

FINAL REPORT: IIU concludes investigation into officer-involved shooting in Winnipeg

On December 12, 2017, at 1:03 a.m., Winnipeg Police Service (WPS) notified the Independent Investigation Unit (IIU) about an officer-involved shooting that had just occurred at an apartment building on Charles Street in Winnipeg. According to this notification, during the late night of December 11, police were dispatched to the address on Charles Street in response to a 311 telephone call that had indicated there was a “dead” body at this location. At 12:18 a.m., now December 12, four WPS officers, in two police vehicles, arrived on scene and attended to a specified unit. The officers knocked on the suite door. A male (later identified as the affected person – AP), who was armed with a knife, answered the door. One of the WPS officers deployed his conductive energy weapon (CEW) on AP as the other officers tried to have AP disarm himself. AP refused to comply with their directions. Shortly afterwards, another of the WPS officers discharged his service pistol and shot AP a number of times, resulting in serious injuries to him. An ambulance was requested and AP was subsequently conveyed to the Health Sciences Center (HSC) in critical condition. AP was taken to surgery but was expected to survive.

As this matter involved an injury to a person that resulted from a police officer’s discharge of a firearm, the IIU assumed responsibility for this mandatory investigation in accordance with section 65(1) of *The Police Services Act* (PSA). A team of IIU investigators was deployed to the scene.

The IIU civilian director designated the WPS officer who shot AP and the WPS officer who deployed a CEW as the subject officers (SO1 and SO2 respectively). The remaining two WPS officers present at the scene of the shooting were designated as witness officers (WO1 and WO 2).

Under the provisions of the PSA, a subject officer is not required to provide a statement or notes regarding an incident. In this case, both SO1 and SO2 declined to be interviewed about the shooting but, through legal counsel, each supplied a self-prepared statement for review.

Additionally, IIU investigators interviewed two civilian witnesses (CW1 and CW2).

Due to the severity of the injuries suffered in the shooting, IIU investigators were unable to interview AP until January 23, 2018. When he was interviewed, he was still in hospital at HSC. AP did not remember anything about his interaction with the police, citing excessive alcohol consumption as the likely reason. AP did sign a medical release permitting access to his treatment records at HSC.

The investigation conducted by IIU investigators included:

- attending and examining the scene of the shooting;
- canvassing for witnesses;
- reviewing the forensic examination of the scene;
- examining the pistol and CEW used by SO1 and SO2 respectively;
- reviewing and transcribing 311 calls;
- reviewing police radio transmissions;
- reviewing file materials from WPS;
- reviewing medical reports regarding AP;
- obtaining statements from designated witness officers;
- obtaining statements from civilian witnesses;
- obtaining and reviewing prepared statements of subject officers;
- regular consultations and briefing sessions; and
- preparation of the final investigative report.

WPS Forensic Identification Section (FIS) personnel processed the scene of the shooting. FIS located two spent shell casings outside the front door of the suite. A bullet hole was found in a closet wall opposite the front door of the suite, leading to the discovery of an expended bullet embedded in the wall of the apartment. FIS also located a CEW with one expended cartridge lying on the floor just inside the kitchen of the apartment. A large white-handled knife was located in the hallway of the residence, near where AP was laying after being shot. A black-handled serrated knife was found in the kitchen, also in close proximity to where AP fell. Finally, a yellow and black handled screwdriver was observed laying on the floor in the kitchen, near the CEW.

FIS seized the duty pistols of all four constables who attended this call for service. SO1's pistol was found to contain 13 live .40 calibre rounds in a 15 round magazine, while the pistols of each of the other officers each contained 15 live .40 calibre rounds in 15 round magazines.

The CEW located on the floor at the scene was believed to have been carried by SO2 on the night of the shooting incident. A download of the data on the unit determined the unit had been discharged once at 12:26 a.m. on December 12.

IIU investigators seized SO1's service pistol. The firearm has not been submitted for laboratory examination, as subject and witness officer accounts, round counts performed, and physical evidence located at the scene all support the conclusion that SO1 was the only police officer who discharged his pistol on the date in question.

