

# ***FINAL REPORT: IIU concludes investigation into injuries to male related to arrest by WPS officers***

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On October 29, 2019, the Winnipeg Police Service (WPS) notified the Independent Investigation Unit of Manitoba (IIU) of an incident where a male sustained a broken arm during his arrest by WPS officers.

According to this notification, which read in part:

*“Between July 18, 2018 and August 8, 2018, three separate warrants of arrest issued for the affected person (AP). On October 29, 2019, at approximately 12:54 p.m., police in the north rear lane of William Avenue West, observed AP, in company with two other males, just west of Juba Street, acting in a suspicious manner. When questioned by officers, AP provided a number of false identities. Officers were able to confirm his identity through computer checks and a photo of AP on the system, which also revealed the existence of the three outstanding Warrants of Arrest. Officers advised AP of his arrest on the strength of the outstanding warrants and attempted to affect the arrest. At this time, AP became uncooperative and combative, which resulted in the application of use of force. AP was wrestled to the ground where officers administered knee strikes in order to gain compliance.*

*Due to his intoxicated state and violent behaviour, AP was conveyed to the Provincial Remand Centre (PRC) as a direct lock-up. During the course of the admission process, AP advised PRC staff that he might have broken his left arm during the course of his arrest. The arresting police unit subsequently transported AP to the Health Sciences Centre (HSC) where medical staff confirmed he had sustained a broken left humerus. The arm was placed in a cast and AP was medically cleared. He was conveyed to the PRC where he was detained”*

A broken humerus falls within the definition of serious injury found in IIU regulation 99/2015. Accordingly, the IIU is mandated to investigate the conduct of the WPS officers pursuant to the Police Services Act (PSA). IIU investigators were assigned to this investigation.

Information obtained by IIU investigators included:

- officers’ notes and reports
- call history
- certificates of failure to appear
- use of force report
- medical report relating to AP

The civilian director designated a WPS officer as the subject officer (SO). In addition, four WPS officers were designated as witness officers. IIU investigators interviewed AP and a medical

practitioner (PW). IIU investigators attempted to locate a civilian witness who was present at the time when AP was detained and arrested by WPS officers without success.

### **FACTS AND CIRCUMSTANCES:**

#### **AP:**

IIU investigators invested several months, between November 1, 2019 and June 12, 2020, attempting to locate AP and speak with him. When he was finally located on June 12, 2020, IIU investigators met with AP to interview him and obtained a consent for the release of medical information.

AP stated that the incident with WPS occurred at the rear of a William Avenue residence, where his friend resided. AP stated that he was going to see his friend and two WPS officers stopped him and were asking their names. AP stated that he was with his friend “*Mikey*,” last name unknown. AP knows “*Mikey*” from school.<sup>1</sup> AP stated that after the police asked his name, they then “roughed him up”. According to AP, one of the police officers pulled out a “*Taze Gun*,” but did not use it.

AP stated that he did provide the police with a false name, because he did not want to go back to jail. He knew he was “wanted” for breaching a recognizance order. AP stated that he did eventually provide his real name to the police. One police officer told him he was under arrest for a breach, grabbed his arm, started twisting it and pulled AP to the ground.

AP stated that he was “... *going to make a run for it, but he wasn't resisting.*” The police officers pulled AP to the ground by his arm and held him there until they handcuffed him. AP told the police officers that his arm was broken but they ignored him and took him to jail.

AP stated that the jail guards phoned the police and told them to come back and take him to the HSC.

#### **Medical Report and Physician's Opinion:**

AP provided authorization for IIU investigators to obtain his medical records pertaining to this matter. The attending physician writes that AP would not say how he received his injury. The attending physician documented AP's injury as:

*“Obliquely orientated fracture extending through the junction of the middle and distal thirds of the left humerus. There is angulation of the fracture in a convex dorsal direction. There is separation of the fracture on the order of 1cm at its cephalad aspect. No other significant bony, joint or soft tissue abnormalities are seen.”*

IIU investigators asked PW, the Chief Medical Examiner for Manitoba, if the above-described injury was consistent with someone falling on a hard surface during a struggle. PW replied:

*“The location and description of this fracture are typical for a fall onto an outstretched hand. If there was an additional load on the arm (such as the weight of a police officer) at the time of the fall, the odds of such a fracture would increase.”*

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<sup>1</sup> At the time of the incident, AP was 37 years old. His friend, “Mikey”, based on background information, was 56 years old. It would appear highly unlikely that the two would have met or spent time together in school when their respective ages are considered.

