

# ***FINAL REPORT: IIU concludes investigation into WPS officer- involved shooting***

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On November 21, 2019, the Winnipeg Police Service (WPS) contacted the Independent Investigation Unit (IIU) and notified it of an officer involved shooting that occurred that day.

The notification, provided to IIU (edited for clarity), read in part:

*“On November 21, 2019, at approximately 5:31 p.m., WPS members were dispatched to the 7-Eleven store located at Ellice Avenue and Arlington Street, for a male armed with an edged weapon.*

*Prior to police arrival, a witness indicated to the call taker that the male was now waving the weapon around inside the store. Supplemental information indicated that there were approximately two store employees hiding and several customers were seen fleeing from the store.*

*WPS units were on-scene within minutes and observed a 16-year-old male, later identified as the affected person (AP), who was still armed with a weapon, exiting the store. During the subsequent encounter, a WPS officer discharged his firearm causing AP to fall to the ground.*

*Emergency first aid was immediately administered by attending police personnel.*

*AP was conveyed by ambulance to the Health Sciences Center (HSC) for treatment. He is currently in surgery and is expected to live.”*

According to this notification, AP sustained several gunshot wounds. As this notification concerned the discharge of a firearm by police, which resulted in injuries to a person, this constitutes a serious injury as defined by regulation. Accordingly, the IIU is mandated to undertake an investigation into this matter, pursuant to section 65 of The Police Services Act (PSA). A team of IIU investigators was assigned to this investigation.

The civilian director designated the police officer who discharged his service pistol at and striking AP as the subject officer (SO). Additionally, 14 WPS officers were initially identified as potential witness officers. However, following a review of notes and reports provided to IIU, investigators determined that ten witness officers (WO1- WO10) would be subject to interviews. IIU investigators also interviewed or reviewed statements provided by nine civilian witnesses (CW1- CW9). IIU investigators attempted to meet with and interview AP on numerous occasions. However, AP declined to meet with IIU investigators. A consent form releasing AP's medical information was provided to IIU investigators.

Information obtained by IIU investigators included:

- officers' notes and narratives
- call history
- WPS radio transmission recordings
- conductive energy weapon (CEW) downloads and discharge reports
- statements of civilian witnesses
- video recordings of interior of 7-Eleven prior to shooting
- video recordings from a traffic camera located at the intersection of Ellice Avenue and Arlington Street
- video recording from a civilian witness' cell phone
- physical evidence from scene, including a machete and nine shell casings
- Forensic Identification Service reports
- investigative scene photographs
- medical report relating to AP

A canvass of the area of the scene of the officer-involved shooting disclosed the existence of surveillance video from a nearby gas bar and several transit buses. None of these videos was of assistance in this investigation, as none captured the incident at the time of the shooting.

## **Facts and Circumstances**

### **Civilian Witnesses**

CW1 was stopped at a red light at the intersection of Arlington Street and Ellice Avenue. CW1 observed a man in a black hoodie and dark pants "*hacking*" on the inside of the door of the 7-Eleven store. CW1 states that the male had a large knife or sword in his possession. CW1 states that the man came out of the 7-Eleven Store and turned to the east. CW1 states that the male walked directly towards a police officer and had raised the knife over his head. CW1 states that the male then grabbed the handle of the knife with two hands and began to bring it down towards the police officer's head. According to CW1, there was approximately two to three feet between the male and the officer. CW1 states that the other police officers were yelling "*drop the knife*" at the male. CW1 states that the officer fired his gun and the male's body turned. The male was still holding the sword and he swung it towards other officers. CW1 states that as a result, the police officer fired again and the male fell to the ground. CW1 observed the police turn the male over. At this time, the traffic light changed to green and CW1 drove away.

