

FINAL REPORT: IIU concludes investigation into officer involved shooting during arrest by WPS officers

On January 9, 2019, Winnipeg Police Service (WPS) notified the Independent Investigation Unit of Manitoba (IIU) of an incident involving a vehicular pursuit and discharge of a service pistol, resulting in minor injuries to an individual, occurring earlier that evening. It was reported that police officers responded to a complaint of an attempted stabbing in the northeast corner of the city, where the suspects had fled the area in a vehicle. A description of the vehicle, along with a license plate number, was provided to police, who located and attempted to stop the vehicle a short time later. However, the driver of the vehicle would not stop and a short pursuit ensued. A WPS duty inspector aborted the pursuit due to high speeds and danger to the public.

Two police vehicles uninvolved in this pursuit later observed the suspect vehicle stopped at the corner of Panet Road and Nairn Avenue, and attempted to perform a containment block by stopping immediately in front and behind the suspect vehicle. Four WPS officers then exited and approached the suspect vehicle, at which time it backed into one of the cruiser cars and drove off to the south. During this interaction, two WPS officers discharged their service pistols at the suspect vehicle.

A second pursuit commenced and, eventually, the suspect vehicle was stopped alongside train tracks near the corner of Archibald Street and Marion Avenue. The suspect vehicle backed into another police cruiser. The suspect vehicle sustained heavy damage to its rear. Three occupants of the suspect vehicle were removed and arrested. One of the occupants was found to have sustained a superficial gunshot wound to his neck and was taken to hospital where he was treated and then taken into custody by police. The other two individuals were uninjured.

As this notification concerned the discharge of firearms by police, which resulted in injuries to a person, this constitutes a serious injury as defined by regulation. Accordingly, the IIU was mandated to undertake an investigation into this matter, pursuant to section 65 of The Police Services Act (PSA).

A team of IIU investigators was deployed.

Information obtained by IIU investigators included:

- Witness officers' notes and reports
- SO1's notes and reports
- Prepared statements of subject officers
- Audio recording of 911 call
- Audio recordings of WPS radio transmissions
- WPS Forensic Identification Section (FIS) reports
- Scene and investigation photographs

- Forensic reports on firearm analysis
- Forensic reports on motor vehicle analysis
- WPS policy on pursuits
- WPS policy on use and discharge of service pistols
- Gas bar video
- Hotel surveillance video
- Medical reports

The civilian director designated two WPS officers who self declared to discharging their respective service pistols as subject officers (SO1-2). Two additional WPS officers were designated as witness officers and were interviewed. The three occupants of the suspect vehicle were identified as affected persons (AP1-3). IIU investigators interviewed AP1 and AP2 while AP3 declined to participate or provide a statement. IIU investigators also interviewed two civilian witnesses (CW1-2) and a subject matter expert (SME)¹ on the matter of a containment stop².

Facts and Circumstances Determined Through the Investigation:

Affected Persons:

AP1 stated he was driving a car that was stopped at Panet Road and Nairn Avenue when a police cruiser drove up and struck him from behind. A WPS officer exited the police cruiser and began shooting AP1's car. AP1 stated that he did not hear the police officer say anything prior to shooting. AP1 stated that he could smell gunpowder and felt his neck burn. AP1 states that he went into shock and does not remember much after that. AP1 stated that his vehicle was stopped when it was shot at and it was only after the shots were fired that he drove away. It should be noted that AP1 declined to answer many of the questions posed to him by IIU investigators and terminated the interview early.

IIU investigators received and reviewed AP's medical reports, with his consent and written authorization, which confirmed that he sustained two lacerations to his neck related to gunshot wounds. Serious damage and consequence to AP1 were ruled out and he was treated and released from hospital.

Twice, IIU investigators interviewed AP2. AP2 stated there was a fight involving AP1, AP3 and her sister's boyfriend at her house. AP2 stated that she departed in a white, four-door car with AP1 and AP3. AP2 stated she was seated in the back seat of the car and AP1 was driving. AP2 stated that police began to chase them but stopped a short time later. AP2 stated that the police began to chase them again near a high school and the police cruisers were ramming into the back of the white car, as they drove near Kildonan Place Shopping Centre. AP2 stated that AP1 was speeding and she became scared. AP2 stated that the police began to call out over a loudspeaker, saying, "*Pull over, police.*" Then, AP2 stated that there were two gunshots coming from behind, approximately one minute apart. The first gunshot shattered the rear window of the car, and AP2 was unaware what happened to the second gunshot. AP2 stated that the white car was moving at the time of the gunshots. When asked about her sobriety at the time, AP2 responded, "*Not very*" and admitted to consuming five rum and cola that evening.

