

FINAL REPORT: IIU concludes investigation into serious injuries related to WPS arrest in Winnipeg

On January 24, 2016, at 12:30 p.m., the Independent Investigation Unit of Manitoba (IIU) was formally notified of an incident involving Winnipeg Police Service (WPS) officers, which occurred the previous day at a rooming house on Ross Avenue in Winnipeg. During this incident, police used force to restrain and control an individual, resulting in a serious injury as defined by IIU regulation 100/2015.

As this notification involved a serious injury and an admission to hospital, IIU assumed responsibility for the investigation in accordance with section 65(1) of the *Police Services Act* (PSA). The primary issue for this investigation was whether members of the WPS subjected the affected person (AP) to unnecessary and excessive force from their initial interaction with him, through arrest, and while in the care and custody of the police service. A team of IIU investigators was assigned and immediately deployed.

The following facts were determined:

At approximately 3:00 p.m. on January 23, 2016, WPS officers responded to a call that a male, wearing a black ski mask and armed with a firearm, was observed on the main floor of a rooming house on Ross Avenue.

Seven WPS officers responded to this call and arrived on scene. Three WPS officers entered the rooming house. Immediately upon entering the common hallway, officers observed two persons at the bottom of a stairwell. The entryway is very narrow, allowing only single file passage. The stairs are shoulder width so only one person can go up or down at a time.

An individual (AP) wearing a black wool balaclava with a skull pattern was seated on the third or fourth step, facing the officers, while a second individual (Civilian Witness - CW1) was on a lower step with his back to the officers. Hanging from a strap over AP's shoulder was what appeared to be a sawed-off rifle with a scope attached (later identified as a Remington Model 700, black in colour with a scope attached. The serial number was scratched out and "666" drawn in white ink under the trigger guard. The barrel was sawed off). It also appeared that CW1 was injecting a syringe into AP's left forearm. The WPS officers were approximately 1.5 meters from AP when they first entered the rooming house.

Two WPS officers (Subject Officers – SO1 and SO2) each had a service pistol drawn and pointed at AP, while a third officer (SO3) had his service shotgun also pointed at AP. The three officers repeatedly yelled commands at AP to the effect of “hands up, don’t move!”, “give me your hands, show me your hands” and “if you touch the rifle, you will be shot.” CW1 immediately complied but AP put his left hand on his head while his right hand hovered at shoulder height, inches from the stock of the rifle. The WPS officers believed the rifle to be real and AP’s hands were hovering over it.

When AP did not comply with repeated commands to raise both hands, SO1 holstered his pistol and approached closer while the other two officers maintained cover. SO1 first moved CW1 to an entryway, where other WPS officers (Witness Officers – WO1 and WO2) took him under control. SO1 made a conscious decision that either he had to go “hands on” with AP or he may “get shot.” SO1 then grabbed AP by one wrist and the back of the neck and pulled him forward, trying to force him to the floor.

The two struggled on the narrow stairway and SO1 lost his balance but succeeded in getting AP face down on the floor. However, the rifle was under AP’s chest and his hands were free. SO1 drove both his knees into AP’s back to pin him down, while grabbing AP by his left wrist and trying to pull it behind his back. SO3, still holding the shotgun in his hands, pinned AP’s left shoulder with his knee while SO2 maintained watch with his pistol pointed at AP. AP tried to bite SO1’s hand, resulting in SO1 punching AP and yelling at him to stop resisting. SO1 pulled AP’s left arm behind his back and applied the handcuff. He ordered AP to put his right hand behind his back but AP tensed up and kept his right hand under his right shoulder, near the stock and trigger area of the rifle. SO2 punched AP two or three times in the side of his upper body. AP continued to struggle, trying to free his left arm while keeping his right hand under his body.

SO2 holstered his pistol and drew out his Taser™. He ordered AP to stop struggling and to put his hands behind his back or he would be “tasered.” AP did not comply with this request. SO3 used a two-second stun to the back of AP’s shoulder. SO1 continued to pull at the right hand under AP’s chest. AP began to “flail his upper body” and then struck his head on the floor. AP continued struggling and kept his right hand under his body.

SO2 delivered another stun to the back of AP’s shoulder while SO2 punched AP two or three times in the side of the face. At this point AP gave up, allowing SO1 to pull the right arm back and complete the handcuffing.

The rifle had come free of the sling during this struggle. WO2 pulled the rifle from under AP’s upper body and “made it safe,” finding it to be unloaded. AP was formally arrested by SO1 and transported to the Public Safety Building (PSB). The entire incident from police arrival to arrest and detention was two minutes in duration.

En route to PSB, AP was verbally abusive toward officers and refused any medical attention.

