

FINAL REPORT: IIU concludes investigation into injury of youth during arrest

On September 2, 2017, at 7:44 a.m., Winnipeg Police Service (WPS) notified the Independent Investigation Unit (IIU) about an incident that occurred that same day at approximately 12:40 a.m. According to this notification, at approximately 12:10 AM, WPS received a call reporting that a Chevrolet Cruze had just been stolen from the area of Magnus Avenue and Charles Street in Winnipeg. WPS members were dispatched to the area to investigate, as several other calls were received in relation to this vehicle being driven erratically in the area and possibly being involved in a hit and run involving a parked vehicle. On arrival, WPS members observed the Cruze still being driven erratically. The Cruze came to a stop on Charles Street near Magnus Avenue, at which time the officers exited their police vehicles and approached. A female youth (later identified as the affected person – AP) fled from the vehicle. A WPS officer shouted “Winnipeg Police” and ordered AP to stop. She refused to comply with his request and a foot pursuit ensued. During the foot pursuit, that same WPS officer pushed AP from behind, causing her to fall to the ground. Once on the ground, she was handcuffed and then placed under arrest. AP was subsequently conveyed to the Division 13 Station on Hartford Avenue. At approximately 1:30 a.m., AP complained of a sore shoulder and was conveyed to Children's Hospital for examination. She was treated for a fractured left clavicle and was provided a sling and pain medication. She was released from hospital and then conveyed to the Manitoba Youth Centre.

Although this injury does not meet the definition of a serious injury according to Independent Investigations regulation 99/2015, the IIU civilian director determined it to be in the public interest for an independent investigation to determine whether a member of WPS subjected AP to unnecessary and excessive force. A team of IIU investigators was assigned to this matter.

The IIU civilian director designated the WPS officer who chased, pushed and arrested AP as the subject officer (SO) and 12 WPS officers as witness officers (WO1 through WO12). Of the 12 witness officers designated, only three had relevant evidence relating to the matter and issue at hand. That evidence will be reviewed in this report. AP cooperated with IIU investigators and participated in an interview.

A neighbourhood canvass of the arrest area on Charles Street was conducted. No witnesses to the arrest of AP were found. IIU investigators did identify six potential civilian witnesses (CW1-CW6), but two did not observe the interaction between SO and AP and two others have never been located.

IIU investigators also received and reviewed:

- file package from WPS including witness officers' notes, reports, narratives, call histories, and radio transmissions;
- copy of SO's notebook and use of force report;
- medical record concerning AP.

As outlined under *The Police Services Act (PSA)*, a subject officer cannot be compelled to provide his notes to IIU investigators or to attend an interview with them. In this matter, SO provided his notebook and use of force report to IIU investigators but declined to be interviewed.

The following facts and circumstances were determined:

On September 2, 2017 at approximately 12:10 a.m., AP, a 14 year old female, had been the passenger in a stolen vehicle, a Chevrolet Cruze, that was stopped by WPS officers on Charles Street between Manitoba Avenue and Magnus Avenue. AP fled the scene of the traffic stop and was pursued and pushed to the ground by SO. AP fell on her left shoulder and, as a result, sustained a broken left clavicle. She was escorted to Children's Hospital in Winnipeg for medical treatment and then conveyed to the Manitoba Youth Centre (MYC).

Affected Person

AP was a ward of Child and Family Services. IIU investigators met with her social worker and received full permission to interview AP. AP said that she had been a passenger in a stolen vehicle with two other youths--CW1 and CW2--when the police started to pursue them. AP was seated in the back seat of the car, with CW1 in the front passenger seat and CW2 the driver. AP said their car came to a stop on Charles Street between Manitoba Avenue and Magnus Avenue because the tire deflated from hitting a curb. AP jumped out of the car and started to run. She ran a very short distance when she was tackled by a police officer. When asked how she was tackled, AP said, "... he kinda just came from behind and wrapped his arms around me and fell." As soon as she struck the ground, AP said she felt a pain in her shoulder.

AP said she did not hear the police say anything to her prior to being tackled. She was unable to describe the officer who had contact with her, but did remember he told her she was being arrested after she was on the ground and handcuffed. AP said she had consumed liquor that night but was not drunk.