**Witness Officers:**

WO1 was partnered with SO and was originally designated as a subject officer himself. However, following a review of agency information received, including the use of force report prepared by SO, it was clear that WO1 could not be responsible for the injury sustained by AP. Accordingly, WO1 was re-designated as a witness officer.

WO1 stated he was working with SO on general patrol. While driving north bound on Juba Street, in the lane between William Avenue West and Elgin Avenue, WO1 observed three individuals who appeared to be looking into yards and other property.

WO1 drove towards the three males who continued to act in a suspicious manner. As soon as the three males became aware of the police presence, one of them immediately ran off. WO1 and SO exited their patrol car and approached the remaining two males. WO1 stated that he informed the males that they (the police) were speaking with them because of the suspicious behaviour and the area being a high crime area.

One male provided a valid name and identification. However, the second male (later identified as AP) provided a number of false names and false dates of birth. When AP provided his parents' address and it was checked on the police computer, his identity was revealed. At this time, the outstanding warrants for his arrest were also discovered. WO1 states that SO advised AP that he was under arrest. SO took hold of AP, who pulled away and started dragging SO. WO1 went to assist and drew out his conductive energy weapon (CEW). AP was swearing and yelling at the police officers and was physically resisting his arrest. WO1 ordered AP to stop resisting and to put his hands behind his back. AP refused to comply and said "*You're not taking away my freedom*" and "*f\*\*\* you, you are not arresting me*". WO1 holstered his CEW and grabbed hold of AP's right arm. The police officers eventually got AP to the ground. AP's right arm was under him and by his side near his waist. WO1 ordered AP to produce his right arm but he refused to do so. WO1 delivered two knee strikes to AP's right bicep. AP then produced his right arm and placed it behind his back. SO eventually gained control of AP's left arm and handcuffed him.

AP continued to swear at the police officers, stating that he would not be arrested and threatened suicide numerous times. AP then asked the police officers to give him a break and asked to be released. The police officers had to pull AP into the back of the police cruiser as he continued to resist, even when in handcuffs.

Due to AP's behavior, he was transported to PRC as a direct lockup. A PRC nurse asked AP if he had any injuries to which he responded "*no.*" However, prior to leaving PRC, WO1 and SO were advised that AP was now complaining of soreness to his left arm and he would have to be medically cleared before admitted to the jail. WO1 and SO transported AP to HSC. When it was learned that AP had sustained a broken arm, SO arranged to be relieved in order to attend police headquarters and prepare reports. WO2 then attended and relieved SO. WO1 states that when the attending doctor asked what happened, AP replied, "*I was rough and out of control.*"

WO2 relieved SO at HSC, after AP was transported for treatment for the injury to his left arm. WO2 had no notes on this incident. WO2 states that custody of AP was turned over to WO3 and WO4.

Neither WO3 nor WO4 were present during the arrest of AP. WO3 and WO4 both attended HSC to relieve WO1 and WO2 who were guarding AP. Prior to taking custody of AP, WO3 was

briefed by WO1. WO3 learned that WO1 and SO had arrested AP earlier that day and that AP had sustained a broken arm during his arrest. WO3 stated that he and WO4 were to return AP to PRC once final clearance from the attending doctor was received.

**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.

SO provided IIU investigators with his notes, use of force report and narrative reports. SO did not participate in an in-person interview during this investigation.