¹ A person who has special skills or knowledge on a particular job or topic

² A Containment Stop is a method to prevent suspect vehicles from fleeing from police

Civilian Witnesses:

CW1 stated he was with CW2 and was driving home, eastbound on Nairn Avenue, when he observed a police cruiser driving south on Panet Road stop abruptly behind a white car. The white car was stopped on Panet Road facing south. CW1 stated that he noticed that four police cruisers, one of which was stopped on an angle, now surrounded the white car and there were six or seven police officers outside. CW1 observed that one police officer, standing next to the driver's door window, was swinging his hand in an attempt to break it. The white car then drove around the police cruiser that was stopped in front, at which point the police officer who was attempting to break the window, drew his service pistol and began to fire at the car. CW1 stated he could see muzzle flashes from the police officer's firearm and could hear repeated "pops" from the gunshots. CW1 stated that there were more than three gunshots. CW1 did not see the white car reverse into the police vehicle behind it and only saw one police officer fire his firearm. CW1 was concerned, as he believed the police officer continued to fire at the white car as it drove towards his own vehicle.

CW2 was in the front passenger seat of CW1's truck as they drove east on Nairn Avenue. CW1 observed three police vehicles surrounding a white car on Panet Road at Nairn Avenue, with two officers on foot and one of whom was standing next to the driver's door of that car. CW2 stated that police officer was trying to open the driver's door of the white car and was banging on the window. CW2 stated that this police officer then drew out his service pistol and began to fire at the white car. The white car started to drive off and into the intersection. CW2 stated the police officer continued to fire his firearm as the car drove away, and believed hearing five to eight gunshots.

Witness Officers:

WO1 was partnered with SO1 and they were in a marked police cruiser during the evening of January 9. WO1 stated that they became aware of an attempted stabbing call in the northeast part of Winnipeg and of a pursuit of a suspect vehicle by other WPS units. The suspect vehicle was spotted and followed to the corner of Panet Road and Nairn Avenue, where WO2 and SO2 attempted to perform a containment stop on it. SO1, who was the driver of their vehicle, pulled in front of the suspect vehicle, while WO2 and SO2 stopped immediately behind it. All four officers then exited their vehicles and approached the car. WO1 stated he went up to the driver's door and drew his service pistol as he advanced. WO1 stated that he could clearly see three occupants of the suspect car: two males in the front and a female in the back seat. WO1 stated he commanded the driver to stop. He could not recall what the other officers were saying as his focus was on the suspect car. WO1 attempted to open the driver's door of the car, but it was locked. WO1 stated that he struck the window with the butt of his service pistol in order to break it but did not succeed. At that point, the suspect vehicle reversed and backed into a police cruiser then proceeded to move slowly forward before accelerating to get around the police cruiser. WO1 let go of the door handle and then heard four or five gunshots. WO1 stated that he dropped to his knees and covered his face. WO1 was unsure where the shots came from or who discharged their weapon.

WO1 stated that in his opinion, the driver had intentionally driven at SO1 and he would have fired at the car if he had the opportunity. WO1 stated that the flow of traffic at the time was

normal, though there were businesses on the southeast and southwest corners of the intersection of Panet Road and Nairn Avenue.

WO2 was partnered with SO2 and was the driver of their police cruiser when he became aware of a call for service regarding a stabbing and that the suspect vehicle may be involved. Other WPS units located the suspect vehicle in the northeast corner of the city and pursued it for a short time, before a duty inspector called it off over public safety concerns. WO2 continued to patrol the area and located the suspect vehicle on Concordia Avenue. WO1 and SO1 were also in the vicinity. Both police units followed the subject vehicle, until it came to a stop at the traffic lights on Panet Road at Nairn Avenue. At that time, WO1 and SO1 drove in front of the suspect vehicle to block its forward progress, while WO2 positioned his vehicle immediately behind it. The four officers then exit their respective police cruisers and take up positions around the suspect vehicle. WO2 stated he and WO1 were on the driver's side of the suspect vehicle, with SO2 was near the right rear corner and SO1 was somewhere in front of it, towards the passenger side. WO2 stated that he drew his service pistol and called out to the occupants to open the door. WO2 stated he repeated this five or six times. WO2 stated that the windows on the suspect vehicle were frosted and he was unable to see inside of it. WO2 stated that he was fearful someone could exit the car with a weapon, given the nature of the original call for service. WO2 observed WO1 attempt to open the driver's door with no success and then withdraw a baton and attempted to smash the window with it. The suspect vehicle then reversed and turned to the right in an effort to drive around the police cruiser. WO2 was unsure if the suspect vehicle collided with the police vehicle parked behind it. WO2 said the suspect vehicle drove forward towards SO1. WO2 stated he considered firing his service pistol at the moving vehicle because of the threat it posed to SO1, but refrained, as there were other vehicles and a business behind the intended target. WO2 stated he heard five or six gunshots ring out in quick succession. WO2 was not able to say from where the shots originated. The suspect vehicle continued to drive in a southerly direction across Nairn Avenue. WO2 and SO2 returned to their police cruiser and pursued the suspect vehicle to Marion Street and Archibald Street, where it was stopped and the occupants arrested. WO2 stated that the driver of the suspect vehicle had a bullet injury to his neck and first aid was administered.

