

FINAL REPORT: IIU concludes investigation into shooting of suspect by WPS officers

On July 24, 2017, at 12:05 p.m., Winnipeg Police Service (WPS) notified the Independent Investigation Unit (IIU) about an incident that occurred that day at approximately 11:23 a.m. According to this notification, members of WPS responded to the report of a male, armed with a handgun, who had attended an address on La Verendrye Street and then left in a black Nissan. When the suspect vehicle was observed at Archibald Street and Provencher Boulevard, a motor vehicle pursuit ensued, proceeding southbound on Archibald Street. The suspect vehicle was involved in a collision near 454 Archibald Street. Following a brief foot chase, the suspect was engaged by members of the Tactical Support Team (TST) and a firearm was discharged. The suspect (later identified as the affected person – AP) was wounded and was transported to the Health Sciences Center in critical condition.

The gunshot wounds sustained by AP are serious injuries as defined by IIU regulation 99/2015. Accordingly, IIU assumed responsibility for the investigation in accordance with subsection 65 (1) of *The Police Services Act (PSA)*. A team of IIU investigators was deployed to the scene of the shooting while a second team was deployed to WPS headquarters.

The IIU civilian director designated two WPS members, who shot AP, as subject officers (SO1 and SO2) and 16 WPS officers as witness officers (WO1 through WO16). AP cooperated with IIU investigators and participated in an interview. IIU investigators also interviewed 21 civilian witnesses (CW1- CW21), although the majority of those interviewed did not witness the shooting. Finally, IIU investigators interviewed two members of Winnipeg Fire and Paramedics Service (WFPS) respecting their interactions with AP.

IIU investigators also received and reviewed:

- file package from WPS including witness officers' notes, reports, call histories, radio transmissions and interviews;
- photographs of scene;
- two security video recordings of the scene;
- GPS data and report;
- medical record concerning AP.

IIU investigators seized a duty pistol from SO1 and carbine rifle from SO2. Neither firearm was submitted for laboratory examination, as subject and witness officer accounts, round counts performed on both firearms, and physical evidence located at the shooting scene, all support the conclusion that SO1's and SO2's firearms were the only weapons discharged that day.

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, each SO provided a prepared statement to IIU investigators and did answer several questions posed to each.

The following facts and circumstances were determined:

July 24, at 11:13 a.m., WPS received a call for service to attend an address on La Verendrye Street in Winnipeg, where a purported home invasion had taken place by a male armed with a handgun. The male with the handgun departed in a car, described as a black Nissan Versa, which was last seen driving towards Provencher Boulevard.

At 11:22 a.m., a black Nissan Versa was observed by WPS officers at the corner of Provencher Boulevard and Des Meurons Street. It collided with a marked WPS cruiser car while attempting to turn onto Des Meurons, but did not stop. As a result, a pursuit ensued. Several WPS vehicles, including three TST units, chased the Versa eastbound on Provencher Boulevard then south on Archibald Street, until the driver of the Versa lost control and crashed into a red truck parked at commercial premises on Archibald Street.

A male occupant of the black Nissan Versa, later identified as AP, jumped out of that vehicle and began to run southbound on the west side of Archibald Street. TST attempted to cut off the fleeing male without success as AP ran across Archibald Street to the east side of the road and continued to run south. TST officers, SO1, SO2 and WO1, exited their vehicles and pursued AP on foot for a short period of time. AP was shot by both SO1 and SO2.

AP was conveyed to Health Sciences Centre via ambulance with non-life threatening multiple gunshot wounds to his right hip, leg and foot. He underwent surgery and remained in hospital for an extended period of time. He was subsequently charged with 21 Criminal Code offences related to the home invasion on La Verendrye Street and subsequent vehicle pursuit.

Ambulance staff who transported AP from the scene to hospital recalled hearing AP ask why the police did not kill him. WO2, a WPS officer guarding AP at Health Sciences Centre shortly after the shooting, said AP made several utterances, including that he had intentionally pointed at the police hoping they would shoot him, because he did not want to go to jail.

The scene was examined and processed shortly following the shooting. Eight spent shell casings were located on the road north of the spot where AP was felled. Four of those casings were pistol rounds and four were from a carbine rifle. A small silver handgun was located underneath the driver's side of the Nissan Versa, at the spot of the collision.

