

FINAL REPORT: IIU concludes investigation into alleged assault by two officers

On April 20, 2016, at 4:06 p.m., Winnipeg Police Service (WPS) notified the Independent Investigation Unit (IIU) about an incident that occurred on October 17, 2015, shortly after 1:00 a.m. According to this notification, the affected person (AP) alleged that she was assaulted by two male WPS officers while in the alley behind her residence. She alleged that one of the officers stomped on her knee and the other punched her in the right side of her face. AP was subsequently detained at the Main Street Project (MSP) pursuant to the *Intoxicated Persons Detention Act*. Following her release from MSP, she attended hospital for treatment as she believed her leg was broken. AP alleges she sustained three torn ligaments in her knee as a result of her encounter with police.

On November 16, 2015, AP filed a complaint with the Law Enforcement Review Agency (LERA) and an investigation began into the alleged misconduct by WPS officers. On April 19, 2016, this incident came to the attention of WPS, which led to the notification to IIU on April 20. On April 22, the civilian director advised WPS that as AP did not suffer a serious injury as defined in IIU regulation 99/2015 and, based on the circumstances disclosed in the notification, IIU would monitor this investigation subject to a review of the WPS file materials relevant to this matter. On April 27, the civilian director advised WPS that the IIU had reviewed the file materials and it was determined it was in the public interest for an independent investigation to be conducted by IIU. The agency assumed jurisdiction over this matter pursuant to section 75(1) of *The Police Services Act (PSA)*. A team of IIU investigators was assigned to this matter.

The IIU civilian director designated two WPS officers as subject officers (SO1 and SO2) and eight WPS officers as witness officers (WO1 through WO8). AP cooperated with IIU investigators and participated in an interview. IIU investigators also interviewed nine civilian witnesses (CW1 through CW9). In March 2017, following a review of the IIU investigative file, it was determined that expert medical opinions would be sought regarding the injuries sustained by AP. Three medical doctors (PW1 through PW3) were contacted and eventually participated in interviews with IIU investigators on May 16, June 26 and June 28 respectively.

IIU investigators also received and reviewed:

- a file package from WPS Professional Standards Unit (PSU) including witness officers' notes, reports, prisoner logs and call histories;
- WPS use of force report, arrest report and notes from SO1;
- video and photographs of AP's injuries;
- photographs of the scene;
- LERA file materials;
- MSP Intoxicated Persons Detention Act (IPDA) Intake Assessment Form

- medical reports respecting AP.

As outlined under the PSA, a subject officer cannot be compelled to provide his notes to IIU investigators or to attend an interview with them. In this matter, SO1 agreed to provide his prepared use of force report, arrest report and notes to IIU investigators. SO2 did not provide any notes or reports to IIU investigators. Neither SO1 nor SO2 agreed to participate in an interview with IIU investigators.

Summary of facts:

The following facts and circumstances were determined (with assistance from witnesses who provided relevant information in this investigation):

On Oct. 16, 2015, at 11:16 p.m., WPS dispatch received a report of an altercation on McGee Street in Winnipeg.

The WPS dispatch included the following in part:

“...FRIENDS ASLT'D HER, SORE KNEES, AMB NOT REQ'D...FRIENDS MIGHT HAVE HAD KNIFE, NONE SEEN BUT VIC KNOWS THEY CARRY KNIVES FEM VIC INTOX. VIC DESC: NAT, 17, LONG HAIR WRING: ARMY JKT...VIC WAS WITH MALE DESC: 5'10, WRING: GRY SWEATER”.

SO1 and WO1 were in a marked police cruiser and were the first WPS unit to respond. The officers saw two individuals in the back lane of McGee Street, vaguely matching the dispatch information. The two individuals were AP and CW1. AP and CW1 appeared to be angry at each other. They were screaming loudly, alternately crying and yelling obscenities at each other.

SO1 and WO1 identified themselves as police and AP and CW1 immediately ran off. SO1 and WO1 yelled at AP and CW1 to stop. WO1 pursued CW1, who was apprehended after a short foot chase and was immediately handcuffed.

SO1 pursued AP. SO1 gave loud, clear verbal commands to AP to stop and get down on the ground but she continued to run. SO1 was able to close the distance on AP and grab her around the shoulders, causing her to lose her balance and fall to the ground. AP thrashed about and struggled to break free as she was pinned to the ground by SO1. SO1 gained control of AP and was able to place her in handcuffs. SO1 walked AP towards the police vehicle where she then sat on the ground and leaned on its back bumper. AP was extremely uncooperative, belligerent and, without warning, began hitting her face and head area against his police vehicle's bumper numerous times.

WO1 escorted CW1 back to the cruiser car. CW1 was also noted to be uncooperative and belligerent. As a result, additional police units were requested to attend and assist.

