

FINAL REPORT: IIU concludes investigation into shooting by Winnipeg police in downtown skywalk

On May 1, 2017, at 12:50 p.m., Winnipeg Police Service (WPS) notified the Independent Investigation Unit (IIU) about an officer-involved shooting that had just occurred in downtown Winnipeg. According to this notification, members of the WPS became involved with a male, later identified as the affected person (AP), at an optometrist's office located on Graham Avenue. During this altercation, a WPS officer shot AP, who was brandishing a homemade spear at the time. AP was transported to hospital with a non-life threatening gunshot wound to his right side. AP underwent surgery to repair this injury.

The gunshot wound sustained by AP is a serious injury as defined by IIU regulation 100/2015. Accordingly, IIU assumed responsibility for the investigation in accordance with subsection 65 (1) of the *Police Services Act* (PSA).

The IIU civilian director designated the WPS officer who shot AP as the subject officer (SO). Nine WPS officers present at or near the scene of the shooting were designated as witness officers and all but one were interviewed (WO1 – 8).

WPS forensic identification section, working with IIU investigators, provided forensic scene examination services.

The investigation conducted by IIU investigators included:

- attending and examining the scene of the shooting
- canvassing the area for witnesses
- reviewing the photographs from the forensic examination of the scene
- examinations of the firearms used by the SO and WO1
- examination of the homemade spear found at the scene
- reviewing and transcribing 911 calls
- reviewing police radio transmissions
- reviewing file materials from WPS
- reviewing video surveillance footage of AP interacting with WPS officers prior to the shooting
- reviewing AP's medical report from Health Sciences Center (HSC)
- obtaining statement from AP
- obtaining statements from eight designated witness officers
- obtaining statements from 11 civilian witnesses
- regular consultations with the civilian director
- preparation of the final investigative report

For the sake of brevity and to avoid undue repetition, summaries of only the most significant and revealing statements by witness officers and civilian witnesses are included in this report.

IU investigators seized service pistols from two WPS officers who were present and armed in the optometrist's office at the time of the shooting incident (SO and WO1). Neither firearm was submitted for laboratory examination, as subject and witness officer accounts, together with round counts performed on both firearms, support the conclusion that SO's service pistol was the only one discharged on the date in question.

Under the provisions of the PSA, a subject officer is not required to provide a statement or notes regarding an incident. In this case, the subject officer declined to be interviewed about the shooting, but, through legal counsel, supplied a self-prepared statement for review.

The Incident

On May 1, 2017, at approximately noon, WO1 went to get some lunch from a restaurant situated on a skywalk next to the downtown WPS headquarters (HQ). On his way back to HQ a few minutes later, he was approached by CW1--a security guard who worked nearby. CW1 requested assistance in dealing with a male, later identified as AP, who was asking for help contacting the police. According to CW1 AP appeared to be agitated and was holding under his left arm what looked like a black stick with a hook.

WO1 spoke to AP who told him that there were people after him. WO1 also noted that AP was holding a black stick in his left hand with the end hidden in his armpit. WO1 offered to assist AP by escorting him to the duty office at HQ. AP would not accompany him and instead walked away towards the restaurant and then to the entrance of an optometrist's office. Upon arrival at the optometrist's office, SO and WO3 arrived on scene to assist.

At that point, AP entered the optometrist's office and attempted to hold the door shut. WO1 could see a number of people inside the office and was concerned for their safety given that AP was armed with the stick and appeared unstable. The three police officers pushed the door open and AP backed further into the office. WO1 drew his service pistol at some point after entering the business and prior to AP drawing out the stick from under his arm. WO1 said he did this because he feared for the safety of the civilians present in the office.

As AP reached a hallway at the rear of the office, he pulled the stick out from under his arm. WO1 could see a blade or scissors taped to the end of the stick with the sharp end pointed at him and SO. WO1 could not recall if AP was holding the stick with one or two hands but recalled AP thrusting it towards him.

AP was told a number of times to drop the weapon but he did not comply. These commands were issued in a loud and clear manner by both WO1 and SO. AP did not drop this stick.

AP reached the back of the optometrist's office and stopped retreating. He then lunged at the two police officers with the stick, at which time WO1 heard two gunshots coming from his right side, where SO was situated. WO1 did not see SO fire his gun as his attention was focused on AP. AP fell to the ground and the police officers on scene secured him with handcuffs and commenced first aid.