A canvass was conducted by IIU investigators for witnesses and video footage of the shooting incident. Two significant videos were located from commercial operations on Archibald Street. The first video captured the collision involving AP's vehicle. Immediately following the collision with the red truck, AP is seen getting out of the vehicle, ducking down briefly, then running south on the west shoulder of Archibald Street. Two WPS vehicles are seen attempting to cut off the fleeing male without success, and AP is seen running across Archibald to the east side of the road.

The second video shows AP running along the east side of Archibald Street, with his left arm pumping and his right arm secured to his side. AP was being pursued on foot by four WPS officers, all of whom appeared to be pointing weapons at him. At one point in the video, the fleeing male pivoted and looked back at the officers. A short time later, he fell to the ground, presumably as a result of being shot. AP fell beside a silver vehicle that had been driving north on Archibald but stopped as the foot pursuit approached.

The second video footage was subsequently enhanced, and showed that AP pivoted his upper body towards the pursuing officers with his right arm appearing to point back at the police. It could not be ascertained whether AP was holding anything in his right hand at that moment.

CW1 was in a vehicle on Archibald Street, in the immediate vicinity where AP was shot. At 11:22 a.m., CW1 noticed a number of police officers running south towards him, so he stopped his vehicle. The police officers were holding rifles that were pointed towards a male running along the east side of the road. CW1's windows were up and he was listening to the radio. However, he could hear police telling the male to stop. As this male ran past his vehicle, CW1 saw him reach into his belt with his right hand and remove what he believed to be a gun. CW1 said the male pointed the gun towards the police and fired one shot. CW1 then heard four gunshots and the male fell to the ground.

CW1 could not describe the male's gun as his hand covered most of it. However, CW1 believed it was a gun by the way it was being held.

CW2 was a passenger in a northbound vehicle on Archibald Street and observed the collision between the black Versa and the red truck. She saw a male run from the driver's side of the Versa, fumbling with his waist band or belt area of his pants. CW2 observed a flash of something metal in the man's front left hip area, and was uncertain if it was his belt buckle or something else. She observed the man being pursued by police officers. CW2 heard yelling outside, but was unable to make out specific words. Several seconds later she heard six to eight gunshots, but did not see the actual shooting incident.

CW3 was inside a business office when she heard sirens and three or four gunshots. CW3 immediately ran outside the building and observed four police officers with their guns drawn, chasing a young male down the east side of Archibald Street. The officers were each holding black handguns and yelling. She could not hear exactly what they were saying. CW3 stated the police officers shot the male seven times, and she was unaware what precipitated the officers firing their weapons. When shown the second video footage she identified herself as exiting the business office after the shooting event had already taken place. She then acknowledged that she could not have seen the shooting as she described in her statement.

Affected Person

AP was interviewed by IIU investigators while he was in the hospital. He stated he had been driving a vehicle that was pursued by police from Des Meurons Street and Provencher Boulevard to Archibald Street, where he lost control of the car and crashed into a parked truck. AP

admitted there was a gun in the car with him, but denied having custody of it or placing it under the car as he ran off. AP said he ran south on Archibald Street and was pursued by seven or eight officers. As he was running, AP stated he could hear police telling him to stop.

AP said that, while running, he was attempting to pull up his pants, as he had lost some weight and they were falling down. He admitted having a set of brass knuckles in his pants pocket, but denied reaching for them or pointing back at the police at any point. AP stated he did look back at police officers pursuing him from behind, at which point he heard someone say, "He's got a gun." AP heard a number of gunshots and felt burning in his hip and leg. He fell to the ground and was eventually taken by ambulance to hospital.

AP was asked about comments attributed to him that he wanted to be shot to avoid going to jail. AP acknowledged this, saying he wanted to get shot that day so he would not have to go to jail for leading the police on a high speed chase, but he continued to deny that he made any motions that would precipitate being shot.