CW2 was driving southbound on Arlington Street, approaching the intersection with Ellice Avenue, at 5:36 p.m., when a police car passed by travelling at a high rate of speed. CW2 came to a stop just north of the intersection of Arlington Street and Ellice Avenue. CW2 noted a police car was parked on the curb to the north west of the intersection. The side of the building and awning blocked CW2's view of the parking lot of the 7-Eleven store. CW2 then heard what she believed to be the sound of firecrackers. CW2 scanned the parking lot and saw a uniformed police officer, standing in a shooting stance with a weapon drawn. CW2 now concluded that the sounds heard were gunshots. CW2 states that the police officer was pointing his firearm towards the front and east of the 7-Eleven. CW2 could not see at what the police officer was firing. CW2 states hearing four or five additional gunshots. CW2 states that the gunshots sounds were rapid with a pause of three to four seconds between the shots. The traffic light facing CW2 turned

green. As CW2 moved forward, a person, in dark clothing, was observed lying outside of 7-Eleven.

CW3 was driving eastbound on Ellice Avenue and stopped at a red light at the intersection with Arlington Street. CW3, who was the second car in line from the red light, looked towards the 7-Eleven store and saw a male inside the store, “*whacking*” at the door with a large machete. CW3 states that when the traffic light turned green, he pulled his car into the nearby Husky gas station parking lot, just east of Arlington Street. CW3 states that he could still see the male inside the 7-Eleven, hitting the glass door with the machete as he exited his car. CW3 states that a number of police officers started to arrive and CW3 was asked to move from the Husky parking lot. CW3 went across the street and started to record the incident on his cell phone. According to CW3, the male managed to open the door of the 7-Eleven, came out and ran at a police officer. CW3 states that the male held the machete upright and was trying to hit the officer. Police officers were yelling to the male to “*put the weapon down*”. CW3 states that he heard five gunshots and the male dropped to the ground. The police immediately attended to the male when he fell down and did CPR on him. CW3 states that he posted his cell phone video recording on Facebook (Facebook video). IIU investigators have secured the Facebook video.

CW4 and his two young children had attended the 7-Eleven store at Ellice Avenue and Arlington Street. CW4 states that the children were purchasing hot chocolate, when he heard the door buzz open behind him. CW4 states he saw that a few kids had come in the store. Seconds later, CW4 states that his son yelled “*dad, dad*” and pointed to the counter area. CW4 states that he observed a male was behind the counter and was waving a machete. CW4 states that the clerk ran from the counter area. CW4 grabbed his two children and headed to the front door of the store. However, CW4 states that the door was now locked. CW4 states that he called out to the clerk to unlock the door but the clerk did not answer him and instead ran to the back of the store. CW4, fearing for his children’s safety, started to kick at the door. After several kicks, the door opened and CW4, with his children, managed to escape. CW4 ran around the corner onto Arlington Street as police arrived. A few minutes later, CW4 states he heard several gunshots but did not see the shooting.

CW5 states that at approximately 5:30 p.m., he was walking east bound on Ellice Avenue, in front of the 7-Eleven store at Arlington Street. CW5 states that he observed a police car in the 7-Eleven parking lot, with two officers out of the car. CW5 also observed a male, inside the 7-Eleven store, who was banging on the front glass door with a machete. CW5 made his way to the southeast corner of the intersection as more police cars arrived. CW5 states seeing a police officer with an assault rifle. CW5 states that the male finally got out of the store and the police started yelling at him to drop the knife. CW5 states that the male turned towards one of the police officer and slowly raised the machete. The officer then shot the male five times. The male stumbled and the officer shot him four more times. The male fell to the ground and CW5 continued on his way home.

CW6 was working at the 7-Eleven store at Ellice Avenue and Arlington Street, with a co-worker, CW7. CW6 states that both were both behind the counter when a male came around it, stood in front of her and held up a large knife above her head. CW6 states that the male started yelling at her and demanding money. CW6 states that she opened the cash register, and then grabbed CW7 and both ran to their office at the back of the store, locking themselves in. CW6 called 911 on her cell phone. CW6 watched the male on closed circuit television on a computer in the office.

The male came to the office door and started banging on it. The male then went to the front door and started smashing at the glass. CW6 did not see the shooting.