WO2 was at the restaurant near HQ at noon hour and observed WO1 and CW1 interacting with AP. He could see that AP was holding a black stick tucked under his left arm. WO1 asked WO2 to go to HQ and obtain assistance from other station duty officers. WO2 left the area and walked to HQ where he spoke with station duty officers.

On his return, approximately five to eight minutes later, he observed AP, WO1, SO and WO3 standing in front of the optometrist's office. WO2 noted that AP was standing with his back to the optometrist's office door and was speaking with the police officers, who were aligned in a semi-circle around AP. WO2 stated AP, who was still holding the black stick, appeared agitated and was raising his voice. AP backed into the optometrist's office. Police officers followed him into the office. WO2 was focused on a woman seated at the reception desk of the office when he heard police officers around him telling AP to drop the knife. At that point, WO2 looked at AP and saw him holding the black stick up at an angle. There was a blade on the end of the stick.

AP began to back his way deeper into the optometrist's office and was followed by the police officers, who maintained a distance of five to 10 feet from him. WO2 stated the police officers repeatedly (estimated at 10 to 20 times) told AP to drop the weapon but AP did not comply. WO2 saw two civilians in a hallway behind AP, who were told by police officers to get away from AP. The civilians retreated into rooms at the back of the business, at which time WO2 heard someone say, "*don't do that or I'll shoot,*" immediately followed by two gunshots. WO2 did not know which police officer discharged his firearm. AP dropped the homemade spear and collapsed to the floor, where the police officers restrained him and provided first aid.

WO3 first observed AP interacting with WO1 and SO outside the restaurant at approximately 12:15 p.m. AP was holding a cell phone in his right hand and a black stick in his left, and was telling someone on the phone that he needed help. The upper end of the black stick was hidden from view under AP's left armpit. However, as AP moved the stick, WO3 was able to see a blade taped to the end of it, and he communicated that to SO. AP then walked off and stopped in front of the optometrist's office. AP entered the office and attempted to hold the door shut with his foot. WO3 observed a female receptionist inside the office and felt he could not leave her there alone with AP, who he knew to be armed with a bladed weapon. He and SO forced the door open, causing AP to stumble backwards. AP then drew out the stick from underneath his armpit and, holding it in two hands, began to jab it at the officers as he slowly retreated further into the office. WO3 stated SO and WO1 drew their service pistols. From that point onward, he heard SO continually tell AP to drop the weapon, estimated at approximately 40 times.

According to WO3, AP continued to retreat until he reached a rear wall where he stopped, still holding the stick with the blade in his hands. WO3 saw civilians behind AP move to positions of cover as AP approached their location. WO3 was positioned behind SO's left shoulder at that point, when AP suddenly lunged forward with this "*home-made spear.*" WO3 said SO fired his service pistol twice, resulting in AP dropping the spear and then falling to the ground. WO3 moved in at that point to handcuff AP, after which time first aid was initiated, as the AP had suffered one gunshot wound to his right side.

CW1 saw AP interact with three police officers on the skywalk outside the restaurant and then move to the front of the optometrist's office. CW1 saw AP inside the office, followed by the police officers. After entering the office, AP drew the stick and began waving it at the officers with his left hand. CW1 stated the officers drew their guns in response to the actions of AP and

told him at least twice to drop the knife. AP did not comply and was shot. CW1 was unable to remember how many shots he heard or which officer fired his gun.

CW2 was working in the optometrist's office when AP entered. CW2 was seated near the front door of the business when she observed AP holding a spear in one hand and a cellular phone in the other. CW2 said AP was swearing and waving the spear around with one hand, as the police officers repeatedly told him, "*Drop the weapon or we're going to shoot you.*" However, he did not comply. CW2 heard two shots and AP fell to the ground.

CW3 was at the rear of the optometrist's office when AP first entered. He heard the sounds of a disturbance and looked out to see AP holding a black metal spear with both hands, waving it back and forth in front of him. CW3 could see police officers positioned nearby, with one or two having their "side arms" drawn and pointed at AP. CW3 recalled officers saying, "*drop the knife*" on two or three occasions. He retreated into his office, where he then heard two gunshots.

CW4 and CW5 were patients inside the optometrist's office at the time AP entered. Both were in a room at the rear and recalled hearing yelling in the reception area.

CW4 observed AP standing outside the room holding a long stick with a blade taped to the end. AP was pounding the blade of the stick into the floor and then swinging it around. AP disappeared from sight and CW4 heard someone tell AP to drop his weapon, at least four or five times, then heard two shots. CW4 did not see the police prior to the shooting so she was not able to tell which officer shot AP.

