage Avenue digging through a clothing donation box.

The male in question was observed to be leaning into the donation bin, with a hatchet near his right hand.

Attending units arrested AP after a brief use of force encounter, which was described as several knee strikes to the upper torso and a punch to the head as AP refused to comply with officer’s directions. (Use of Force Report Completed)

The hatchet was seized.

*AP was viewed by Sgt. * at WDS, where he complained of soreness to his ribs and was observed to have a small cut above his right eye. AP declined medical attention.*

When AP was conveyed to the Central Processing Unit, the paramedic indicated that AP was likely suffering from a broken rib, and directed offices to take AP for medical attention.

*AP was seen by Dr. * and released. (Doctor) indicated that the injury was likely a broken rib despite the results of the x-ray (no obvious break). The doctor noted that radiographs can miss rib fractures.”*

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.

IIU investigators obtained the following information from the WPS, among other items:

- Audio recordings of 911 calls related to incident
- CAD History of Incident
- Radio transmissions of involved WPS officers
- Arrest Report of WO1
- Emergency Medical Report for AP
- Narrative Report of WO2
- Notebook entries of WO2 and WO4
- Prisoner log sheet

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- Use of Force report of WO2

The civilian director designated one subject officer and four witness officers.

Facts and Circumstances

Canvass

On September 25, 2023, a neighbourhood canvass was conducted by IIU investigators. A video of the incident was located at store on Portage Avenue; however, the distance between the camera and the arrest was considerable and the fine details of the incident were not captured. No other video footage was found.

Civilian Witnesses (CW1-5)

CW1

On September 27, 2023, IIU investigators obtained a statement from CW1. She was driving west on Portage Avenue near Westwood Drive when she observed a male subject holding a hatchet walking east along the north side of the road. She called police. She did not see the male hit anything with the hatchet and did not see police interacting with him.

CW2

On October 20, 2023, IIU investigators obtained a statement from CW2. She and her husband (CW3) were shopping at a store on Portage Avenue, when she observed a male subject walking with a hatchet in his hand in the parking lot of the business. According to the witness, the male subject was "*walking with intent*" and appeared to be on some sort of intoxicant. CW2 stated the male placed the hatchet in a shopping cart, then took the cart to a fence behind a nearby restaurant, where he broke off a piece of wood. She saw the male at a clothing donation bin. He was approached by police who arrived. CW2 said she saw the male on the ground quite quickly and then was put into a police vehicle. She did not see how he came to be on the ground, nor did she see any strikes by police.

CW3

On October 20, 2023, IIU investigators obtained a statement from CW3. He and his wife saw a male holding a hatchet in a parking lot. CW3 observed the male with a shopping cart, into which he put the hatchet. CW3 believed the male was intoxicated on a substance. CW3 later saw the male went behind a restaurant and breaking wood off a fence. He then went to a nearby clothing donation bin. He and his wife were approximately 80 to 100 feet away, and he saw a number of police vehicles arrive. His wife called 911 and guided the police to where the male was located. Police arrived. CW3 saw three officers approach the male on foot, one from the south, one from the east and one from the west. One officer appeared to be saying something to the male. The male was not reacting to what the officer was saying.

CW3 was asked if the male was facing the officers or if his back was to them, and he replied, "*He was all over the place.*" He added that he believed the male was moving in a circle, looking in different directions. CW3 could not hear what the police were saying to the male. CW3 believed the male was holding the board from the fence in his right hand while police were approaching him. He stated that the 1 x 6 inch board was 2 1/2 to 3 feet long. The conversation between police and the male lasted a minute. CW3 took his eyes off the situation briefly, and when he looked back the male was on the ground. He could not see what was happening on the ground because of traffic going by on Portage. The struggle on the ground lasted two to three minutes, and CW3 said it looked like police were having a hard time with the male. The male was brought to his feet and put into the back of the police SUV. He was handcuffed behind his back at that time.