Circumstances of the Incident

On December 11, 2017, at 11:43 p.m., the Winnipeg Police Service Operational Communications Centre (WPS OCC) received a telephone call from a 311 operator employed by the City of Winnipeg. The operator reported that she had taken a call earlier in the evening from an unknown male who claimed he had found a body. The 311 operator did not obtain any

personal information regarding the caller other than his telephone number, adding that the caller "... seemed really out of it."

It was determined that the telephone number was assigned to a cellular phone associated with AP, who resided at an apartment on Charles Street. At 11:54 p.m., WPS OCC broadcast the following information on the police radio system:

"Require unit to attend 481 Charles between Church and Machray. Male caller to 311 stated he found a body and didn't know what to do with it. Sounded out of it. Unit to check wellbeing."

Two WPS police vehicles, one occupied by SO1 and WO1 and the other occupied by SO2 and WO2, attended to the Charles Street address at 12:18 a.m. on December 12. At 12:26 a.m., SO1 called out on the police radio that shots had been fired at the location and an ambulance was required. Winnipeg Fire and Paramedic personnel attended the building where they provided emergency treatment to AP for gunshot wounds to his abdomen and right ear. AP was transported by ambulance to HSC where he received further treatment for his injuries.

Civilian Witnesses

A canvass of the remaining apartments at the Charles Street location was conducted by IIU investigators, in search of possible witnesses and video footage. No video footage or eyewitnesses to the actual shooting were located, but two persons who resided in the same building as AP did hear the shooting take place.

CW1 lived across the hall from AP. At approximately 11:00 p.m., he heard banging and yelling coming from AP's suite. He yelled, from inside his unit, telling his neighbour to be quiet, and the noises ceased. Approximately 15 minutes later, CW1 saw a number of police cars outside the building and officers banging on the outside door. They were eventually let inside by another tenant and made their way AP's unit where they knocked on the door, but there was no answer. CW1 stated that the officers said:

"AP', could you open the door please? It's the Winnipeg Police."

According to CW1, the officers also said:

"AP', open the door, it's the police. You're the one who called the police," and

"AP', it's the Winnipeg Police. If you don't open the door we're going to kick it down."

CW1 tried to look out the peephole on his door, but his view was blocked by someone standing in the way.

CW1 told investigators he heard a loud bang, then police started to say:

"Drop the knife! Drop the knife!"

He heard one officer say:

“Drop the knife or I’m going to f’n shoot!” followed by

“Don’t reach for the knife! Don’t reach for the knife!”

There were two loud pops and the sound of a CEW being deployed.

CW1 looked out the peephole of his door again and observed an officer performing first aid on AP, who was lying on the floor. An ambulance arrived and transported him away.

CW2, who resided with CW1, provided a similar account. She could hear the tenant who resides across the hall from her apartment, AP, banging and yelling, at approximately 11:30 p.m. CW2 stated the police showed up sometime later and went to the doorway of AP’s unit, where they knocked a few times and asked him to open the door. CW2 recalled the police saying:

“AP’, open up. It’s the police, you had called us.”

CW2 believed she heard AP ask who was there and also remembered hearing police threaten to break down the door if it was not opened.

Shortly, CW2 heard a male voice commanding someone to drop the knife, followed by the words:

“Don’t pick up the knife!”

Then there was a loud pop, then a sizzling noise that she believed was a CEW being fired.

Witness Officers

WO1:

WO1 said he attended Charles Street with SO1, SO2 and WO2 in response to a “possible found body call.” The four officers approached AP’s suite at which time WO1 knocked on the door, but there was no response. WO1 knocked again and called out:

“AP’, it’s the police, open the door.”

There was no response to WO1’s call out. WO1 knocked a third time and was informed by SO1 that he saw movement in the light coming from under the door. WO1 knocked a fourth time, stating:

“AP’, we know you are in there, open the door or else we will have to kick in the door.”