The following additional WPS units responded to assist:

1. WO2 partnered with WO3;
2. WO4 partnered with SO2;
3. WO5 partnered with WO6;
4. WO7 partnered with WO8.

IIU investigators interviewed WO4, WO5, WO6, WO7 and WO8, none of whom had any recollections of anything significant about the incident.

SO1 escorted AP inside a different police vehicle. AP proceeded to kick at the doors and windows of this police vehicle. SO1 commanded AP to stop kicking the police vehicle.

AP was noted to be heavily intoxicated. It was determined she would be detained under the *Intoxicated Persons Detention Act*. WO2 and WO3 transported AP to MSP for that purpose. AP did state to IIU investigators that the officers who transported her to MSP were not among the police who assaulted her. WO2 recalled that AP complained about a sore knee. However, WO2 also recalled that AP was kicking the police vehicle partition.

AP provided IIU investigators with several statements concerning the incident. She stated she and CW1 were having a bonfire in her backyard on McGee Street and that, all of a sudden, a police vehicle showed up. CW1 ran because she was afraid of the police. AP ran because CW1 ran. AP stated that she stopped immediately as soon as she was ordered to do so by the police. However, she was still tackled to the ground by a male police officer. AP reported that SO1 told her not to lie and then stomped his foot on her left knee. The force of the stomp caused the injury to her knee. AP also reported that while she was sitting handcuffed outside the police vehicle, another police vehicle pulled up. A different male police officer (later identified as SO2) exited the vehicle and, without saying anything, approached her and punched her in the face.

AP admitted she had been drinking that evening but claimed she was not drunk. AP also stated she was kicking the police vehicle which was transporting her to the MSP

CW1 proved to not be a credible witness. Whenever challenged by the IIU investigators she would change her story to explain any discrepancy.

IIU investigators interviewed MSP staff who were on shift at the time of AP's detention. The MSP staff members referred to the IPDA Intake Assessment Form, which had been completed with respect to AP, to assist in their recollections. The IPDA Intake Assessment Form noted that AP was intoxicated when she was lodged. The form also noted that AP's left knee was examined and no visible injury or trauma was observed. AP was noted as able to bear weight on her left knee and walk into the MSP cell without assistance.

AP was released from MSP at approximately 8:00 a.m. on Oct. 17, 2015. AP stated she told the MSP staff about her sore knee.

AP attended the Grace Hospital later that morning following her release from MSP. She was examined by PW1 who advised her to use a leg brace and crutches. A medical report from October 17, 2015 noted that AP had good range of motion on her left knee. No x-ray was taken of her left knee at that time. Photographs taken of AP's injuries while she was at the Grace Hospital depicted minor scrapes and bruising consistent with the events of the previous evening during her interaction with and arrest by SO1.

AP had an MRI procedure on November 30th, 2015, which showed she had suffered a tear of her medial collateral ligament (MCL) and a complete tear of her posterior collateral ligament (PCL). She was prescribed a brace to wear for the ensuing six weeks to aid in her rehabilitation.

PW1 subsequently stated that the knee injury was consistent with extreme force being applied to the outside surface of the left knee.

The IIU investigators interviewed PW2, an orthopedic surgeon, for an opinion on how AP could have sustained the injury to her left knee. PW2 stated that a considerable amount of force would have been required to cause the injury shown in the MRI. The force would have to have been applied from the outside and the knee would have to be bent towards the buttocks. PW2 stated that the stomping of the knee as described by AP was not consistent with the injury shown in the MRI. He added that it was possible the knee injury could have been caused during the fall described by SO1 but that it was not likely. PW2 also stated that AP would not have been able to bear any weight on her left knee with an injury like the one shown on the MRI. AP would have become so distracted by the significant pain that she would not have been able to do anything with her left knee.

IIU investigators also interviewed PW3, an orthopedic surgeon. PW3 described the injury shown in the MRI as being acute and recent. He stated the knee injury may have occurred as described by AP but it would depend on the position of the foot under the knee. If the foot were directly underneath the knee or below the knee, the injury shown in the MRI would not be possible. If the foot was above the knee, and if there was significant downward pressure on the knee, then the injury could have been possible. PW3 added that if there was any evidence that AP had been in an altercation prior to the incident, then it would be doubtful that the injury was caused by a stomping of the knee.

Issue and Review:

The relevant issue in this matter is whether, at any time, SO1 and/or SO2 subjected AP to unnecessary and excessive force during the course of apprehending and arresting her.

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

On July 17, 2017, the completed IIU investigation file was forwarded to Manitoba Prosecution Services requesting that it be reviewed and advice provided respecting the identified issue.

Following a thorough review of this file, on February 14, 2018, Manitoba Prosecution Services provided advice to this office that there is no reasonable likelihood of a conviction in respect to either SO1 or SO2.

Accordingly, and based on this advice, neither SO1 nor SO2 will face any Criminal Code charges arising from this matter.

This investigation is complete and the IIU will close its file.

Final report prepared by:
Zane Tessler, civilian director
Independent Investigation Unit
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