CW4

On October 11, 2023, IIU investigators obtained a statement from CW4. He was stopped at a red light at Cavalier Drive and Portage Avenue on September 22, 2023 at approximately 5 p.m., when he observed a male subject walking eastbound on the north side of Portage holding a medium-sized axe. The male swung the axe at a bus shelter and broke glass. CW4 called police. He did not see the police interact with the male, but added he received a call from a WPS officer about 45 minutes later explaining they had arrested a man who was on methamphetamine and had an axe.

CW5

On September 27, 2023, IIU investigators obtained a statement from CW5. She was driving southbound on Cavalier Drive and was stopped at the traffic light. She noticed a male walking eastbound on the north side of Portage Avenue holding an axe in his right hand and walking "*...like he was on a mission.*" The male swung the axe at a glass wall in a bus shelter and broke it with one swing. CW5 called police and drove off.

Witness Officers (WO1-4)

WO1

On November 23, 2023, IIU investigators obtained a statement from WO1. He and his partner, WO2, were dispatched to a call for service about a male (AP) with a hatchet. WO1 said he recalled there were other calls about the male perhaps having a second hatchet or axe and a piece of wood as possible weapons. Other officers attended as well. WO4 located the male climbing into a clothing recycling bin. WO4 pulled AP out of the bin and took him to the ground. AP landed on his front and scratched his face on the pavement. WO2 announced WPS and told the male to release his hands, which were under his body near his waistband. AP was yelling something back and not releasing his arms from under his body.

WO1 pinned one of AP's legs with WO3. WO1 and WO2 were on AP's upper left and right quadrants respectively. WO4 was holding AP's head. WO1 delivered two blows to AP's left side with his hand. WO1 was unsure if the blows were done with a fist or open-handed. He did not

see either SO or WO2 deliver any knee strikes. WO1 estimated the struggle lasted 15 to 20 seconds and ended when the male released his arms and was handcuffed. AP was taken to WO1's police vehicle. AP was arrested. AP complained of rib pain on his left side. He was later taken to hospital by WO1 and WO2.

WO2

On November 6, 2023, IIU investigators obtained a statement from WO2. He was working with WO1. They were dispatched to a call of a male (AP) swinging around a hatchet. The male was reported to have smashed a bus shelter on the north side of Portage Avenue and may have a second hatchet and a piece of wood as additional weapons. They arrived in the area with three other officers. WO4 found AP partially inside a clothing donation bin on the south side of Portage Avenue. All five officers approached the male on foot. AP was still partly inside the bin. WO2 could see a yellow hatchet was on AP's right side within arm's reach. WO4 pulled AP off the bin and forced him onto the ground. Officers announced they were police and commanded AP to give up his hands, which were under his body. AP responded by telling officers to get the f* off of him and refused to release his arms. WO2 stated he was unsure if the male had another weapon on him and was reaching for it. WO4 was at AP's head on his right upper side. SO was on his left upper side. WO3 and WO1 were at his legs. WO2 delivered one or two knee strikes to AP's upper body in order to get him to release his hands to be handcuffed. Prior to WO2 delivering knee strikes, he observed AP's left arm come out from under his body. After he delivered knee strikes, AP gave up his right arm and WO1 handcuffed him. AP was arrested. AP complained of left side rib pain but declined medical attention. AP was transferred to WPS headquarters (HQ), where the paramedic on duty directed that AP receive medical attention. AP was taken to Grace Hospital for treatment.

WO3

On December 14, 2023, IIU investigators obtained a statement from WO3. He was partnered with SO. They responded to a call of a male (AP) with a hatchet. WO4 located AP partially inside a clothing donation bin on the south side of Portage Avenue. He, WO2, and WO1 approached on foot. WO3 and SO drove up. WO4 pulled the male out of the bin onto the ground. AP landed on his face on the ground, pulling his arms under his body at the same time. WO3 pinned AP's lower legs. WO1 was pinning his upper legs. SO was on his upper left quadrant. He did not know where WO2 and WO4 were. Commands were given to AP to release his arms, that they were WPS, and to stop resisting. AP's arms eventually released and he was handcuffed and led to a police vehicle. WO3 estimated the struggle lasted between 30 seconds and one minute.