Medical reports received from the Health Science Center confirmed that AP had sustained a broken left clavicle

Civilian Witnesses

CW1, a female youth, was interviewed at the Manitoba Youth Centre. CW1 had been in the stolen Cruze with AP and CW2 when the police stopped them on Charles Street. According to CW1, AP attempted to run from the car after it was stopped. A police officer grabbed the sleeve

of AP's sweater and "... whipped her to the ground." This occurred approximately 10 feet from the stolen vehicle, on the roadway, and CW1 said she did not hear the police officer say anything to AP prior to grabbing her.

CW2, a male youth, was also interviewed. CW2 stated he was driving the stolen Cruze on Charles Street between Magnus Avenue and Manitoba Avenue. AP was seated in the back seat of the car when they were stopped by police. CW2 claimed the police threw him on the ground and started beating him with a baton. He said AP did not run, but was instead arrested by the police and thrown on the hood of a police vehicle where she was handcuffed.

Witness Officers

WO1, a police dog service handler with WPS, was interviewed. WO1 said he was alone in his own police vehicle when he was dispatched at 12:30 a.m. to a complaint of a suspicious vehicle in the area of Magnus Avenue and Charles Street.

On arrival, WO1 observed a silver car driving north on Charles Street near Manitoba Avenue. The vehicle was being operated by a very young-looking male and had considerable front end damage, leading the officer to believe it was likely a stolen vehicle. WO1 followed the silver vehicle, without emergency equipment activated, as it drove west on Magnus Avenue, south on Aikens Street and east in a back lane. It stopped on Charles Street, at which point the officer activated the emergency lights on his police vehicle. WO1 noted two other police vehicles behind him, one operated by WO2, and another vehicle occupied by WO3 and SO. WO1 stopped and exited his police vehicle. He approached the driver's side of the silver car and, together with WO2, took the driver of the vehicle, CW2, into custody. WO1 stated that WO3 and SO went to the passenger side of the stopped car. WO3 arrested a female who was in the front passenger seat, while another female occupant from the back of the car tried to run off. WO1 heard SO yell, "*Stop! Police! Get on the ground,*" and saw him reaching out towards her. WO1 then lost sight of them. He was unsure if he lost sight of them because they fell or because they ran out of his field of vision. WO1 did not hear any other cries or yelling, and later saw the same female, in handcuffs, being escorted to a police vehicle.

WO2 responded to a complaint of a possible stolen vehicle in the area of Charles Street and Burrows Avenue. He was alone in his police vehicle and encountered a car with considerable front end damage. It was being followed by other police units, so WO2 turned to follow as well. WO2 said that none of the police vehicles following the stolen vehicle had emergency equipment activated at the time. They followed the stolen and damaged car to Charles Street between Magnus Avenue and Manitoba Avenue, where it stopped. WO2 said he and WO1 exited their police vehicles and approached the driver's side of the stolen vehicle, and arrested a male youth. WO2 stated he was aware there were other persons in this car. They had tried to run off from the vehicle but were apprehended by other officers at the scene. WO2 did not see AP's arrest, nor did he see SO have any physical contact with anyone that night.

WO3 stated that he and his partner, SO, were dispatched at 12:35 a.m. to a complaint of a possible stolen vehicle in the area of Charles Street and Burrows Avenue. The suspect vehicle was described as a small grey car.

Upon arriving in the area, WO3 observed a small grey car driving north on Charles Street. The car had considerable front end damage and he followed it. The grey car then collided with a parked vehicle and drove slowly west on Magnus Avenue to Aikens Street, where it turned into a back alley. WO3 stated he was the second police vehicle following the grey car, with WO1 in the lead. WO3 said he did not activate his emergency equipment at this time and could not recall if WO1 had his emergency lights activated.

As the grey car reached Charles Street it stopped, and WO3 stated three occupants got out of the car and appeared ready to flee. WO1 went to the driver's side of the vehicle and dealt with the male driver, while WO3 and SO approached two female subjects who were on the passenger side of the car. WO3 stated that the female in the front seat of the car--CW1--was commanded to get on the ground and did so. AP, who was in the back seat, ran off across Charles Street and was pursued by SO, who WO3 said called out, "Winnipeg Police! Get on the ground!" WO3 saw SO reach out for AP as she ran, then saw her fall to the ground where she was handcuffed. WO3 did not see how AP ended up falling on the ground but, after the incident, SO told him he had pushed her down.