CW7 states that at approximately 5:30 p.m., she was working with CW6 at the 7-Eleven store at Ellice Avenue and Arlington Street. CW7 was behind the counter when a male came in and pointed a large knife at her. The male demanded money. CW6 opened the cash drawer and the male started to grab the money. CW7 and CW6 then ran to the back office and locked themselves in. CW7 states they were watching the male on the computer in the office. The male was hitting the door of the office and they had to remain very quiet. The male then went to the front door and started smashing at the glass. The male then got out of the store. After a few minutes, the police came into the store and they opened the office door.

CW8 states he met up with his friends, AP and CW9 after school. CW8 states that they started drinking Crown Royal Peach and Captain Morgan rum. They also smoked marijuana. They walked around the area of Portage Avenue, Beverley Street, Sargent Avenue and Arlington Street while drinking and smoking. CW8 states he went to catch his bus at Burnell Street and Ellice Avenue while AP and CW9 went to the 7-Eleven store. AP said they were going to the store to “*drill.*”<sup>1</sup> Minutes later before his bus arrived, CW8 states that he heard some loud banging followed shortly after by the sounds of several gunshots. CW8 did not see the shooting.

CW9 states that at approximately 5:30 p.m., he was with his friends, AP and CW8. CW9 states that they were drinking and smoking “*weed*” on the afternoon of the shooting. CW8 had left to get a bus and CW9 and AP went into the 7-Eleven store as they intended to steal some merchandise. CW9 states that he observed AP produce a machete and start to rob the store. CW9 states that he did not know that AP was armed with the machete when they entered the store. CW9 states that he ran from the store when a customer opened the front door. CW9 did not see the shooting and only learned about it later in the day when he saw the shooting on Facebook.

### **Witness Officers**

WO1 was working with WO2, when, at 5:32 p.m., they were dispatched to a robbery in progress at the 7-Eleven store at Ellice Avenue and Arlington Street. WO1 states that they arrived at the store within a minute of the dispatch call. WO1 states that they parked in the parking lot of the 7-Eleven. WO1 states that following their arrival, his attention was focused on a male within the store. According to WO1, the male was swinging what appeared to be a machete (with an eighteen-inch blade). WO1 was aware that employees were still inside the store. WO1 states that the male approached the front door of the store. WO1 states that it appeared the door was latched or locked as the male was pushing on it and it did not open. WO1 states that the male started hitting the door with the machete. WO1 now drew out his handgun. WO1 states that a call was made for backup and tactical support. WO1 states that WO2 took out his CEW. The male inside the store continued to strike the glass door with the machete while WO1 and WO2 gave verbal commands to the male to drop the knife. WO1 states that he heard sirens approaching and several other police units arrived to assist. WO1 states that at some point, the front door of the store unlocked and the male came out of the 7-Eleven store. WO1 recalls that he yelled, “*He’s coming out!*”

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<sup>1</sup> “*drill*” means to steal chips and chocolate bars

The male, quickly turned to his left, and WO1 heard people shouting “*drop the knife, drop the knife.*” The male still had the machete in his raised right hand. WO1 states that WO2 deployed his CEW but it was ineffective and the male kept walking. WO1 decided it was not safe for him to fire his service pistol because he was aware there were civilians still inside the store and he had a glass backdrop. WO1 lost visual of the male when he repositioned himself behind an SUV in the parking lot. When WO1 was behind the SUV, he heard several gunshots. WO1 states that he was able to regain a view on the male, who was still walking with the machete raised up near his head. WO1 saw SO with his firearm pointed at the male. SO then discharged his firearm at the male. WO1 states that the male dropped to the ground on his knees. Members of the Tactical Support Team (TST) then took over and started first aid on the male.

