

# ***FINAL REPORT: IIU concludes investigation into police pursuit and motor vehicle collision***

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On May 23, 2016 at 6:40 a.m., the Independent Investigation Unit (IIU) was notified by the Winnipeg Police Service (WPS) of a two-vehicle motor vehicle accident that had occurred earlier that day in the area of McPhillips Street and Redwood Avenue in Winnipeg. According to the notification, in the early morning hours of May 23, a 17-year-old male (affected person 1 – AP1) took his mother’s unregistered Toyota Corolla (Toyota) without permission. He picked up a 16-year-old friend (AP2) and the two removed a licence plate from another vehicle and affixed it to the Toyota. They drove around the North End of Winnipeg, picking up an additional four passengers along the way--a male (civilian witness 1 – CW1) and three females (AP3, CW2 and CW3).

At approximately 2:35 a.m., two WPS officers (later designated as subject officers 1 and 2 – SO1 and SO2), operating a marked police vehicle, sighted the Toyota with six occupants travelling westbound on Aberdeen Avenue in Winnipeg. While police followed the Toyota, it turned north then west onto Redwood Avenue. The subject officers queried the licence plate using their in-car computer terminal, which revealed the plate was registered to a different vehicle. The officers activated their police vehicle’s emergency lights in an attempt to stop the Toyota. AP1 did not stop the Toyota but instead accelerated away. The subject officers radioed that they were pursuing the vehicle west on Redwood Avenue.

The Toyota continued westbound at a high rate of speed, which the police vehicle did not match. As the Toyota approached McPhillips Street--a traffic light controlled intersection with Redwood Avenue--the police vehicle was 250 metres behind. The traffic light was green for north/south traffic on McPhillips Street and red for east/west traffic on Redwood Avenue. The Toyota ran the red light at McPhillips Street and collided with a northbound Chrysler 200 (Chrysler) operated by AP4 with one passenger, AP5.

AP1 and CW1 both ran from the crash scene and made good their escape from police. Police arrested them both later that afternoon. AP4 and AP5 were treated in hospital for minor bruises and scrapes and both were released the same day. AP3 suffered a broken left femur--a serious injury as defined by IIU regulation 99/2015--and was admitted to hospital for surgery to have metal rods inserted to set the break. AP2 suffered a fractured vertebra--a serious injury as defined by IIU regulation 99/2015. He was released from hospital after a night’s observation, with instructions for physiotherapy. Neither CW2 nor CW3 suffered any injuries.

As this notification involved serious injuries, IIU assumed responsibility for the investigation in accordance with section 65(1) of *The Police Services Act*. IIU investigators were deployed to the scene of the accident.

As stated, the IIU civilian director designated two WPS officers as subject officers (SO1 and SO2). In addition to interviewing all affected persons and civilian witnesses, IIU reviewed the following:

- a complete file package from WPS that included narratives and reports, GPS data recordings from the police vehicle involved in the pursuit, and radio transmission recordings between the WPS Communication Centre and the police vehicle involved;
- a report from an accident reconstruction analyst;
- existing WPS motor vehicle pursuit policies;
- surveillance video from a nearby business, which captured the collision; and
- medical reports respecting the various injured parties.

The purpose of this IIU investigation is to determine whether the facts and circumstances of this matter justify *Criminal Code of Canada* or *Highway Traffic Act* charges against the police officers.

The following facts and circumstances have been determined:

**Affected Persons:**

AP1 stated he had been driving around with some friends. The police tried to pull them over but he did not stop. He drove about a kilometre to Redwood Avenue and McPhillips Street where he ended up getting into a collision. AP1 ran away and went home. WPS arrested him later that day. Also in the car were AP2, AP3, CW1, CW2 and CW3. They were driving around for "maybe five minutes" when police tried to pull them over. The car was his mother's and the license plates were from a different vehicle. The other people in the car did not know the situation with the car / license plate. AP1 stated that he panicked and did not stop because the car was not properly registered. The police car was following them for "maybe forty seconds" on Redwood Avenue before the lights and siren came on. The police car was pretty close to their car. AP1 was driving about 50 km/h at the time but he then sped up to about 100 km/h. It was raining at the time but there were no other cars on Redwood Avenue.

AP1 believed it was about two kilometres from where the police tried to pull them over until the intersection with McPhillips Street. (A subsequent measurement shows the distance to be 1.67 kilometres.) The police car was not keeping up with the Toyota. In fact, by the time he got to McPhillips Street, the police were a "fair distance, pretty far" behind. The traffic light was red as he approached McPhillips Street. The police had their flashing lights on and siren activated, although the siren was growing fainter as AP1 increased the gap. The other occupants of his car were telling AP1 to stop and pull over.