Subject Officer

SO supplied IIU investigators with a copy of his notebook and a WPS Use of Force Summary Report to account for his actions in this arrest. He declined to be interviewed.

In his use of force report, SO wrote:

On 17/09/02 at approximately 00:39 hrs, the writer was working...with "WO3" in general patrol capacity in full uniform (officer presence). This crew, along with other marked police units were in the area of Magnus and Borrowes [sic] for the report of a silver car driving erratically and thought to be stolen.

This unit observed the silver vehicle baring [sic] Manitoba plate, a grey 4 door 2015 Chevrolet Cruze. The vehicle travelled north bound Charles St, striking an unrelated civilian vehicle and turned west bound on Magnus Av, then south bound Aikens St, making a quick east bound turn in the south back lane of Magnus Av.

Officers caught up to the AM vehicle and activated full emergency equipment. As the writer exited the cruiser car and approached the subject vehicle, the rear passenger was exiting the vehicle. The writer shouted, "Winnipeg police get on the ground." (verbal direction)

A female, later id's as "AP" began to flee south bound (active resistance) from the vehicle to which the writer engaged in a very brief foot pursuit instantly catching up to "AP" and pushing her from behind (hard empty hand).

"AP" stumbled forward, landing on her left shoulder area on the pavement. The writer hand cuffed "AP" without further incident and she was later placed in a near by [sic] cruiser car.

Issues, Assessment and Conclusions

The relevant issue in this matter is whether, at any time, SO subjected AP to unnecessary and excessive force in the course of apprehending and arresting her.

Section 25 of the PSA provides that:

The duties of a police officer include:

- (a) preserving the public peace;*
- (b) preventing crime and offences against the laws in force in the municipality;*
- (c) assisting victims of crime;*
- (d) apprehending criminals and others who may lawfully be taken into custody;*
- (e) executing warrants that are to be executed by peace officers, and performing related duties;*
- (f) laying charges and participating in prosecutions;*
- (g) enforcing municipal by-laws; and*
- (h) performing other duties assigned by the police chief.*

Section 25 (1) of the Criminal Code of Canada provides that:

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.

Any force that is in excess of that which is necessary in the circumstances is not justified and may constitute an assault in law.

Section 265 (1) (a) states:

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 injury constitutes bodily harm under the Criminal Code of Canada.

Effectively, the question is whether SO's actions were reasonable and justified in the circumstances. Reasonableness of an officer's use of force must be assessed in regards to the

circumstances at the time the force was used, particularly when considered in light of the dangerous and demanding work and the need to react quickly to emergencies.

Police may be required to use force and various levels of interventions in their law enforcement role. While the authorizations outlined in Section 25 of the Criminal Code of Canada established protections from liability for a police officer who, in the course of enforcing the law, finds it necessary to use force, the particular facts and circumstances, training and assessments must be appropriately considered to determine whether that use, the method(s) employed and the degree were justified.

I am satisfied that SO was lawfully placed as a peace officer at the time he spotted the stolen vehicle, in which AP was a passenger, come to a stop. Furthermore, SO was in the lawful execution of his duties when he attempted to detain and then chase the fleeing AP on foot. I am satisfied that AP was running to evade apprehension by SO. I am satisfied that SO had a clear duty under the Criminal Code and common law to take all necessary steps to apprehend AP. I am satisfied SO was in the lawful execution of his duties when he pushed AP to assist in apprehending and arresting her. I am also satisfied that, in these circumstances, SO's actions were reasonable and appropriate.

In this investigation, the IIU mandate was to determine whether consequences should flow from SO's actions. On careful review of the available evidence and material facts obtained in this investigation and in consideration of the applicable law, I am not satisfied that there are reasonable grounds to believe that SO exceeded the ambit of justifiable use of force in apprehending AP. Accordingly, no charges will issue against SO.

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

Final report prepared by:

Zane Tessler, civilian director
Independent Investigation Unit
March 06, 2018

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