When there was no response to that command, SO1 started to kick at the door. According to WO1, after four or five kicks, a male voice could be heard inside, yelling something like:

“How do I know who you are?”

WO1 said he responded by telling the person to look out the peephole on the door of the suite. WO1 was able to see shadows under the door that indicated to him that someone was looking out. However, that person then moved away from the door without opening it.

WO1 then called out:

“It’s the police. You called us, ‘AP’.”

WO1 heard something inaudible yelled back in an angry tone and then the deadbolt to the suite was unlocked. However, the door was not opened. WO1 said SO1 drew his duty pistol and SO2 drew his CEW. WO1 reached out, opened the door and then observed a male (later identified as AP) with his back to the police officers. The door then closed, as it had an automatic closing attachment on the top. WO1 opened the door a second time and held it ajar with his foot. Again, WO1 observed AP, who was now six feet away and facing the officers. WO1 said he could see a black-handled knife sticking out of AP’s front left pocket.

WO1 said he called out:

“He’s got a knife!”

WO1 heard the other officers yelling at AP to drop the knife. AP did not respond. WO1 commanded AP:

“Get your hands up.”

AP complied as WO1 added:

“Keep your hands up.”

WO1 said he heard SO2 tell the male that he would be “tasered” if he failed to comply, to which the person mumbled something incomprehensible.

WO1 said he ordered AP to take a step forward for the purposes of disarming him. AP initially complied but then reached down with his right hand and drew the knife from his pants pocket. WO1 stated he immediately heard two gunshots, fired by SO1. AP was struck in the abdomen and in the right ear. WO1 was also aware that SO2 had deployed his CEW, as there were “Taser” probes visible on AP’s upper body.

WO2:

WO2 said he and the other three officers attended Charles Street in response to a call that someone had located a dead body. WO2 said they approached a suite on the second floor of the apartment building where WO1 knocked and announced:

“Winnipeg Police!”

No one answered the door. WO2 said he could see a break in the light under the door of the residence, which indicated to him that someone had approached the door from the inside of the suite, but the door did not open.

WO2 said he was sent to locate a caretaker who could open the door of the apartment but he was unable to locate anyone who could assist. When he returned to the unit, a decision was made to have SO1 kick in the door. SO1 kicked at the door approximately three times, at which time a male voice could be heard yelling from inside the residence, asking what the police wanted. Both SO1 and WO1 responded by saying it was the police, and ordered that the door be opened. WO2 said the door was unlocked and opened.

Once the door was open, WO2 stated he could see a lone male (later identified as AP) standing inside the suite, roughly six to seven feet away from the police. AP had a black-handled knife in his left front pocket. WO2 said he called out:

“Knife! Knife! Knife!”

WO2 commanded AP to keep his hands up and pointed his pistol at him. WO2 recalled the other officers telling AP to raise his hands and warning him not to reach for the knife, otherwise he would be shot.

WO2 stated the male initially complied with the direction and raised his hands, then reached down and drew the knife out of his pants with his right hand and held it with the point up. WO2 said he heard three pops at that time, one from his right side where SO2 was positioned and two from his left side, where SO1 was standing. WO2 believed SO2 had deployed his CEW, while SO1 had fired his pistol. AP then dropped to the floor of the suite.

Subject Officers

SO1:

SO1 provided IIU investigators with a prepared statement. SO1 wrote that he and WO1 attended a call for service at Charles Street shortly after midnight on December 12. The call related to someone claiming to have found a body, and they attended to the address with SO2 and WO2, who were in another police vehicle.

According to SO1, WO1 "... knocked loudly on the door, announcing Winnipeg Police." There was no response. SO1 then wrote:

"After another few knocks, I observed what appeared to be a shadow pass back and forth along the bottom of the door. This has been consistent in my experience to occur when a person walks or stands just on the inside of the door, blocking the light which was before, shining under it. I told everyone what I had seen and that there must be someone inside."

