IIU | INDEPENDENT INVESTIGATION UNIT OF MANITOBA

IN THE MATTER OF AN INVESTIGATION INTO A SERIOUS INJURY RELATED TO AN ARREST BY WPS

FINAL REPORT OF THE CIVILIAN DIRECTOR

OF THE INDEPENDENT INVESTIGATION UNIT

Acting Civilian Director:	Bruce M. Sychuk
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Introduction

On Feb. 24, 2024, the Winnipeg Police Service (WPS) notified the Independent Investigation Unit of Manitoba (IIU) of an incident.

The written notification disclosed the following information:

Written excerpt from the Part 7 notification received on Feb. 26, 2024:

On Feb 24, 2024 general patrol were in the area of Logan avenue when officers observed AP operating a stolen vehicle. Officers followed AP's vehicle with the assistance of Air1.
AP exited the vehicle in the area of McDermot avenue and fled on foot. Officers were able to locate AP which resulted in a brief use of force encounter while being taken into custody.
AP complained of soreness to his chest, left ribs, leg and back. AP indicated that he had a number of pre-existing injuries from a separate incident.
AP was transported to HSC.

As this matter concerned injuries sustained during an arrest, the IIU assumed responsibility for this investigation in accordance with Sec. 65(4) of The Police Services Act. IIU investigators were assigned to this investigation.

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

- notes, narratives and summaries from the officers
- video surveillance from Air1
- use-of-force report
- computer automated dispatch (CAD) and radio history
- medical reports

The civilian director designated two WPS officers as subject officers (SO1 and SO2) along with six WPS officers as witness officers (WO1 to WO6). The affected person (AP) also provided the IIU with a statement.

Facts and Circumstances

Scene Examination

There was no examination of the scene done by IIU investigators, and a canvass of the area for witnesses did not result in anything substantial.

Summary of Witness Interviews

Affected Person (AP)

IIU investigators interviewed AP on Feb. 28, 2024, and were provided the following information:

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AP acknowledged that he was aware that he was driving a stolen vehicle and that police vehicles, along with the police helicopter, were following him. AP confirmed that he got out of the stolen vehicle and went into the backyard of a residence. AP stated that he planned to hop the fence; however, he could not do so as a result of previous injuries. According to AP, his right leg was injured and his right arm was broken prior to this encounter with police.

AP stated that he stopped in the backyard and put his hands up. AP said that, roughly 10 seconds later, two officers arrived in the backyard and tackled him and told him to stop resisting. AP stated that once he went to the ground, he did not resist the officers. AP stated that his arms were near his forehead on the ground and not under his body at any point during arrest.

AP stated that more officers arrived and that they were striking him along with the first two officers. AP stated that he was kicked and punched in the face. AP stated that, near the conclusion of his arrest, an officer kneed him in his left upper back causing his ribs to break and his lung to collapse. AP confirmed that he did move his arm to the injured area at that point.

AP did not have any weapons on him at the time of arrest and was sober.

It should be noted that based on the Air1 surveillance, AP did not just wait to be arrested by police officers. From reviewing the surveillance, AP attempted to run away from officers once they entered the backyard. Further, AP did not appear to be hindered by the prior injuries as he fled the stolen vehicle and ran into the backyard.

Witness Officers

Witness Officer 1 (WO1)

IIU investigators interviewed WO1 on April 18, 2024, and were provided the following information:

WO1 was partnered with SO2 on the date of the incident. They were assigned to follow the stolen vehicle being driven by AP, with the assistance of Air1. WO1 stated that the background call information suggested that AP may have been involved in a firearms call earlier that evening.

WO1 and SO2 came upon the stolen vehicle and proceeded to chase AP on foot. SO2 went to the front of the house, while WO1 went to the rear. WO1 noted that another officer joined her at the rear of the house, but did not recall the officer's name.

WO1 said that once she got to the rear of the house, she could hear commands being given to get on the ground and stop resisting. WO1 could not observe anything as the fence at the rear of the house was impeding her view.

WO1 did not see the arrest. WO1 escorted AP to the hospital for treatment. WO1 did not talk to SO2 about the incident.

Witness Officer 2 (WO2)

IIU investigators interviewed WO2 on April 18, 2024, and were provided the following information:

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WO2 was partnered with WO3 in relation to this incident. When they arrived on scene, WO2 and WO3 went to the rear of the residence to assist; however, they ran into a large fence that impeded their ability to assist.

WO2 could hear yelling in the backyard but could not observe anything. WO2 scaled the back fence at which point he observed AP had already been detained in handcuffs.

WO2 and WO3 took custody of AP and formally arrested him. AP was complaining of injuries in relation to the current arrest as well as advising WO2 of prior injuries.

Witness Officer 3 (WO3)

IIU investigators interviewed WO3 on April 18, 2024, and were provided the following information:

WO3 confirmed that he was partnered with WO2. WO3 recalled that they were assigned to follow a stolen vehicle and that the vehicle may have been involved in a firearms call from earlier in the day.