WO2 was working with WO1 when they were dispatched to a robbery call at the 7-Eleven store at Ellice Avenue and Arlington Street. Prior to arrival, they were advised of a male inside the store who was waving a knife around. WO2 states that they were the first police unit to arrive at the scene. WO2 states they parked at the front of the 7-Eleven store and saw a male standing inside the store repeatedly smashing a machete against the glass door. The doors appeared to be locked. WO2 states that both officers positioned themselves approximately fifteen (15) feet in front of the doors. WO3 and WO4 then arrived and took up a position to the west of them. WO2 was fearful of what would happen if the male managed to open the doors. WO2 observed WO1 draw his pistol. WO2 then armed himself with a CEW. WO2 was yelling at the male to drop the machete. The male looked directly at WO2 but continued to smash the glass with the machete. WO2 requested TST members to attend, as they would be better equipped to handle this situation. The male finally managed to open the door. The male exited the store and made a quick left hand turn, (eastbound). The male had the machete raised as if he was ready to strike somebody. WO2 states he deployed his CEW; however, it had no effect. WO2 states that he then heard gunshots, and numerous officers shouting and ordering the male to drop the machete. WO2 saw officers rushing over to the male, once he fell and started to provide CPR. WO2 states that he entered the store with other officers and located two female staff members hiding in a locked office at the rear of the store.

WO3 was working with WO4 when, at approximately 5:30 p.m., they were dispatched to the 7-Eleven store at Ellice Avenue and Arlington Street, regarding a male inside the store armed with a machete. Prior to their arrival at the store, they heard another unit broadcast that they were already on scene and could see the male inside the store with the machete. On arrival at the 7-Eleven, WO4 parked just west of the front door of the store. WO3 states that she observed the male inside the store holding the machete. WO3 armed herself with a carbine rifle and ensured she had one round in the chamber. WO3 states that the male was aggressively attacking the store’s front door with the machete. WO3 states she yelled, “*Drop the knife*” as loud as she could. WO3 held her rifle in the “*high ready*” position, in case the male exited the store and attacked. WO3 was aware that there were officers east of her position and she verbally warned them that it was likely the male would exit the store. The male eventually forced the door open, exited the store and turned to the east “...with a steady, purposeful gait towards police officers to the east”. The machete was in the male’s right hand and was raised above his head. WO3 believed the male was trying to attack someone, and that she had to shoot to stop him. WO3 had sighted the male with the laser on the rifle and pulled the trigger. WO3 states that she heard a CEW deploy but the male continued to move forward. WO3’s rifle had not fired and she looked



to see the safety was on. In the meantime, the male continued to walk towards Arlington Street. The male's right arm with the machete was still raised, and he was still approaching a police officer. WO3 attempted to re-acquire the target but was unable to because other officers were now in the line of fire. The male continued to advance towards the officers and Arlington Street. WO3 observed the male raise up his left arm and now held the machete with both hands. WO3 heard gunshots. Initially, WO3 believed that the gunshots had been ineffective as the male continued to advance. The male then fell to the ground. A number of the officers attended to him and began to administer first aid. WO3 entered the store with two other officers, cleared it and located the staff who were locked in a back office.

WO4 was working with WO3 when they were dispatched to the 7-Eleven store at Ellice Avenue and Arlington Street regarding a robbery in progress. The information was that a male was armed with a knife, that there were two employees still inside the store and that the male was hitting the glass door with the knife as he appeared to be locked inside the store. On arrival, WO4 noted that there were several members of the public present and a lot of traffic in the area. WO4 dispersed some of the crowd for their own safety. When WO4 returned to the front of the store, he radioed that there did not appear to be another exit from the store. The male soon exited the store through the now opened front door. The male was holding a machete in his right hand. The male held the machete above his shoulder as if he was ready to deliver a blow. Once outside the store, the male turned to the east with the machete in his right hand and still raised above his shoulder. WO4 heard loud shouts of "*drop the knife, drop the knife*" but the male did not hesitate nor stop. WO4 stated the male was moving quickly, "*as if determined to hurt someone.*" WO4 states the male appeared to target an officer and immediately closed the distance between him and that officer. In response, WO4 aimed his service pistol at the male when he heard a series of gunshots. As the male continued to move, WO4 decided not to shoot, as there were now police officers and civilians in the male's backdrop. WO4 was struck on his left wrist. He also felt a sharp pain in his right upper leg and hip area. The sharp pain caused him to lose sight of the suspect for a moment. When he did regain sight of the male, WO4 noted that the male was now falling to the ground. WO4 states he heard six shots while this was occurring. When the male fell to the ground, he had travelled between twelve to twenty (12 – 20) feet before being shot. From WO4's vantage point, the male had walked very close to the officer that fired his service pistol. Other officers went to the male and provided first aid. WO4 checked himself for injuries and located two areas where it appears he had been struck by a ricochet or debris.