AP2 stated that he and five others were in the Toyota and they were driving for about 15 minutes. AP2 was in the front passenger seat and AP1 was driving the Toyota. AP3 was in the right rear seat, CW2 was beside her in the middle seat, and CW1 was in the left rear seat. CW3 was sitting in the front seat area. AP2 did not know what street it was but he looked behind and saw a police car. The emergency lights were not on at that time. The Toyota turned down a

couple of streets and the police followed them. Officers then turned on their emergency lights and the Toyota sped up. AP2 and the other passengers were telling AP1 to stop but he kept driving faster. AP2 said the police car was trailing about four blocks behind them because the Toyota was "speeding really fast." He was not sure if the police siren was on. AP2 said that by the time they arrived at the intersection with McPhillips Street, the Toyota was ahead of the police car by "a block and a half." He estimated the Toyota's speed at "120 - 130 km/h ." AP2 looked up and saw a red light ahead but the Toyota kept going. AP2 saw the other car coming and the two cars collided. AP2 got out of the car but his back hurt a great deal. He was diagnosed with non-displaced right transverse process fractures to his L2 and L3 vertebrae.

AP3 related that her friends--CW2 and CW3--and their friends--AP1, AP2 and CW1--were in the car with her. AP1 was the driver. She stated she did not know how long she had been in the car before the police started following them. Somebody else in their car noticed the police car behind them and that is when AP3 first saw it. The flashing roof lights were on and the siren was sounding when AP3 first saw the police car. AP1 started driving faster but he did not say anything about the police. Just before they hit the other car, she saw that the traffic light on Redwood at McPhillips was red. She thinks the police had been chasing them for "a short time." When asked for a timing estimation, she replied, "less than a minute." The police car was "pretty far" behind them when they collided with the other car in the intersection. She thinks the emergency lights were still flashing but she did not hear the siren. AP3 was sitting in the right rear seat, next to the door. Her left leg was broken in the crash and surgery was required to insert two rods to stabilize the break. She did not know how fast they were going. AP3 had told the driver to stop.

AP4 stated she was travelling northbound on McPhillips Street when a westbound vehicle entered the intersection from Redwood Avenue, hitting her vehicle. She recalled the traffic light was green for her to proceed through the Redwood Avenue intersection. She did not see the vehicle coming and did not see any police lights before the crash. Her injuries consisted of bruising and pain in her chest, back and neck and mild swelling in her elbow, arm and hand.

AP5 stated she and AP4 were driving northbound on McPhillips Street to her residence on Mountain Avenue. AP4 was the driver and AP5 was seated in the front passenger seat. She noticed a green light straight ahead facing them at the intersection with Redwood Avenue. As they entered the intersection, AP5 looked to her right and noticed headlights heading toward them, getting bigger and brighter. She did not see any emergency lights or hear police sirens. She knew their vehicle would be hit. The collision occurred on her side of the Chrysler and the airbags deployed. AP5 suffered bruising to her chest.

### **Civilian Witnesses:**

CW1 stated he is a friend of AP1 and AP2. He was not to associate with AP2. On the night of the accident, he was at a party also attended by AP3, CW2 and CW3. They ended up in the Toyota operated by AP1. AP1 drove down some side roads west of Main Street. When they were on Redwood Avenue, CW1 saw flashing police lights behind them. AP1 started speeding away, despite pleas by everyone for him to slow down and pull over. CW1 heard a police siren behind

them, but it turned off at some point because he did not hear it before the crash. He stated AP1 was doing "about 100 km/h" and had hit the brakes before they crashed. Just before the collision, CW1 looked back and saw the police car was approximately one to two blocks behind them. After the crash, CW1 ran away and made his way to Kenora to stay with his father. He returned to Winnipeg on May 26, 2016 and turned himself in to WPS.

CW2 stated that she and her friends, AP3 and CW3, came from a party in an apartment on Mountain Avenue. Three males drove up in a car and CW3 knew one of them. They got in the car. She stated that the six of them were driving around for a few minutes. After those few minutes, she saw police following them and everyone was "freaking out." At first the emergency lights were not on, it was just following their car. After about a minute, the flashing roof lights came on. CW2 stated that the driver asked if the police were following them, and she told him "yeah." He started driving faster and CW2 heard the siren behind them. AP1 was driving faster and she saw the flashing police lights turn off. She told the driver to pull over but he kept driving faster and faster and then they crashed. CW2 does not know exactly how long the chase lasted. She does not know why the driver was trying to get away. She does not know how far behind them the police car was at the time of the crash. She kept looking to the front when the car started going very fast.

