

# ***FINAL REPORT: IIU concludes investigation of assault allegation made against WPS officer***

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On July 22, 2016, at 10:00 a.m., the Independent Investigation Unit (IIU) was notified by the Winnipeg Police Service (WPS) of an incident that occurred on June 7, 2016 at approximately 9:45 p.m. during a traffic stop on Eugenie Street near Hill Street in Winnipeg. According to this notification, the affected person (AP), who was arrested for assaulting a peace officer and a number of allegations under the Highway Traffic Act, alleged that an arresting officer (subject officer – SO1) assaulted her.

AP did not suffer a serious injury as defined in IIU regulation 99/2015. However, this notification concerned a complaint that police officers had engaged in conduct that may constitute a contravention of the Criminal Code (Canada) or other federal or provincial enactment. IIU assumed jurisdiction over this investigation as the civilian director determined it to be in the public interest for an independent investigation to be conducted and to determine whether a member of WPS subjected AP to unnecessary and excessive force, whether at the time of her arrest or while in the care and custody of the police service. A team of IIU investigators was assigned to this matter.

WPS supplied the Professional Standards Unit (PSU) investigative file, including witness officers' notes and AP's video statement taken on June 17, 2016.

IIU investigators also interviewed AP.

On August 25, 2016, the IIU civilian director designated two WPS officers as subject officers (SO1-2) and three WPS officers as witness officers (WO1-3). During the course of the investigation, it became evident that SO2's role was that as a witness and accordingly, on October 4, 2016, the IIU civilian director re-designated him as WO4.

During the course of its investigation, the IIU determined the following facts:

On June 7, 2016 at 9:45 p.m., SO1 and WO4, in a marked police cruiser, were travelling northbound on Des Meurons Street in Winnipeg and observed a vehicle operated by AP fail to stop at a stop sign situated at the intersection with Lariviere Street. AP's vehicle then made a westbound turn onto Eugenie Street and nearly collided with a southbound vehicle. A traffic stop was initiated on Hill Street just south of Eugenie Street. AP could not provide any photo identification, her vehicle was uninsured, and she was acting very erratically. AP was detained in custody pursuant to the Highway Traffic Act (HTA), advised she would receive traffic offence

notices and that her vehicle would be towed. AP was handcuffed and escorted to the police cruiser. As AP was placed in the cruiser, police alleged she assaulted one of the arresting officers by kicking him in the leg. AP denied kicking the officer and stated that, in fact, when she was placed in the rear of the police cruiser, an officer entered the rear seat with her and assaulted her by punching her in the face, pulling her hair and slamming her head onto the passenger seat.

AP was arrested for assaulting a police officer and was taken to East District station for fingerprinting and photographs. AP was released on a Promise to Appear in court.

**Interviews and Statements:**

**AP:**

On June 17, 2016, AP met with PSU investigators and provided the following information:

On June 7th, 2016 at 9:55 pm, she left her home and drove to a store for some groceries. She had only her debit card with her at this time. En route, she stopped to reply to a text and saw flashing lights behind her. The police told her she did not stop at a stop sign. When she asked which one, they immediately got aggressive with her. A tall officer stayed at the police cruiser, while a shorter officer told her that her driver's license and vehicle insurance was past due and unpaid. AP was asked to step out of the vehicle and she asked if they were going to tow her vehicle. AP says she was told that since she could not prove the car was hers and had no identification on her, not only would the car be towed but also that she would spend the night in jail. She was handcuffed and pushed toward the cruiser. AP says the shorter officer pushed her into the car, and then he went in on top of her and punched her in the nose and on each side of her head. He then pulled her hair and banged her head on the fibreglass seat, which opened a wound on her. While this was happening, the taller officer was in the driver's seat laughing at her.

When she arrived at the police station, the desk sergeant asked, "What happened to your face?" and she told him "your officers did that." AP says he laughed and said, "You must have been resisting."

The following day, she attended Misericordia Hospital and received medical attention. A doctor took photos of her injuries with her cell phone.