WO4

On October 27, 2023, IIU investigators obtained a statement from WO4. He heard a call about a male (AP) with a hatchet who was smashing things on Portage Avenue and assigned himself to the call, along with WO2, WO1, WO3 and SO.

They arrived in the area but were initially unable to locate the male. Then, WO4 located a male standing on an overturned shopping cart, partially inside a donation bin. He could see a hatchet

sitting on the bin beside where the male was situated, and he was concerned that if the male grabbed the hatchet the officers would be in a lethal force encounter. WO4 stated that he considered all use-of-force options (conductive energy weapon, pepper spray and baton) and dismissed each because they were not suitable in the circumstances. WO4 believed the best way to address the issue was to sneak up on the male, grab him and pull him away from the bin and hatchet. WO4 went up behind the male and grabbed his belt and pulled him off the shopping cart onto the ground. AP he fell on his front. They announced they were WPS. Once AP was on the ground, he pulled his arms under his body and would not release them to be handcuffed. WO4 saw some blood in the male's mouth and secured his head when they were on the ground so the male could not spit at them. WO4 was focused on AP's head but could see out of his peripheral vision that WO2 and SO were delivering knee strikes and punches to AP to release his arms. Commands were being given to AP at the same time by all involved officers. WO4 stated the struggle lasted less than 30 seconds. AP was handcuffed and put into a police vehicle. He was taken to hospital by WO2 and WO1, where it was determined that he suffered a possible rib fracture.

Subject Officer (SO)

SO declined to be interviewed; however, he provided his notes. SO indicated a complaint had been received regarding a male with a hatchet "... *randomly swinging it around.*" He and four other WPS officers located AP in a clothing donation bin. SO saw the hatchet beside him. AP was grabbed and pulled to the ground to limit his ability to grab the weapon. Once on the ground, the officers announced that they were the police. AP pulled his arms under his body. SO delivered one or two blows to AP's head and one to two knee strikes to his left arm and shoulder area. SO wrote he was "*not sure if my knee strikes hit his arm/shoulder due to his flailing.*"

Other Evidence

911 Calls

The 911 calls indicate that several persons called about a male holding a hatchet and walking along the north side of Portage Avenue in Winnipeg. Two of the callers stated that the male smashed the glass on a bus shelter.

Use of Force Report

The Use of Force report, authored by WO2, stated that he and four other WPS officers were dispatched to a complaint of a male subject swinging around a hatchet and smashing glass on a bus shelter near 3300 Portage Avenue in Winnipeg. It stated that AP had his entire torso inside a clothing donation bin with only his legs visible. On the right-hand side of the donation bin a yellow hatchet was observed resting on the bin, where it was within reach of AP's right hand. Due to the hatchet being within reach, WO4 grabbed AP and pulled him out and onto the ground using the element of surprise to ensure that he did not have time to access the hatchet or any other weapons, as it was stated in the call history that he was armed with an additional axe as well as a piece of wood. AP fell to the ground. Police loudly stated, "Winnipeg Police, do not resist!" AP landed on the ground and tucked both of his hands underneath his body and stated

"Get the f* off me, leave me alone!" WO1 and WO3 applied shin pins to his legs to hold him in position and prevent him from creating enough space to access a weapon nearby or hidden on his person. At this time, officers feared AP could potentially still be armed with an axe and a piece of wood due to the information that was provided in the call history. Officers feared AP was attempting to access a weapon concealed somewhere on the front of his body, such as his waistband or a pocket.