CW3 stated that she had been at a party on Mountain Avenue with friends, AP3 and CW2. They got into the car with some boys. She did not know the driver or one of the passengers but she did know AP2. They were driving on Main Street, then on Redwood Avenue going toward McPhillips Street. CW3 thinks the driver was the first to notice police following them. He asked the others if it was a real cop car behind them. CW3 looked back and saw the police car. The police turned on their flashing roof lights and siren but the driver of the Toyota did not stop; instead he started driving very fast. CW3 estimates it as "like a 100" km/h . She could not say how far the police car was behind the Toyota, but as they approached McPhillips Street it was "like a block" behind. The flashing roof lights were still on. CW3 saw that the traffic light at the intersection with McPhillips Street was red. She and the other passengers were telling the driver to stop and pull over. She does not know why he would not stop. After the crash, everything went black. She stated that she hit her head hard. She was taken to hospital by ambulance, where she was examined and released.

### **Subject Officers:**

Under the PSA, subject officers cannot be compelled to provide their notes to IIU investigators or to attend an interview with them. In this matter, SO1 and SO2 declined to participate in an interview and to provide IIU investigators with their respective notes.

### **Call History and Surveillance Video of the Collision:**

A review of the call history between the subject officers and WPS Operational Communication Center (OCC), along with seized surveillance video of the collision, discloses the following information:

At 2:35 a.m., while en route to a service call, SO1 and SO2 observed the Toyota vehicle, with six occupants, travelling northbound on McKenzie Street then turning westbound on Redwood Avenue. The officers queried the licence plate using the in-car computer terminal and determined the vehicle did not match the licence plate. The officers activated their emergency lights to conduct a traffic stop on Redwood Avenue. The Toyota did not stop and instead increased its speed as it continued westbound. The officers radioed OCC to report the vehicle speeding away, heading towards McPhillips Street, and to advise they were in pursuit. The police vehicle attained a speed of 86 km/h as it pursued the Toyota. When the Toyota increased speed and pulled away from the police vehicle, the officers turned off the emergency equipment, slowed their vehicle and did not attempt to keep pace. The subject officers radioed OCC to report the collision between the Toyota and another vehicle at the intersection of McPhillips Street and Redwood Avenue. They arrived at the intersection approximately 12 seconds after the collision. The emergency lights of the police vehicle were reactivated after the collision occurred.

### **WPS Pursuit Policy:**

A review of the service's pursuit policy in effect at the time of the incident determined that the actions of the subject officers were within the guidelines of the policy, including the authority to engage in a pursuit, assess risk, and decide to abort.

### **Accident Reconstruction Report:**

The report consists of a 30-page written and bound document accompanied by a DVD containing digital photographs, laser scans of the crash scene, and scene video. The report is excerpted as follows:

1. Establish the sequence of events.

The Chrysler had been traveling northbound on McPhillips Street, correctly positioned within the middle lane of the three straight through lanes.

The Toyota had been fleeing from police at very high speed for a sustained period and was traveling westbound on Redwood Avenue just before the collision occurred. The Toyota was straddling the centerline of the road, with approximately half of the car in each of the eastbound and westbound lanes.

The Toyota began to brake at a minimum of 11.48 m before impact. It was skidding straight as it entered the intersection on a red light and collided with the Chrysler that had the right-of-way.

2. Attempt to establish the pre-impact travel speeds of both vehicles.

Chrysler: The Chrysler had been traveling very consistently at 48 km/h - 51 km/h (in a posted 60 km/h zone) for at least five (5) full seconds before the crash. The data used is reliable and the speeds reported are accurate.

Toyota: The Toyota was skidding under emergency braking before impact. It was determined that the pre-skid travel speed of the Toyota was an absolute minimum of 94 km/h, in a posted 50 km/h zone. The actual travel speed would have been higher than 94 km/h. The rolling tire marks examined throughout this report are indicative of sustained speeds over a great time and distance.

3. Attempt to establish the speeds of both vehicles at time of impact.

Chrysler: At the point of impact, the Chrysler was traveling at 51 km/h.

Toyota: At the point of impact, the Toyota had slowed somewhat from its pre-impact speed and was traveling at 84 km/h.

**Issues, Assessment and Conclusions:**

Police pursuits of actual or suspected violators of the law are authorized pursuant to provincial traffic laws. Section 106 of *The Highway Traffic Act* details the privilege to peace officers in pursuit of an offender, including the authority to disregard traffic rules, the requirements for compliance, and the limitations to this authority. The overriding requirement is that the police must proceed with due regard for the safety of other persons using the road, having regard to all the circumstances of the case.

Whenever a pursuit is necessary, a police officer must constantly analyze the circumstances of the driving, and weigh any risks to other persons against the need to apprehend those who are committing offences.