Subject Officers:

A subject officer cannot be compelled to provide his or her notes regarding an incident, nor to participate in any interview with IIU investigators. In this case, SO1 provided a copy of his notes and reports to IIU investigators. Both SO1 and SO2 declined to participate in an interview with IIU investigators but SO2 provided a prepared statement in response.

SO1's narrative report and notes are summarized as follows:

We decide to do a containment stop and box the vehicle in to prevent it from moving.

I decide to completely block the front end of the suspect's car with the front passenger side of my cruiser car as going too far into the intersection may cause a motor vehicle accident with any cross-traffic. This effectively prevented the suspect vehicle from moving forward as I was almost touching the suspect's car with my own cruiser car. The back-up unit blocked the suspect car in from behind.

All officers exit their cruiser cars and surround the suspect vehicle with sidearms drawn. Multiple officers announce "Winnipeg Police" and command the suspects to exit their vehicle.

I exit the cruiser car at this time as well from the driver side and go around the front of the cruiser car and take up a position in front of and off to the passenger side of the suspect vehicle.

The driver of the suspect car immediately ignores the commands of officers and chooses instead to put his vehicle in reverse and slam into the cruiser car behind, buckling the trunk area of his own car, creating space in front of his car now.

The suspect vehicle is now no longer directly up against my cruiser car, effectively providing him the opportunity to turn and go around the cruiser car.

The driver of the suspect vehicle then makes direct eye contact with me and accelerates toward me.

I am less than 10 yards away from the vehicle at this point and knew the driver had no intention of stopping and would run over me to flee. I felt my life was in immediate danger and I had little to no time to react.

I fired my sidearm at approximately the same time as another officer fired his sidearm and leaped out of the way of the oncoming car that would have ran me over had I stayed in its path. This all happened over the course of only a few seconds.

I had to place one hand on the ground to catch myself from falling completely to the ground from leaping out of the way. This was on the sidewalk near where the light standard is, between lane 3 and the turning lane to go westbound on Nairn Avenue.

The suspect vehicle then goes through the intersection at a high rate of speed and continues southbound on Panet Road.

SO2's prepared statement is summarized as follows:

This unit proceeded to turn south on Panet Road...It was then that WO1 and SO1 advised the vehicle had come to a stop at Panet Road and Nairn Avenue... WO1 and SO1 then advised they would be approaching the vehicle for a two vehicle take down. They immediately pulled in front of the suspect vehicles [sic] front driver-side corner. Our unit pulled up behind the vehicle, leaving space between ours and theirs [sic]. The back windows of the vehicle appeared frosted; I could however still see three silhouettes of people inside the vehicle.

Due to the nature of the call history and the manner of driving exhibited by the suspect vehicle, I exited the vehicle and had my firearm in the low ready position. All officers on scene were in full police uniform, including red stripes down the side of our pants and shoulder flashes with police written on them. We began yelling verbal direction advising the occupants exit the vehicle immediately. Despite our verbal direction no one exited the vehicle.

I then observed SO1 make his way in front of the suspect vehicle. It was at this point I saw the vehicles [sic] reverse lights come on, I heard the motor rev and I felt fear that I

would be struck by the vehicle; as I was standing off of the rear passenger side corner. I stepped further from the suspect vehicle as sit [sic] continued to reverse into our vehicle.

As I looked up from my side of the vehicle I could see SO1 in front of the car. I then saw the reverse lights turn off and could hear the tires turning on the road and observed them begin to turn right. The vehicles [sic] engine revved again as it began moving towards SO1. I feared SO1 would be hit or run over by the vehicle. I then heard a loud pop coming from my left side which sounded like the discharge of a firearm.

The vehicle made no indication of stopping for SO1 who was now standing near the front passenger side corner of the vehicle.