AP advised she had three eyewitnesses to the incident but refused to provide investigators with their names.

On August 9, 2016, AP met with IIU investigators for an interview. AP stated:

On June 7, at approximately 9:55 p.m., she left her home to buy a few things at a nearby store. While en route, she stopped her vehicle in order to answer a text and observed flashing lights behind her. When police approached her car, she rolled her window down and asked what was wrong. The officer advised she failed to stop at a stop sign. She felt the officer was verbally aggressive. AP did not have photo identification and provided her name, date of birth and

address to the officers who then went and did some computer checks. The officer returned to her vehicle and told her she did not have a valid license or insurance for the vehicle, which she already knew. AP was told that her vehicle would be towed and she was going to jail. She was then handcuffed and taken to the police car by the shorter officer. While going to the car she turned to him and "did a scream," as the officer was hurting her previously injured arm. The officer pushed her into the back seat of the cruiser car and entered behind her, got on top of her and punched her in the nose and on each side of her head. He then pulled her hair and banged her head on the fibreglass seat, which opened a wound on her forehead. They drove her to the station on Plessis Road and once there, the Sergeant asked her what happened to her face. She told him "your officers did that." He laughed and said, "you must have been resisting." She spoke with a lawyer by telephone. AP was then taken to WPS downtown headquarters where she was photographed, fingerprinted and released with documents. On June 8<sup>th</sup>, she received medical attention at Misericordia Hospital and a doctor took photos with her cell phone.

AP said she has three witnesses to the incident but refused to provide the names of the witnesses or identify them. AP was unable to explain how she received injuries to her forehead when she was on her back on the cruiser car, stating those details are insignificant as the photos showed her injuries.

AP signed a medical release at the request of IIU investigators. On August 15, 2016, IIU investigators received treatment records concerning AP from Misericordia Hospital. Those records included notes made by a registered nurse on June 8, 2016. According to those notes, AP told the registered nurse, among other things, that when she was driving her vehicle she was pulled over by police because of an "incomplete stop." AP gave her driver's license to a police officer who informed her that the license had expired. She was removed from her vehicle, arrested and handcuffed. Due to a pre-existing injury in her right shoulder, the handcuffs caused her pain. She asked to be removed from the handcuffs. The officer became aggressive and grabbed her arm, causing her more pain. She spun to lessen the pain. AP believes the officer mistook this move as resistance on her part. She was held against the car, punched in the nose and then had her head strike the outside of the vehicle. AP says she was then left inside the police cruiser for an hour.

On August 16, 2016, IIU investigators received a series of eight digital photographs from AP. The first photograph appears to have been taken at a residence, date unknown, and shows two linear scrapes on AP's left forehead at her hairline. Photograph 2 appears to have been taken as AP lay on a hospital stretcher and shows her left forehead with very faint marks near the hairline. Photographs three and four show scratches located on the center of the back. Photographs five and six show a faint bruise on her right bicep. Photograph 7 is a street view and photograph eight is a street sign.

IIU investigators repeatedly requested the names of the three witnesses AP said she had located. Despite these attempts, AP has never disclosed the names or identities of the three witnesses.

**Witness Officers:**

**WO1:** WO1 is a member of WPS and was on duty as the desk sergeant at East District station the evening of June 7, 2016. He advised that the arresting officers explained the original incident was a traffic stop and that they detained AP for lack of any identification. As they were placing her in the rear seat of their cruiser, she struck SO1 by a “donkey kick” or swiping his leg with her foot. SO1 pushed AP away from him and that caused the injury on her face. SO1 is a shorter, stockier individual when compared to his then partner WO4. AP did not ask for a phone call while in WO1’s presence. WO1 asked AP what happened to her head and she stated, “Your guys did this to me.” He then completed the Prisoner Injury Report.

**WO2:** WO2, a member of WPS, was involved in searching AP and escorting her to downtown police headquarters. WO2 did not observe any injuries on AP. AP appeared upset and complained about it “being unfair.” AP did not say anything about injuries nor did she tell WO2 what had occurred.