Witness Officers

WO3, with **WO4**, was driving south on Archibald Street from Nairn Avenue when they were made aware of the pursuit involving the black Nissan Versa. He became involved in the chase until the Versa collided with the red truck. **WO3** was driving the police vehicle and observed a male exit the Versa and start running south on Archibald Street. He described the male as running with both hands pumping back and forth. **WO3** attempted to cut off the fleeing male with his vehicle but was unsuccessful. **WO3** exited his police car and began to pursue on foot. He saw four to five TST officers running after the man as well, all with guns drawn. **WO3** heard the TST officers commanding the man to stop and get on the ground, but he did not comply. The man was observed to look back at the officers pursuing him and reach into his belt, at which point he was shot.

WO4 described the fleeing male as running with both hands pumping. After **WO3** had exited the police vehicle following the unsuccessful attempt to cut off the subject, **WO4** stated he got into the driver's seat to again try to intercept the male. **WO4** said he observed five or six TST officers on foot behind the man, all with weapons drawn. He heard verbal commands being given, "Stop, stop get on the ground" several times, then three to four gunshots. **WO4** did not see the shooting as he was attempting to back his police vehicle onto the street from where it had been stopped.

WO5 and **WO6** were together in another marked WPS police vehicle. They arrived on scene to see a male subject running south on Archibald Street. **WO5** said the male had his right hand in the waistband of his pants and was looking back at "about four TST officers" who were chasing him on foot, with their firearms drawn. **WO5** heard someone yelling at the male to stop and show his hands, then he heard five to seven gunshots. **WO5** did not see the shooting as his view was obstructed by the TST officers on the roadway in front of him.

WO6 observed the male running with his right arm tucked into his pants and his left arm swinging freely. TST officers, brandishing firearms, were running after him, and **WO6** recalled

hearing them repeatedly calling out: "Get on the ground, show us your hands." WO6 said the male appeared to turn his body like he was pulling something from his waistband and moved his right arm back towards the TST officers. WO6 then heard five to six shots. The male fell to the ground at that point. WO6 did not know which officers fired their guns.

WO1 and WO7 were TST officers who attended the St. Boniface area following the initial home invasion complaint on La Verendrye Street. They arrived on scene after the Versa had collided with the red truck, and observed a male subject running away from the collision scene along the west side of Archibald. They also noted that the male was running with his right hand in the front of his pants, while his left arm swung freely, leading them to suspect the person was holding onto a weapon that was secreted into his belt line.

WO7, the driver of the police vehicle, attempted to cut off the male, but was not successful. At that point, WO1, holding his carbine rifle, exited and joined SO1 and SO2 in a foot chase of the male, while WO7 attempted to reposition the police vehicle. WO7 heard WO1 call out to the fleeing male to stop, then heard multiple gunshots to the south. He said he did not see the shooting incident as his attention was focused on driving the vehicle.

WO1 said he called out to the fleeing male, "Stop, police. Stop and show me your hands. You're gonna get shot if you don't," as he was pointing his carbine rifle at him. WO1 recalled SO1 and SO2 were to his right as they ran down Archibald. The male looked back over his shoulder and pulled his right arm out of his pants and pointed it back at SO1 and SO2, at which point he heard the sounds of a pistol and carbine rifle being shot from his right. The male fell to the ground and was handcuffed. WO1 provided first aid and recalled the male saying, "Just kill me. I wanted you guys to kill me."

TST officers WO8 and WO9, arrived on scene following the collision, and observed a male subject running south on Archibald. The male was running with his left arm pumping, but his right arm was on his waistband in the front of his pants. WO8 also recalled the male kept looking back at officers pursuing him as he ran. WO8, who was driving the police vehicle, attempted to overtake the fleeing male. She drove up beside him then stopped the vehicle. She could hear someone yelling, "Stop, police," then heard four to five shots being fired. WO8 did not see who shot the male.

WO9 could see SO1 with his pistol drawn and SO2 carrying a carbine rifle as they chased on foot. He could hear someone yelling at the male to stop. Once his vehicle stopped, WO9 exited and immediately heard three to five gunshots in quick succession. He looked up and saw the male who had been running fall to the ground. After the shooting incident, WO9 heard the male subject say, "I wanted you to f*****n' kill me."

Subject Officers

Both SO1 and SO2 met with IIU investigators for interviews on this matter. They each read self-prepared statements and answered supplementary questions posed by investigators.