SO attempted to utilize a shin pin technique on AP upper torso. AP was thrashing and flailing his body. SO delivered one to two punches to AP's face/head area followed by one to two knee strikes with the target being his upper left arm/shoulder area, while continuously giving verbal demands to "give us your arm!" Due to AP thrashing and flailing about, it is unknown if the knee strikes landed on the desired target. AP responded by removing his left arm from underneath his body and raising it up in attempts to cover his head. WO1 grabbed AP's left hand and forced it behind his back.

WO2 loudly stated "Give us your other arm!" to which AP showed no change in behaviour and kept his arm tightly clenched underneath his body. WO2 then delivered one to two knee strikes with the target being his upper right arm/shoulder area. WO2 was giving constant verbal demands to "Give up your arm!" to which AP released his right arm from underneath his body. WO1 took hold of AP's right arm and secured both of his arms in handcuffs behind his back.

Once AP was secured in handcuffs, he was rolled on to his side. AP was searched; however, no weapons were located. AP was then escorted to this a cruiser car where a more thorough search was conducted; again, no weapons were located.

Further, the report indicates that between 7:57 p.m. and 8:12 p.m., AP was transported to HQ. He was taken before the paramedic on site who medically assessed AP and advised that he was required to attend a hospital as he may have a broken rib. AP attempted to decline medical attention again; however, the paramedic advised that it was no longer his choice. AP was taken to Grace Hospital where he was treated by a doctor who advised that the X-rays were negative; however, he indicated that it is still likely that AP suffered a minor rib fracture. The doctor provided a medical clearance note.

Affected Person (AP)

AP is transient and lists his permanent address as the N'Dinawemak shelter located on the Disraeli Freeway in Winnipeg. IIU investigators attended this location on multiple occasions, but could not locate AP. IIU investigators asked the staff of the shelter to contact them; however, this was also unsuccessful. On November 22, 2023, a letter was prepared for AP and left at the shelter, asking that he call the IIU; however, no call was received.

No medical information was ever obtained during the investigation as AP was never located.

Applicable Law

Section 25 the Criminal Code of Canada is 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.

(3) Subject to subsections (4) and (5), a person is not justified for the purposes of subsection (1) in using force that is intended or is likely to cause death or grievous bodily harm unless the person believes on reasonable grounds that it is necessary for the self preservation of the person or the preservation of any one under that person's protection from death or grievous bodily harm.

(4) A peace officer, and every person lawfully assisting the peace officer, is justified in using force that is intended or is likely to cause death or grievous bodily harm to a person to be arrested, if

(a) the peace officer is proceeding lawfully to arrest, with or without warrant, the person to be arrested

(b) the offence for which the person is to be arrested is one for which that person may be arrested without warrant

(c) the person to be arrested takes flight to avoid arrest

(d) the peace officer or other person using the force believes on reasonable grounds that the force is necessary for the purpose of protecting the peace officer, the person lawfully assisting the peace officer or any other person from imminent or future death or grievous bodily harm

(e) the flight cannot be prevented by reasonable means in a less violent manner

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.

Conclusion

It is the IIU's mandate to consider whether the actions of the officer were reasonable.

The officers proceeded to lawfully arrest AP as they had received information that he had a hatchet or axe and a piece of wood, and he had smashed glass in a bus shelter. There were multiple 911 calls reporting the actions of AP. AP was located leaning into a clothing bin and

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officers attempted to arrest AP with an element of surprise, as they had observed a hatchet at arm's length of AP. Several verbal commands were given to AP. Officers feared that the AP may have other weapons. AP was resisting arrest and had his hands underneath him. Officers used force to handcuff and arrest AP. The struggle to effect the arrest of AP lasted approximately 30 seconds. Once it was determined AP may have suffered a serious injury, appropriate medical attention was provided.

Given the totality of the circumstances, the actions of all officers involved, including the subject officer, were reasonable. Therefore, no charges are recommended and the IIU investigation is now completed and closed.