**WO3:** WO3 had little interaction with AP. His partner, WO2, searched AP and he was the driver of the patrol car that transported AP to downtown police headquarters. WO3 did not notice any injuries on AP. AP did not mention any injuries to WO3.

**WO4:** WO4 and his partner, SO1, conducted a traffic stop and interacted with AP. When AP’s vehicle was stopped, she, the lone occupant, exited the vehicle immediately. AP was told to return to her vehicle. AP was argumentative and was unable to provide photo identification. AP eventually provided her name, date of birth and address. Computer checks were conducted and it was determined that AP did not possess a valid license and the vehicle was not insured. AP was advised that she would be ticketed and her vehicle would be towed. AP refused to hand over the keys to the vehicle. Due to her uncooperative behavior and her inability to produce proper identification, AP was detained for a continuing Highway Traffic Act investigation. AP was handcuffed and was taken to the cruiser car. When he and his partner got her to the car, she placed her foot on the floorboard and refused to get into the car. He went around to the driver’s side of the cruiser car to pull her into the car. He observed AP turn and kick SO1. He went back toward them but noticed that SO1 had managed to push AP onto the backseat. All doors were then closed and, after AP’s vehicle was towed, they drove the cruiser car to East District station. At the police station, he provided AP with a phone to contact counsel and another team of officers transported her to the WPS downtown headquarters for fingerprinting and photographs prior to being released.

**Subject Officer:**

As outlined under the Police Services Act, a subject officer cannot be compelled to provide his notes to IIU investigators or to attend an interview with them. In this matter, SO1 declined an interview but agreed to provide his notes and written statement to IIU investigators, which he did on November 18, 2016.

SO1’s narrative report and notes are consistent with WO4’s interview. SO1’s report also indicates that after AP kicked him, he pushed her shoulders/upper body with both hands into the

back seat of the cruiser car. AP was thrashing her shoulders from side to side while on her back in the car so he reached in and held down her shoulders until she calmed down. They waited for the tow truck to attend and AP was driven to the East District Station.

On completion of the investigation, on January 29, 2017, Manitoba Prosecution Services was forwarded the file material for a review and advice. That advice has now been provided and considered.

**Issues and Conclusions:**

The relevant issue in this matter is whether, at any time, SO1 subjected AP to unnecessary and excessive force--from the initial interaction, through detention, and while in the care and custody of the police service.

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 in excess of what is necessary in the circumstances is not justified and can constitute an assault.

Section 265 (1) (a) of the Criminal Code states:

*A person commits an assault when...without the consent of another person, he applies force intentionally to that other person, directly or indirectly*

I am satisfied that AP's vehicle was lawfully stopped by police and that her detention was authorized in the circumstances. I am satisfied AP's driver's license had expired and that her vehicle was not registered. I am satisfied that AP did not have any form of government-issued identification on her person when she was stopped. After a review of the relevant provisions of the Highway Traffic Act, I am satisfied that police lawfully detained AP. I am satisfied that SO1 used force on AP. There is a significant discrepancy between the narrative provided by AP and SO1/WO4 on how and under what circumstances that force was applied.

A peace officer is authorized to use force in the lawful execution of his duties and as much as necessary for that intended purpose. Moreover, a peace officer is authorized to use force to defend or protect himself from the use or threat of force by another person, provided it is reasonable in all of the circumstances. Where it is determined that reasonable grounds exist to believe a criminal offence has been committed, the Civilian Director may charge a subject

officer accordingly. The determination whether reasonable and probable grounds exists is based on a careful assessment of all the available evidence.

Following a careful review of the available evidence and material facts obtained in this investigation, on considering the discrepancies in and differing recollections of the primary witnesses and with due consideration of the advice provided, I am not satisfied that the requisite reasonable and probable grounds exist to justify the laying of a criminal code charge or other offence against SO1.

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

**Final report prepared by:**

Zane Tessler, civilian director  
Independent Investigation Unit  
May 09, 2017

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