SO1 and his partner **SO2** arrived on scene in a police vehicle following the collision, and he observed a male running away from the Versa. **SO1**, the driver of the police vehicle, attempted unsuccessfully to cut off the male. **SO1** exited and took up the pursuit on foot. **SO1** stated he could see the male running with his left hand swinging freely, while his right hand was held in his waistband. **SO1** stated he believed the fleeing male was holding a firearm in his belt as he ran.

SO1 drew his service pistol and called out to the male subject to stop and drop the gun, but he did not respond to the commands. The male looked back at him and **SO2**, then pulled his right arm out of his pants and pointed it at the officers, as if he was pointing a firearm. **SO1** stated he could see something metallic in the right hand of the male and believed he was pointing a firearm at them. **SO1** then heard a single shot, and was unsure if another officer or the male subject had fired. **SO1** said he fired three to four rounds at the male, and simultaneously heard other shots coming from his left, where **SO2** was situated. The male fell to the ground and was handcuffed by **SO2**, after which time first aid was initiated. **SO1** recalled the shot male told him, “I wanted you guys to kill me.”

SO2 had a similar account in that he observed a male running from the collision scene, holding his right arm rigidly against his body while the left arm swung freely. **SO2** expressed his belief that the male was holding a firearm as he ran.

SO2 was armed with a carbine rifle as he pursued the male. He yelled at the male several times to stop and get on the ground. **SO2** stated that the subject partially turned and pointed his right arm back at him and **SO1**, similar to someone pointing a gun. **SO2** said he could see a flash of silver in the male’s right hand, which he believed was a firearm. **SO2** fired approximately three rounds at the person, and could hear gunfire coming from his right, where **SO1** was positioned. The male fell to the ground, where **SO2** handcuffed him and commenced first aid. During this time, the male said, “I wanted you to kill me.”

Once the male had been removed from the scene by first responders, **SO1** and **SO2** assisted in searching the area for a handgun. They did not find one, instead locating a pair of brass knuckles that were in immediate proximity to where the man had been lying.

Issues, Assessment and Conclusions

Were the actions of **SO** to fire upon and wound **AP** justified at 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 SO1 and SO2 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 considered in light of the dangerous and demanding work and the expectation the officer will 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 his or her self-preservation 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:

- SO1 and SO2 were acting in the lawful execution of their duty when they attended and dealt with AP;
- Information had been broadcast that AP was a suspect in a purported home invasion involving the use of a firearm;
- AP was involved in a vehicle pursuit, resulting in two separate collisions;
- AP ran from police and refused all demands to stop and surrender;
- AP kept one hand near his belt or groin area throughout the foot chase;
- AP appeared to reach for his waistband as he turned and looked at SO1 and SO2, then made a gesture as if to aim a gun at them;
- SO1 and SO2 noted a shiny/metallic object in AP's hand as he pointed his arm at them;
- There were a number of officers and civilians in the vicinity of AP at the scene, escalating the threat to public safety and the potential of imminent death or grievous bodily harm posed by AP.

The police officers, including SO1 and SO2, were in a potentially volatile situation. In these circumstances, and based on the facts known, it was reasonable to believe that AP had the means and intention to shoot the police officers. SO1 and SO2 were faced with a dangerous and dynamic situation that was unfolding quickly. It would be unreasonable for police to wait before acting. Any delay could have led to the death of officers and civilians. Therefore, if the statements of all the witnesses and the subject officers are accepted, it was reasonable, in these circumstances, for SO1 and SO2 to fire at AP to prevent the death of any of them.

In this case, and in the circumstances that existed, all of the evidence makes sense and is consistent with statements given by each witness. 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.

In this investigation, the IIU mandate was to determine whether consequences should flow from the actions of SO1 and SO2, in consideration of all the circumstances and information known to them at the time of the shooting. 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 either SO1 or SO2 exceeded the ambit of justifiable force in the circumstances.

Accordingly, no charges will issue against SO1 or SO2. IIU has completed its investigation and this matter is now closed.

Final report prepared by:
Zane Tessler, civilian director
Independent Investigation Unit
February 28, 2018

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