All officers called out to the occupant of the suite, but there was no response.

SO1 was told to break down the door in order to gain entry to the residence. SO1 kicked at it four to six times, to which a male voice shouted from within:

"Hey, stop that."

WO1 and SO2 called out to the occupant, who responded by saying things similar to "I don't trust you." The male then asked who they were, to which SO1 wrote:

"I stated loudly that we were the police. The male seemed to pause and then said something to the effect of "I don't believe you and I don't trust you. But I'll open the door." A moment later, the male swung the door open and stood just on the inside of the threshold. I immediately observed the black handle of a large knife. The blade was tucked into the front left pocket of the male's light blue colored jeans."

SO1 wrote that he called that the male (later identified as AP) had a knife, and heard his co-workers present make similar utterances. SO1 pointed his service pistol in the direction of AP and called out repeatedly:

"Don't touch the knife. Don't touch it."

SO1 told AP to get on the ground but he did not comply. SO1 wrote:

"He seemed impervious to my commands, ignoring everything. He would sway or step back and forth. As he got closer, I raised my Glock and obtained a sight picture in the upper center of his chest. I flashed my weapon light over and over in an attempt to disorient him. It had no effect, and instead he stopped, pointed up at me and laughed. As he chuckled, he stated "Ha ha ha Look at this guy with his gun ..."

According to SO1, AP reached down and pulled the knife out of his pants. At this point, AP was "roughly" four to six feet away from the police. SO1 believed he and his fellow officers were at risk of serious harm or death as a result of those actions, so he discharged his service pistol twice. SO1 wrote that the knife was laying at AP's feet near the entrance to the kitchen. SO1 also wrote that he found a yellow-handled screwdriver secreted in the waist band of AP's pants. SO1 believed the screwdriver was intended to be used as a weapon.

SO2:

SO2 sent a prepared statement to IIU investigators. SO2 wrote that he and his partner, WO2, attended a call for service regarding information that someone had found a dead body at a Charles Street apartment building. SO2 stated they arrived after midnight with another team of officers--SO1 and WO1.

The four officers attended to a suite in the building:

“... and knocked on the door announcing Police presence. There was no answer to repeated knocking but SO1, who was positioned further back from the door, saw a shadow move under the door indicating someone was inside. Police began knocking again and letting the occupant know that Police knew he was inside and to open the door but there was still no response.”

SO2 wrote that he made a decision to force the door open and instructed SO1 to kick it in. After three kicks to the door, SO2 stated a male voice could be heard coming from inside the apartment, but that the voice was not saying anything that could be understood by the officer. SO2 commanded the male to open the door. SO2 heard the deadbolt being unfastened.

According to SO2, WO1 opened the door to the apartment, and upon doing so called out that a male inside had a knife. SO2 was able to see a shirtless male approximately six feet inside the door of the residence with a black handled knife inserted into the front left pocket of his pants. SO2, who had his CEW drawn, moved to a position where he had a clear shot. SO2 commanded the male (later identified as AP) to raise his hands. AP complied and raised his hands. SO2 recalled that SO1 had his firearm out and pointed at AP. SO2 also wrote that WO2 was behind him and had also drawn his firearm. WO1 was holding the door open.

SO2 then wrote:

“I made the decision that as we did not know if there was anyone else inside the suite who might be injured we could not back out and turn the incident into an armed and barricaded. As I was getting into position I was telling the male to keep his hands up. The male was told that if he attempted to reach for the knife he would be shot ... When I was in position I was about to start to give the male directions to get down onto his stomach so Police could approach safely and handcuff. The male was acting very erratic and I was still unable to comprehend what he was saying. I had kept my Taser out as I had lethal cover and should the male come at us and want to fight I would be able to use the Taser. The next few moments happened so quickly, the male suddenly dropped his right arm and reached down and grabbed the handle of the knife and pulled it out of his pocket and I feared that myself and my co-workers were in danger of death or grievous bodily harm. I would ideally have transitioned to my firearm when the male reached for the knife but I did not have the time or distance to do this. When I saw him pulling out the knife I fired the Taser but I am unsure if or where the probes struck the

male. At the same time that I tasered the male I heard 1-3 shots from a firearm to my left side. The male went down to the ground and the Police entered the suite. The knife was moved away from the area where the male had fallen and WO1 and SO1 began to provide first aid. The male has a gunshot wound to his lower abdomen and one to his right ear. I dropped the Taser on the ground as I did not want to worry about trying to remove the cartridge and trying to reholster.”