WO5 was working with WO6. Both are members of the WPS TST. At 5:32 p.m., WO5 heard a radio broadcast of that a robbery was in progress at the 7-Eleven store at Ellice Avenue and Arlington Street. Among the information provided was that a male, armed with a knife, was inside the store and employees had locked themselves in a back room. There were other police units on scene and were requesting TST members to attend. WO5 responded to the call and drove to the store. On arrival at the 7-Eleven parking lot, WO5 could see a male, holding a machete in his right hand, inside the store. WO5 then drew his pistol. The male was hitting the glass door with the machete. The male eventually opened the glass door and left the store, walking east. The male still had the machete, in his right hand, which was now held over his head. WO5 yelled, "*Drop the knife*" several times as the male continued to walk east. WO5 followed the male when he heard a CEW being deployed. WO5 believes the CEW was unsuccessful as officers continued yelling at the male to drop the knife. WO5 heard several

gunshots and now saw the male on the ground with the machete still in his right hand. WO5 approached the male, who was now in a seated position with his back against the wall. The male still held the machete in his right hand. WO5 yelled several times at the male, to drop the weapon. The male rolled on his right side and let go of the machete.

WO6 states that a radio broadcast was received regarding a robbery in progress at the 7-Eleven at Ellice Avenue and Arlington Street. An attending police unit at the scene requested the assistance of TST. On arrival at the 7-Eleven, WO5 parked at the southwest corner of the parking lot. WO6 observed several marked police units and several uniformed officers in the parking lot outside of the store. WO6 states he saw a male inside the store and was armed with a machete. The male was standing inside the entrance and hitting the glass portion of the door with the machete. WO6 tried to scan the inside of the store for staff and other customers that may be injured or in distress. WO6 observed a female officer was armed with a rifle and another officer with a CEW drawn. WO6 directed two uniform officers to head to the rear of the 7-Eleven. The male suddenly opened the front door and exited the store. The male immediately turned to his left and quickly walked at a quick pace east across the exterior of the store. Several officers yelled "*drop the knife*" and "*drop it*". WO6 could see that the male had the machete in his right hand, held high with the blade angled back. WO6 states he heard a CEW deploy, but the male kept moving forward continuing to hold the machete in a "*ready to strike*" position. WO6 states that the male appeared to focus on an officer directly in his path. When the male was within two to three steps of the officer, he brought his other hand up to the handle of the machete and now had both hands on the machete. WO6 states that he believed the male was intending to strike the officer. WO6 states that he heard six to seven gunshots. All the shots were fired as the male was still progressing forward. WO6 states that the shots stopped when the male stopped advancing. The male slumped against the wall and officers approached him still telling him to drop the knife. WO6 states that he observed several pedestrians on the sidewalk, to the east of the store. WO6 believes that if the male had reached the sidewalk those civilians would have been in danger of grievous bodily harm or death.

WO7 was working with WO8 when, at 5:32 p.m., they heard a call for service regarding a robbery in progress at the 7-Eleven store at Ellice Avenue and Arlington Street. They were aware that there was a male inside the store, armed with a machete and there were two employees inside the store. On arrival at the store, they parked to the west of the main door. WO7 could see a male smashing at the front door with a machete; the male appeared to be actively trying to get out of the store. WO7 drew his service pistol. WO7 also observed a female officer armed with a carbine rifle and a male officer armed with a CEW. WO7 states he took up a tactical position behind one of the cruiser cars. WO7 states that the male somehow opened the door of the store. As the male came out of the 7-Eleven, he turned and started to walk east. WO7 heard someone say, "*Drop the knife*". The male raised the machete up. WO7 heard multiple gunshots but did not see who had fired. The male fell to the ground. Other officers went to the male on the ground. WO7 and the female officer with the carbine went to the front entrance of the store. He entered and checked to see if anyone was injured inside. He went to the office area and located the two employees, who were both visibly upset.