WO3 recalled that Air1 informed them of the whereabouts of AP. WO3 and WO2 left their vehicle and went to the rear of the residence. WO3 recalled a very tall fence at the rear of the residence, which he attempted to break through without success. As a result, WO3 scaled the fence and observed AP lying on the ground. Officers were handcuffing AP and one of the officers had his knee on AP to pin the prisoner. WO3 did not observe any use of force besides the knee pin.

WO3 confirmed that he and WO2 took custody of AP and formally arrested him. WO3 confirmed that AP did make a comment about current injuries along with noting some previous injuries. AP did not tell WO3 how the current injuries occurred.

Witness Officer 4 (WO4)

IIU investigators interviewed WO4 on May 24, 2024, and were provided the following information:

WO4 was part of the service call in relation to the stolen vehicle. WO4 ran into the back alley to ensure AP did not escape the backyard after leaving the stolen vehicle. WO4 recalls hearing different voices in the backyard giving commands to stop resisting and get on the ground. WO4 could not see into the backyard due to a large fence.

WO4 was able to force open the back gate and observed AP already arrested and being taken away. WO4 saw SO1 and SO2 in the backyard, but did not speak to them about the incident.

Witness Officer 5 (WO5)

IIU investigators interviewed WO5 on April 26, 2024, and were provided the following information:

WO5 was partnered with SO1 that evening. WO5 stated that he ran to the back alley in an attempt to cut off AP while SO1 chased directly after AP. WO5 could hear someone yelling to stop resisting but could not see what was happening due to the large fence.

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WO5 scaled the fence and observed AP lying face down on the ground with handcuffs already in place. WO5 recognized SO2 in the backyard.

Witness Officer 6 (WO6)

IIU investigators interviewed WO6 on April 3, 2024, and were provided the following information:

WO6 was operating Air1 on the day of the incident. WO6 confirmed that he was assisting in tracking the stolen vehicle. WO6 relayed to officers that AP fled on foot and entered the backyard of a residence. WO6 recalled mention of a gun being involved in the matter, but did not recall how that information came to light.

WO6 recalled observing two officers enter the backyard and engage in a struggle with AP. WO6 observed the interaction through an infrared camera and, therefore, could not make out much detail with respect to the interaction between AP and the officers.

Subject Officers

Subject Officer 1 (SO1)

In accordance with his rights, SO1 declined to be interviewed by IIU. SO1 did provide his notes, which provided the following information:

SO1 saw SO2 grab AP and trip him to the ground as AP attempted to flee the backyard. AP went to the ground and pulled his hands under his body. SO1 and SO2 were trying to pull AP's arms out, while telling him to give his hands and stop resisting. SO1 was concerned about a potential weapon as AP was wearing a bulky jacket that could hide a weapon.

AP continued to resist providing his hands and was thrashing his legs. SO1 administered three to four punches to AP's upper left back while telling him to stop resisting and to give his hands. AP continued to try and escape SO1 and SO2's control by pushing his chest off the ground. SO1 administered knee strikes to AP's left torso and left arm. Soon after, AP co-operated and was handcuffed.

Subject Officer 2 (SO2)

In accordance with his rights, SO2 declined to be interviewed by IIU. SO2 did provide his notes and narrative, which provided the following information:

SO2 recalls that Air1 informed the officers that AP had left the vehicle and was fleeing on foot. SO2 reached the residence which Air1 had informed the officers AP would have entered. SO2 opened the gate and observed AP facing him. AP attempted to turn around and run away from SO2.

SO2 gained ground on AP and wrapped his arms around AP and then tripped AP to the ground. SO2 recalls that SO1 assisted in the arrest and that AP put his hands under body resisting arrest. SO1 yelled at AP to give his hands while SO2 was yelling to stop resisting. AP was not compliant so SO2 punched AP three to five times in the right ribs and kneed AP two to three times in the right rib area. AP finally released his arms for handcuffs.

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Other Evidence

Medical Evidence

Medical reports confirmed that AP had suffered broken ribs on his left side and a collapsed lung as a result of the interaction with WPS officers. Notation was also made with respect to his prior leg and arm injury.

Use-of-Force Report

In reviewing the use-of-force report, it appears for the most part to be consistent with the information provided by SO1 and SO2 in their notes and narrative. In comparison to the Air1 video, it would seem that very little if any time lapsed between verbal directions to AP and the use of force by SO1 and SO2.

Air1 Video

As mentioned prior in the report, AP attempted to flee from the officers once located in the backyard. Further, it did not appear on the video that AP's previous injuries were affecting his ability to flee from the vehicle while running into the backyard of the residence.

Despite efforts to enhance the Air1 video, it is not clear if AP did or did not place his hands under his body. What is clear is that the subject officers' use of force was almost immediate upon AP being taken to ground.

Applicable Law

Criminal Code of Canada

All relevant sections of the Criminal Code of Canada were considered with respect to this incident. Sections 25(1), 25(3) and 25(4) of the Criminal Code of Canada have been emphasized here for consideration:

> *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.*

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(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

Conclusion

Following due consideration of all the circumstances of this matter including the relevant legal authorities, I am satisfied that the use of force by the subject officers in relation to the affected person were reasonable in the circumstances. Therefore, no charges are recommended, and the IIU investigation is now completed and closed.

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