Medical Reports

A review of these records indicated AP suffered one gunshot wound to his abdominal region and one gunshot wound to his right ear. The bullet from the abdominal wound was not removed from AP. It had come to rest adjacent to AP’s spine, causing damage to his colon, pancreas, gall bladder and liver.

Issues, Law and Assessment

This investigation must consider whether the actions of the subject officers to fire upon and cause injuries to AP were justified at law.

In this incident, police were required to be prepared and ready for all possibilities when they met up with AP at the Charles Street apartment building. The police had attended in response to a call that a dead body was found at this address. Initial attempts to communicate with any occupants of the suite were met with silence. It made sense for all police officers to arm themselves in these circumstances. This led to concerns on the part of the police and was followed by an attempt to force the door open. When the door was open, police were then confronted by AP who was visibly armed with a knife in his pants. AP posed a significant risk to police safety. That risk was exacerbated when AP moved his hand and pulled the knife out. The possibility that AP could use lethal force towards any of the officers was significantly increased.

Applicable Law

Sections 25 (1), (3), (4) and Section 26 are applicable to this analysis:

25 (1) Every one 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* 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.*

Effectively, the question is whether the decisions of the subject officers in this case to discharge their firearm and CEW at AP were reasonable in the given circumstances.

Reasonableness of an officer's use of force and, in this case, potentially lethal force, must be assessed in regards to the circumstances as they existed at the time the force was used. Where potentially lethal force is used (intended or likely to cause death or grievous bodily harm), there must be a reasonable belief by the subject officers that their use of potentially lethal force was necessary for their own 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 police attended this location with the belief that a dead body was present within the suite. It was uncertain what type of scene would be presented to them on entry. They received no responses to attempts to communicate with any occupants. Due to concerns as to the state of the scene within the suite, a decision was made to breach the door to gain entry. When communication was made with an occupant, entry was initially denied and then granted. When the door opened, police were confronted with an armed individual. Many commands were given to the male to drop his weapon and surrender. The male, in the face of these commands and armed police, chose to produce the knife in a combative style. The likelihood that AP was capable of using lethal force on any of the officers was real and substantial. The police did not create this lethal force interaction. This was solely the choice of AP. AP refused to comply with all directions, demands and commands to drop his weapon and surrender. AP responded with a heightened threat of his own when he produced the knife from his pants.

The next assessment is whether the evidence from the police officers and witnesses is credible. 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 of the recollections among the various witnesses are not unusual or unexpected. When considered as a whole, I am satisfied that this finding of consistency is appropriate.

Therefore, accepting the statements of the witnesses and the subject officers, it can be readily determined that the actions of the subject officers, in order to prevent the injury or death of themselves or the other officers, were reasonable, both on an objective and subjective basis in these circumstances.

Although neither subject officer participated in full interviews with IIU investigators and instead provided prepared statements, I am satisfied there is consistency with the remaining evidence gathered from various and diverse sources.

I am satisfied that when all of the evidence is reviewed as a whole, there are sufficient facts to support the conclusion that the decision to shoot AP was necessary in order to prevent the injury or death of any or all of the officers.

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

Following a full and complete review of a thorough and comprehensive investigation, it is my view that the actions of the subject officers, in these circumstances, were justified in law.

There will be no charges recommended against any subject officer and the IIU file is now closed.

Final report prepared by:
Zane Tessler, civilian director
Independent Investigation Unit
July 16, 2018

Ref #2017-074