On arrival at the 7-Eleven, WO8 observed several other officers already present. WO8 also observed a male inside the 7-Eleven, who was continuously swinging a machete at the glass of the front door. WO8 positioned himself at the southeast corner of the parking lot. He heard

someone say, “*He’s coming out*” and saw the male leave the store and turn to walk east towards an officer that was standing there. WO8 estimated that the male was now within ten (10) feet of that officer and had the machete raised above his head. The male was given several commands to drop the weapon but he continued to advance. WO8 states that he believed the male would have swung at the officer in an attempt to hurt him. WO8 then heard several shots fired. The male dropped to the ground.

WO9, a member of the TST, was working with WO10 when they heard the broadcast regarding a robbery in progress at the 7-Eleven store. TST members were requested to attend at that scene. WO9 states they arrived at the 7-Eleven parking lot with emergency lights and siren activated. WO9 pulled into the middle of the parking lot and he could see a male inside the store trying to get out. The male was attempting to smash the glass in the door with a machete. WO9 immediately armed himself with a less lethal shotgun, but as he was doing so, the male exited the store. WO9 observed the male walk to the east after leaving the store. WO9 states he heard seven or eight gunshots and saw the male fall to the ground. He returned the less lethal shotgun to his vehicle and secured it. He attended to the injured male and assisted with first aid.

WO10 is also a member of TST. At approximately 5:33 p.m., they heard a request over the police radio for TST members to attend the 7-Eleven store at Ellice Avenue and Arlington Street, regarding a male armed with a machete. When they arrived at the store parking lot, there were already several other WPS vehicles present. WO10 could see a male inside of the 7-Eleven trying to break the glass door with a machete. Within thirty seconds of arrival, the male managed to open the door and exit the 7-Eleven. The male walked very deliberately eastbound on the sidewalk in front of the store. Many police officers were yelling at the male to drop the knife. WO10 drew his firearm after seeing the male exit the store and started walking in the same direction the male was walking. The male had a machete in his hand. WO10 lost sight of the male as he crossed in front of a Honda Pilot parked at the front of the store. WO10 was at the rear of the Honda Pilot when he heard gunshots. When his view was re-established, WO10 saw SO firing his handgun in the direction of and appeared to strike the male. The male was still standing with the machete in his hand. More shots were fired and the male dropped to the ground. The male ended up sitting against the building and still had the machete. WO10 states he yelled at the male to throw away the machete.

### **Subject Officer**

In Manitoba, pursuant to the provisions of the PSA, a designated subject officer cannot be compelled to provide his or her notes regarding an incident nor participate in any interview with IIU investigators.

In this matter, SO declined to participate in an interview with IIU investigators, but provided a copy of his notes and a self-prepared signed report on the incident.

The following is a summary of that report

- *I heard dispatch that there was a robbery in progress at the 7-Eleven on Arlington Street, “the suspect was armed with a machete and currently locked inside the store.”*
- *I assigned myself to the call and made my way to the 7-Eleven store.*