CW5 saw AP standing outside the room holding a long stick, with the point up in the air, banging it on the ground. AP then moved down a hallway and disappeared from her sight. CW5 peeked down the hallway where AP had gone and saw two police officers facing AP, pointing their guns at him. CW5 heard someone say at least four times, "*put the weapon down,*" then heard two gunshots. She did not know which officer shot AP.

CW6 was on her way to the optometrist's office when she came upon AP and two or three police officers standing outside it. The police officers and AP were speaking in raised voices. AP entered the optometrist's office where he was followed by the police. CW6, who remained outside, observed AP holding a black "broomstick" with both hands and "*... jabbing it at the cops.*" CW6 believed the police officers were yelling "*put it down*" to AP, four or five times. Approximately two minutes later, she heard two gunshots, followed by a male voice crying out in pain. CW6 did not see the police officers holding their firearms as she was paying attention to the male with the broomstick.

CW7 was walking on the skywalk between 12:20 and 12:30 p.m. when he overheard some yelling coming from the optometrist's office. He looked inside and saw two police officers with their pistols drawn and pointed at a male who was "*... pacing back and forth with something in his hand.*" CW7 thought the item was a golf putter or something similar, and was being held in the left hand. The item was black and white, and the male was swinging it around, but not pointing it at anyone. CW7 heard the police officers tell the male "*drop the weapon*" and "*drop the knife.*" CW7 estimated the male was told five to six times to drop the item he was carrying. CW7 believed the male took a step in the direction of the police officers, as he heard the officers yell, "*Whoa, whoa, whoa, whoa, whoa.*" He heard two shots and believed that each officer took one shot.

According to medical records, AP was transported to HSC to be treated for the gunshot wound to his right upper abdomen. On examination, he was in stable condition but scans determined the bullet was still within his body. He was taken to an operating room and underwent a laparotomy (a surgical incision through the abdominal wall made to allow investigation of an abdominal organ or diagnosis of an abdominal disorder) to locate and remove the bullet fragment and rule out other potentially extreme internal injuries. The surgery was a success. The bullet fragment was removed, no significant internal injuries were noted, the wound was closed and AP was transported to the recovery area in stable condition.

Affected Person

AP provided a statement to IIU investigators while still in the hospital recovering from his surgery to remove the bullet. AP, a self-acknowledged drug addict, stated he was experiencing withdrawal symptoms on May 1, 2017. He was paranoid that day, believing someone was watching or following him. He admitted to manufacturing a stick with a pair of scissors taped to the end for his defence. He also confirmed carrying the stick with scissors secreted under his armpit as he walked around downtown Winnipeg that day.

AP said he had a cell phone but it only worked when he was able to access a wi-fi connection. AP was looking for medical assistance, and had asked a number of people to call 911 for him, with no success. When he was unable to obtain assistance from others, AP tried to locate areas that he could access wi-fi in order to make the call himself. AP was able to make three 911 calls, but stated the same operator answered each time, asked him irrelevant questions and did not summon assistance for him. AP encountered a security guard who was able to assist him in contacting police, and at least 10 officers showed up. AP said officers were trying to get him into an elevator but he did not trust them. He went to the optometrist's office, where he pulled out the stick with the scissors. AP felt threatened and he was holding the stick in both hands with the pointed end towards them. The police officers drew their guns and told him to drop the weapon. He did not comply and was shot once in the abdomen. AP maintained he did not threaten the officers and was uncertain what caused the police to shoot him. He also questioned why the police shot him when they had tasers available.

On this latter point, IIU investigators reviewed photographs from the forensic examination of the scene (taken by WPS forensic identification section) of all involved officers following the shooting. The scene photographs did not show any officer in possession of a conducted energy weapon (CEW), commonly referred to as a "taser." Additionally, surveillance video recorded moments before the shooting took place did not show any of the involved police officers carrying a CEW that day.

Subject Officer

As indicated earlier, SO declined to be interviewed on the shooting incident but, through his lawyer, supplied a self-prepared statement. In that statement, he stated he was on a lunch break and heading to the restaurant at approximately 12:15 p.m. when he observed WO1 dealing with AP. SO stated he could see AP holding a crutch or cane under his left arm.