I then stepped laterally to my left to gain a clear line of fire on the suspect driver and fired multiple shots directed at the driver with my firearm. When I felt the risk to SO1s [sic] life as well as the risk to the vehicle reversing into us again was done I stopped firing. I can remember the hole in the rear windshield of the car as it sped off southbound Panet Road through the intersection. I can also remember observing SO1 diving out of the way of the vehicle onto the Boulevard between the yield and Nairn Avenue. I feared he had been hit by the suspect vehicle.

Once the vehicle had sped off, we all met in the middle of the lane where the car had been, to ensure everyone was ok. WO1 then advised over the radio that shots were fired, as we all got back into our vehicles and continued south on Panet Road.

Video:

IIU investigators conducted a canvass for witnesses and video footage of the shooting incident. Two significant videos were located; one from a gas bar situated east of the intersection of Panet Road and Nairn Avenue, and the other from a hotel, located on the southeast corner of this intersection. Both videos show a white car stopped on Panet Road at Nairn Avenue facing south when two marked police vehicles drove up behind it. The first police vehicle pulled partially in front of the white car, while the trailing police vehicle stopped immediately behind. Neither police vehicle had emergency lights activated. Police officers are observed to exit from the police cruisers and then approach the white car. Then, the white car reversed into the front of the police vehicle behind it, then forward and drove around the other WPS cruiser, across the intersection and south on Panet Road. As the white car drove forward, an officer is observed moving quickly in a westerly direction, presumably to get out of the way. Neither video contains audio, nor are muzzle flashes seen on either.

Firearm Analysis, Use and Report:

FIS personnel examined the scene and located nine expended shell casings. Seven of these casings were positioned in the northwest corner of the intersection and two others were found on the pavement in the westbound lanes of Nairn Avenue. An examination of SO's service pistol revealed it contained twelve live rounds, which suggests he had fired three times, while SO2's service pistol contained nine live rounds, which suggests he had fired six times. The suspect vehicle was found to have seven bullet impacts, along with a completely shattered rear window and heavy body damage to the back bumper area.

IIU investigators seized the service pistols from SO1 and SO2. Both firearms were submitted for analysis, along with expended shell casings and bullets recovered at the scene and from the

examination of the suspect vehicle. None of the bullets or pieces of bullets recovered could be associated to a specific firearm.

A firearms specialist from Ottawa conducted an examination of the suspect vehicle and provided a report, briefly summarized as follows:

There is a total of seven (7) bullet damages that are consistent to be entrance.

There are two damaged areas consistent with having been caused by two fired projectiles travelling in a front to back direction. One entered the bottom left windshield and entered the dashboard, no exit. The second projectile went through the hood and entered the engine block of the vehicle.

There is one damage area at the bottom of the front passenger door that is consistent with having been caused by a fired projectile. The projectile entered the bottom of the door at a steep angle straight down and exited through the bottom of the sill.

Another damage area on the window frame of the same door is consistent with having been caused by a fired projectile travelling in a back to front direction. The projectile went through the door/window frame and hit the centre beam with no exit.

A damage area is present on the rear door on the passenger side, just below the window, which is consistent with having been caused by a fired projectile travelling in a back to front direction. The projectile went through the door, exited (probably fragmented in at least three parts), and impacted the centre beam on the driver side. A fourth impact is present on the window frame of the rear passenger door on the driver side, which may have been caused by a fourth fragment of the same projectile or from another projectile.

The roof of the car has one area of damage, which is consistent with having been caused by a fired projectile travelling in a back to front direction. The projectile entered the roof with no exit.

The middle headrest of the rear seat has a damaged area, which is consistent with having been caused by a fired projectile travelling in a back to front direction. The projectile went through the headrest and was travelling in the direction of the driver; no other impact areas were noted in the vehicle.

The rear window and the window of the rear passenger door on the driver side are broken and missing. Therefore, there could be more than seven projectiles that were fired at and hit the vehicle.

Conclusion:

On December 18, 2019, following the completion of this investigation, the civilian director forwarded the IIU investigative file to Manitoba Prosecution Service (MPS) and requested a review and opinion on whether any Criminal Code charges should be authorized against any or all of the subject officers.

Following the review of the IIU investigative file, on April 30, 2020, MPS advised IIU that this matter did not meet the prosecution-charging standard, in that there is no reasonable likelihood of conviction against any or all of the subject officers. Accordingly, MPS will not recommend any charges against SO1 and/or SO2.

The IIU investigation is now complete and this file is closed.

Final report prepared by:

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