AP was kept under observation while awaiting interviews and processing by WPS detectives. He repeatedly demanded a shot of methamphetamine (meth). During a routine check, SO1 and SO2 noticed that AP’s breathing seemed labored. Despite declining medical attention again, he was

taken to Health Sciences Centre (HSC). He stated during the drive that he was fine and only needed his shot of meth because the arrival of officers had interrupted his injection.

At HSC, AP was secured in a hospital bed and sedated due to his continued belligerence. Following a series of examinations, including two CT scans, AP was diagnosed with a fractured ninth rib and a partially collapsed lung. He was subsequently admitted to hospital.

The IIU civilian director designated each of the three officers who entered the rooming house and had direct interaction with AP as subject officers. Under *The Police Services Act*, subject officers are not compelled to provide their notes to IIU investigators, nor to attend an interview with them. In this matter, SO1 did voluntarily provide his notes (SO2 and SO3 did not make notes). Subject officers did participate in an interview, reading from their previously prepared narrative reports and agreeing to answer a series of clarifying questions.

Four other WPS officers were designated by the IIU civilian director as witness officers (referenced as WO1, WO2, WO3 and WO4 respectively).

Additionally, the IIU investigators interviewed AP and three other civilian witnesses. IIU received and reviewed the WPS investigative file, WPS radio logs, prisoner logs and file materials, medical records relating to AP and an expert report on the operation of the Taser.

The relevant issue in this matter is whether, at any time, the subject officers applied excessive or unnecessary force to AP, whether at the time of his arrest or while in the care and custody of the police service.

A police officer is entitled to arrest a person he finds committing, or has reasonable grounds to believe has committed, an indictable offence. Police can also arrest anyone to prevent a breach of the public peace.

Furthermore, pursuant to section 25 of the *Criminal Code of Canada*, it provides that:

(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, 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.

(2) Where a person is required or authorized by law to execute a process or to carry out a sentence, that person or any person who assists him is, if that person acts in good faith, justified in executing the process or in carrying out the sentence notwithstanding that the

process or sentence is defective or that it was issued or imposed without jurisdiction or in excess of jurisdiction.

(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; and*
- (e) the flight cannot be prevented by reasonable means in a less violent manner.*

(5) A peace officer is justified in using force that is intended or is likely to cause death or grievous bodily harm against an inmate who is escaping from a penitentiary within the meaning of subsection 2(1) of the Corrections and Conditional Release Act, if

- (a) the peace officer believes on reasonable grounds that any of the inmates of the penitentiary poses a threat of death or grievous bodily harm to the peace officer or any other person; and*
- (b) the escape cannot be prevented by reasonable means in a less violent manner.*

That requirement or authorization extends from initial contact between the police and individual through arrest, transport and custody.

Any force in excess of what is necessary is not justified and can constitute an assault.

Section 265 (1)(a) states:

265 (1) A person commits an assault when

- (a) without the consent of another person, he applies force intentionally to that other person, directly or indirectly*

AP's injuries constitute bodily harm under the *Criminal Code of Canada*.

Following a detailed review of this thorough investigation, the following factors are critical to the analysis of whether the subject officers applied excessive or unnecessary force to AP:

- WPS officers, responding to an emergency call and dispatch came into direct contact with a male wearing a black balaclava and carrying a sawed-off rifle (AP);
- AP was seated on a stairway, 1.5 metres from the WPS officers;
- AP was likely under the influence of some drug, given he was being injected by a syringe on WPS arrival;
- The sawed-off rifle was on a sling around AP's shoulder and dangling on his upper chest;
- The area of the rooming house from the entrance way to the stairway was a small, confined location;
- A second civilian was in close proximity to both police and AP;
- AP was not complying with orders to raise his hands and submit;
- Despite AP's lack of complaint, when he was demonstrating health issues while in police custody, he was assessed and treated at hospital at the earliest opportunity.

The subject officers applied force to AP to disarm him, to prevent the use of the firearm slung over his shoulder, to prevent any harm to the second civilian, to prevent harm to themselves and to prevent significant harm to AP. The subject officers employed all means available to disarm and disable an armed individual and defuse a potentially serious and deadly situation without resorting to the use of lethal force. In my opinion, the subject officers demonstrated calculated, crucial and commendable actions to avoid the necessity of resorting to lethal force. While AP suffered a serious injury through the application of force, I am satisfied that force used was reasonable and necessary in the circumstances for the purposes stated. In the end, more serious physical harm and the potential for loss of life was completely avoided by the actions of the subject officers.

There are no grounds to justify any charges against any of the subject officers.

Accordingly, IIU has completed its investigation and this matter is now closed.

Final report prepared by:

Zane Tessler, civilian director
Independent Investigation Unit
September 26, 2016