SO wrote that he was concerned AP might be suffering from a mental illness, so he stood nearby WO1 to assist if required. WO3, who was also in the area and had stopped to assist, told SO there was something attached to the top of the cane-like object that was tucked under (AP's) arm and he could see there was something there but didn't know what it was. AP walked to the optometrist's office and entered. AP tried to hold the door shut and prevent police from following. In his prepared statement, SO said he was fearful for the safety of a civilian he could see at the receptionist desk inside, given AP's erratic behaviour and possession of a possible weapon. SO and the other two officers forced their way into the office. AP moved backwards and withdrew the cane from his armpit, revealing that it had a blade attached to the end, and he pointed it at the police officers. SO responded by drawing his service pistol, telling AP, multiple times, to drop the weapon. AP did not comply and instead backed further into the office. Suddenly, according to SO's statement, "*(AP) began to advance toward me with the blade of the spear pointed toward me and I perceived him make a lunging motion at me. At this point I feared for my life....to defend myself from grievous bodily harm or death, and in accordance with my police training, I used lethal force and fired 2 rounds from my service pistol.*"

Scene Examination

WPS forensic identification section (FIS) processed the scene of the shooting. Two spent .40 calibre shell casings were found on the floor inside the optometrist office, along with an apparent bullet hole in the rear wall. Further examination yielded a spent bullet in a closet behind where a bullet hole had been found.

Only SO and WO1 were armed with service pistols, being Glock 22 .40 calibre pistols, at the time of the incident. Each pistol had a magazine capable of holding 15 rounds of .40 calibre bullets. The Glock 22 pistols are capable of holding 16 rounds of ammunition, if one round is in the chamber and 15 rounds are in the magazine. On examination, SO's service pistol contained one live round in the chamber and 13 live rounds in the magazine. SO confirmed, in his statement, that he had 16 live rounds in his service pistol at the beginning of his shift that day. WO1's service pistol contained 15 live rounds.

FIS personnel also located a black curtain rod, four feet in length, with a pair of scissors taped to one end inside the optometrist's office. Photos of the fully modified curtain rod and close up of the scissor ends are reproduced below:



While the combination of the curtain rod and scissors was simplistic in design, it is obvious from the examination that a great deal of time and effort was expended to modify the curtain rod and attach the pointed scissors to one end. The result of this modification was to create a formidable weapon capable of causing grievous bodily injury to anyone within 4+ feet of the brandishing AP.

911 Calls

AP told IIU investigators that he made three 911 calls the day of the shooting. The investigation revealed he actually made four 911 calls to WPS on May 1, 2017:

- 11:36 p.m.
- 11:52 p.m.
- 11:58 p.m.
- 12:16 p.m.

Recordings of all four 911 calls were received, reviewed and transcribed by or on behalf of IIU investigators. It was determined that the final call to 911, at 12:16 p.m., was placed approximately two minutes and fourteen seconds prior to the shooting and AP's cell phone remained on and active throughout this incident. As the phone line remained open, the connection was not severed, resulting in a continuous recording of the words of the 911 operator, and police officers at the scene until the time of the shooting. This allowed IIU investigators to hear the entire shooting; the latter portion of the confrontation is reproduced below:

Male voice: Drop it! Drop it now! Drop it now!

AP: Call the police!

Male voice: Drop
(inaudible)!

AP: Call the police!

Male voice: Drop it now!
(inaudible)

AP: Call the (f'n) cops man!

Male voice: Drop the knife!
AP: Call the (f'n) police!
Male voice: Drop it! Drop it now! Drop it now or I'll shoot!
(Inaudible voices)
Male voice: Drop it! Drop that knife! Drop it now!
AP: (inaudible)
Male voice: Drop that knife! Drop it now!
(inaudible yelling)
(two gunshots)

The audio recording is of a male, believed to be a police officer, commanding AP to drop his weapon at least 14 times prior to being shot.

Issues, Assessment and Conclusions

Were the actions of SO to fire upon and wound AP justified at law?

Applicable Law

Sections 25 (1), (3), (4) and Section 26 of the *Criminal Code of Canada* are relevant to this analysis:

25 (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.

(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.*

26 Every one who is authorized by law to use force is criminally responsible for any excess thereof according to the nature and quality of the act that constitutes the excess.