The safest option would be for the police never to chase offenders. However, if they did that, offenders would know that all they had to do is speed off and they would be able to escape the law. On the other hand, if an officer is on a busy street with a great deal of traffic attempting to apprehend someone for a minor infraction, a pursuit may not be appropriate. It is a very fine balance between the need to enforce laws and apprehend offenders on the one hand, with public safety and police safety on the other hand. The latter is also impacted by the significant personal, psychological and economic impact that may arise from a pursuit gone wrong.

In this regard, the possible offences would be:

1. Dangerous driving under the *Criminal Code of Canada*;
2. Careless/imprudent driving under *The Highway Traffic Act*;
3. Driving in excess of the speed limit/disobeying a traffic control device under *The Highway Traffic Act*.

**Dangerous Driving under the *Criminal Code of Canada*:**

The offence of dangerous driving consists of two components:

- (a) operating a motor vehicle in a dangerous manner, and
- (b) a required degree of fault, which is a marked departure from the standard of care that a reasonable person would observe in the same circumstances of the individual in question.

At all material times in this matter, SO1 and SO2 were acting in concert and their actions will be considered together in the operation of their police vehicle.

A critical factor to consider is that SO1 and SO2 are police officers, sworn to apprehend persons who violate the law.

This analysis must consider what is reasonable for a police officer acting reasonably in the same circumstances, balancing the need to apprehend offenders with the duty to drive with due regard to the safety of other persons. In this case, SO1 and SO2 had reasonable and probable grounds to believe that the Toyota was not properly registered or licensed to be operating on public streets. The police officers were justified in attempting to pull the Toyota over and continue their investigation. These grounds were magnified when the Toyota failed to stop but instead sped away at an excessive speed. These grounds, and the behaviour described, called for SO1 and SO2 to stop the Toyota. They were justified to pursue this vehicle.

While at the outset the road speeds were relatively high, traffic volumes were light and there were few pedestrians along the route. SO1 and SO2 were cognizant of their surroundings and slowed their vehicle when the Toyota increased the distance between them, the gap between the Toyota and the police vehicle was ever widening. AP1 did not intend to stop the Toyota in response to the police presence and emergency lights/sirens but was intent on doing everything necessary to avoid apprehension and detention. The police officers must be given some opportunity to determine whether the vehicle will stop in response to their emergency equipment. AP1's actions and disregard of the police, including operating the Toyota at an excessive speed in a residential area and entering a traffic light-controlled intersection on a red light, was the sole cause of the collision described. I am satisfied the actions of SO1 and SO2 were justified in pursuing the Toyota and their driving did not constitute dangerous driving.

#### Careless/Imprudent Driving under *The Highway Traffic Act*

Section 188(1) and (2) of *The Highway Traffic Act* states:

188(1) In this section, "**drive carelessly**" or "**driving carelessly**" means to drive or driving a vehicle on a highway without due care and attention or without reasonable consideration for other persons using the highway.

188(2) No person shall drive carelessly.

Section 95(3) of *The Highway Traffic Act* states:

No person shall drive a vehicle on a highway at a speed greater than is reasonable and prudent or in a manner that is not reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing; and, without restricting the generality of the foregoing, no person shall drive a vehicle on a highway at a speed otherwise permitted under this Act where

- (a) the presence of a child on or near the highway, whether or not he is in close proximity to the grounds of a school building or a playground, dictates, in the interest of safety, a slower speed or the temporary stopping of a vehicle; or
- (b) any factor exists in the face of which failure to reduce that speed, or to stop the vehicle temporarily, constitutes a danger to any person or property visible to the driver.

The test that determines whether driving is careless or imprudent is similar to the test for dangerous driving under the *Criminal Code*, but requires a lower degree of fault. It also requires that all the circumstances of the incident be considered. In this case, while the degree of fault required is lower, for the reason stated above, I am satisfied that the police driving was clearly and sufficiently careful and prudent having regard to all the circumstances.

Exceeding the Posted Speed Limit/Disobeying Traffic Control Devices under *The Highway Traffic Act*:

The evidence demonstrates that the police vehicle exceeded the posted speed limit. However, as referenced above, section 106 of *The Highway Traffic Act* authorizes police officers to exceed the speed limit and not stop if they are attempting to apprehend an offender, provided it is necessary to speed, they are operating their emergency lights and siren, and they are proceeding with due regard for the safety of other persons using the highway. In this case, those exemptions apply and no offence has been committed.

I am satisfied the actions of the police officers were justified and appropriate for the circumstances. I am satisfied the driver of the Toyota was intent on fleeing from police, was driving at extremely high speeds, disobeyed traffic control devices and was solely responsible for the collision with the Chrysler and subsequent injuries sustained by everyone. This matter is now completed and the IIU will close its investigation.

**Final report prepared by:**  
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January 09, 2017