Specifically, SO's use of force report is summarized as follows:

*"This unit was conducting patrols in a fully marked Winnipeg Police cruiser in the Westin area while in full uniform... WO1 observed [three] males in the north rear lane of William Avenue West, west of Juba Street. One male continued to walk away and the two others stopped to speak with police. WO1 conducted computer checks on the two males. One male was negative wants and orders but WO1 advised that the [second] male had warrants. [First] male departed on foot and particulars are located in narrative.*

*The [second] male was identified as...AP. Writer took hold of the [AP's] left arm and advised him he was under arrest for the warrants and would explain in the cruiser car. [AP], who is a larger male, weighed approximately 225 lbs and had been drinking as he had a strong smell of liquor coming from his breath...[AP] yelled he 'wasn't going to get arrested' and started to pull away from the writer and walk away from the cruiser car. The writer placed the accused left arm in an arm lock behind his back. The writer supported the elbow with left hand and took hold of his left wrist with the writers' right hand. The writer continually told [AP] to stop resisting and directed him over the rear of the trunk lid in an effort to gain control by placing him in a position of disadvantage. WO1 assisted and removed his Conducted Energy Weapon (CEW) and instructed [AP] to give his arm. WO1 determined it was not an appropriate method due to close proximity to the writer. [AP] continued to fight by pulling and twisting his body in an attempt to get away from this unit. [AP] purposely slid off the trunk and leaned forward in a lunging motion in an attempt to pull his arm away from the writer. The writer continued to hold the left arm behind his back around the belt line but due to [AP's] weight and size, he pulled the writer with him into the wooden fence. [AP's] left arm became straight behind him as the writer was attempting to hold [AP]. The writer heard a noise while [AP's] momentum pulled us into that wooded fence. WO1 grabbed the right side of [AP] in an attempt to gain full control of the accused. This unit was continually telling the male to give his other arm and stop resisting. [AP] is taken to the ground behind the cruiser car. [AP] is released as he falls and once on the ground the writer grabbed his left arm again and placed it behind his back on his belt line awaiting the right arm. [AP] held his right arm under his body so the writer gave two knee strikes to the left hamstring area and WO1 gave two knee strikes to his right thigh area. The writer observed the right arm come free and grabbed it and placed it behind the back and hand cuffed [AP]. The accused continued to yell at this unit that 'he'll fight us and won't go to jail'. This unit assisted [AP] up and [AP] attempted to walk away from the cruiser car again. Unit escorted [AP] to the cruiser car by his arms while he was hand cuffed behind his back. At*

*the cruiser car [AP] refused to enter by placing his foot on the rocker panel and leaning back away from the cruiser car. The writer pushed [AP] head down and into the cruiser car where he slid inside but refused to pull his feet inside the cruiser car. WO1 pulled [AP] in from the passenger side of the cruiser car and we shut the cruiser car doors. This unit transported [AP] to PRC Direct Lock Up Violent/Intox due to his physical resistance and threats of violence... [AP] continued to tell this unit that he will fight when out. At PRC accused told nurse...that he had no injuries...”*

**Conclusion:**

The following facts and circumstances are established:

1. Both SO and WO1 were lawfully placed and in lawful execution of their duties at all times during contact with AP.
2. There were valid and lawful reasons for AP’s detention and subsequent arrest on the basis of his conduct, false names and outstanding warrants of arrest.
3. AP was properly informed of the reasons for his detention and arrest.
4. AP’s response to the lawful arrest was to refuse to comply, to attempt to leave and to physically resist his detention.
5. The police officers actions to take AP to the ground and gain control were not in the circumstances excessive or out of norm.
6. AP’s description of the police officers’ actions are not consistent with the physical evidence of his injured left arm, nor the medical findings related to the injury.
7. The broken left arm is consistent with a fall to ground onto an outstretched arm, likely increased with additional weight loads at the time of the fall.

In summary, this investigation has determined that due to an unfortunate series of events, leading to the takedown of AP and subsequent broken arm, there is nothing in the evidence gathered to support any contention that SO’s actions support the allegation that the force used was excessive and unnecessary. There are no grounds to justify any charges against the subject officer.

The IIU investigation is complete and this file is closed.

**Final report prepared by:**

Zane Tessler, civilian director  
Independent Investigation Unit  
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