In addition, police officers are entitled to rely on the self-defence provisions of the *Criminal Code of Canada* under section 34:

34 (1) A person is not guilty of an offence if:

- (a) *they believe on reasonable grounds that force is being used against them or another person or that a threat of force is being made against them or another person;*
- (b) *the act that constitutes the offence is committed for the purpose of defending or protecting themselves or the other person from that use or threat of force; and*
- (c) *the act committed is reasonable in the circumstances.*

(2) In determining whether the act committed is reasonable in the circumstances, the court shall consider the relevant circumstances of the person, the other parties and the act, including, but not limited to, the following factors:

- (a) *the nature of the force or threat;*
- (b) *the extent to which the use of force was imminent and whether there were other means available to respond to the potential use of force;*
- (c) *the person's role in the incident;*
- (d) *whether any party to the incident used or threatened to use a weapon;*
- (e) *the size, age, gender and physical capabilities of the parties to the incident;*
- (f) *the nature, duration and history of any relationship between the parties to the incident, including any prior use or threat of force and the nature of that force or threat;*
- (f.1) *any history of interaction or communication between the parties to the incident;*
- (g) *the nature and proportionality of the person's response to the use or threat of force; and*
- (h) *whether the act committed was in response to a use or threat of force that the person knew was lawful.*

Effectively, the question is whether the decision of SO to fire at AP was reasonable and justified in the circumstances. Reasonableness of an officer's use of force must be assessed in regards to the circumstances, as they existed at the time the force was used, particularly when

it is considered in light of the dangerous and demanding work engaged and the expectation to react quickly to emergencies.

Where the force used is intended or likely to cause death or grievous bodily harm, there must be a reasonable belief by the subject officer that this force is necessary for the self-preservation of him or herself or the preservation of any one under their protection from death or grievous bodily harm. The allowable degree of force to be used remains constrained by the principles of ‘proportionality, necessity and reasonableness’ (see *R. v. Nasogaluak*, [2010] 1 S.C.R. 206). The fact AP was wounded, and did not suffer grievous or life-threatening injuries, is not determinative of whether the use of force was reasonable and justified in these circumstances.

The critical facts to be considered in this analysis are:

- SO was acting in the lawful execution of his duty when he attended the scene and dealt with AP.
- AP was in an agitated mood when he initially made contact with the police officers.
- AP was in possession of a homemade weapon that was capable of causing lethal injuries.
- AP had concealed this weapon on his person when he attended the skywalk area, a public place.
- AP made his way to the optometrist’s office and produced the weapon.
- AP brandished the weapon at police officers, creating a real threat of imminent death or grievous bodily harm.
- AP entered the optometrist’s office, without consent or permission, and attempted to barricade the door.
- There were a number of civilians within the optometrist’s office when AP entered. Police officers were aware of the presence of civilians and realized the escalating threat to public safety and of imminent death or grievous bodily harm posed by AP.
- The police officers forced their way into the optometrist’s office to deal with the threat to public safety and of imminent death or grievous bodily harm.
- Despite all attempts to have AP drop his weapon and surrender, he refused to comply;
- Police officers demanded 14 times that AP drop his weapon.
- In response to the police demands, AP, still brandishing the homemade weapon, advanced towards SO, with the blade pointed towards him and made a lunging motion.

The police officers, including SO, were in a potentially volatile situation. It was reasonable to believe that AP had the means and intentions to attack the police officers. SO was faced with a dangerous and dynamic situation that unfolded quickly. It would be unreasonable for police to wait before acting. Any delay could have led to the death of WPS officers or other civilians within the office. Therefore, if the statements of all the witnesses and the subject officers are accepted, it was reasonable, in these circumstances, for SO to fire at AP to prevent the death of any of them. When determining issues of credibility, one must look to the evidence itself, and consider whether it is internally consistent; consider whether it is

consistent with evidence given by others; consider whether it “makes sense” on common sense principles; and consider whether it is consistent with the available objective evidence. In this case, and in the circumstances that existed, all of the evidence made sense and was consistent with statements given by each other and by other witnesses. Minor variations in the recollections of witnesses are not unusual or unexpected. When considered as a whole, I am satisfied that this finding of consistency is appropriate. The active line of the 911 call at the time of the shooting provided significant corroboration to the various witness accounts.

In this investigation, the IIU mandate was to determine whether consequences should flow from the actions of SO, in consideration of all the circumstances and information known to him at the time.

Therefore, on careful review of the available evidence and material facts obtained in this investigation and the applicable law, I am not satisfied that there are reasonable grounds to believe that the SO exceeded the ambit of justifiable force in the circumstances. 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
July 27, 2017

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