- *While on route, I heard a WPS member voice over the radio that they were on scene and could see the suspect was still inside the store. The suspect was actively chopping at the glass with a machete trying to get out.*
- *On arrival... I parked along the lane at the north east corner*
- *As I exit the cruiser car, I note that the intersection of Arlington and Ellice had heavy, backed up traffic in all directions. As well, there were numerous pedestrians in the area. I took note of a family of three standing right in front of my car; they stood there with a young girl (approximately 6-8 years old) who appeared scared and was crying; she was clinging to her parents.*
- *...I could hear very loud banging coming from the front. I passed other pedestrians who were on both sides of Arlington in the immediate area. I pulled my issued firearm and held it in my right hand along the right side of my body pointed at the ground.*
- *I rounded the southeast corner and entered the parking lot. I saw other WPS member who were standing directly in front of the entrance / exit doors, and were approximately 20 feet from the front entrance.*
- *I posted myself at the northeast corner of the parking lot, just off the sidewalk that runs along the front of the store. I positioned myself here, as there were not enough officers on scene yet to cover all areas of the parking lot and sidewalk. I was approximately 20 feet from the entrance / exit of the building.*
- *I could clearly see the suspect. My view was unobstructed. The suspect appeared to be approximately 6 feet tall or taller, thin build, wearing a dark coloured jacket, with the hood up, partially obscuring his face. The suspect had light coloured pants on. In his hands, he had a clearly visible machete with a blade that was approximately 18-24 inches long.*
- *The suspect continuously swung the machete like a bat and it connected with the lower glass of what looked like the right door. The suspect continued to chop at the glass, striking it numerous times and making loud banging noises. I heard an officer yell out that the door was bending and moving from the force the suspect was applying to it.*
- *The right side entrance / exit door swung open and the suspect exited the building with his machete held up high in his right hand. The suspect immediately turned to his left, eastbound and started walking quickly towards me along the sidewalk in front of the building. The suspect still had the machete in his right hand and it was raised above his right shoulder cocked back and readying it to swing. I immediately raised my firearm and pointed it directly at the suspect. I was fearful this suspect would harm any of the numerous members of the public that impeded his escape from police.*
- *I now stood directly in front of the suspect and called out orders for the suspect 'STOP, POLICE, DROP THE KNIFE'. The suspect continued to advance towards me at a quick pace. The suspect transitioned his grip on the machete; he added his left hand to the handle by his right hand and now cocked the machete like a bat about to swing. The machete was up and back...above his right shoulder. I became fearful that this suspect was intent on directing this machete forcefully at me, striking me with it, potentially causing grievous bodily harm or loss of my life. I recognized this to be a lethal force encounter as this suspect was approximately 10 feet away from me advancing towards me, readying to swing the machete... I fired 4-5 shots at the suspect to his front torso area center mass with my firearm to stop this direct threat. I immediately stepped off the*

*line of attack, as these shots seemed ineffective as the suspect continued to advance towards my original firing position, veering slightly to my right. I believed that if I did not step off the line of attack, the suspect would have ran directly into me, making physical contact and stabbing or slashing me with the machete.*

- *The suspect continued to advance in his original direction eastbound towards Arlington, with the machete still raised, now holding it in front of him, confirming to me that this first volley of shots was ineffective. The suspect was now 3-4 feet away and could easily strike me with the machete. There were numerous people in slow moving or stopped vehicles as well as people walking in close proximity on the sidewalk. The suspect clearly displayed he had no intention of following my orders, nor did he fear any force that I or other police officers would use against him. The suspect was still displaying all the elements of the threat assessment. I fired another volley of approximately 4-5 shots to the suspect's upper right torso area, center mass, also possibly striking the suspects back area center mass. These rounds proved effective and caused the suspect to fall against ...with his back against the wall...The suspect still had the machete in his right hand and continued to point it forward towards me in a jabbing motion. I fired no more shots as the suspect's behaviour no longer satisfied all the elements of the threat assessment; he no longer had an effective delivery system.*
- *All the shots that I fired were in accordance with my training to discharge my firearm until the threat has stopped.*
- *The time from when the suspect exited the front doors with the machete raised and came towards me, to when I fired my last shot was mere seconds. All my assessments, judgements and decisions had to be made extremely quickly.*
- *The suspect eventually dropped the knife to his right side and slumped over to his right side appearing to lose consciousness. I holstered my firearm.*
- *Other officers were on scene and started first aid.*

### **Video Evidence**

IIU investigators obtained three videos, crucial to this investigation:

1. Interior security video footage of 7-Eleven store
2. Facebook video taken by CW3
3. Traffic camera video at the intersection of Ellice Avenue and Arlington Street

When the videos are aligned in time sequence and analyzed, the following timeline is developed (note: the red oval/circle identifies the machete possessed by AP):

**17:30:00**



AP Enters Store as customers leave





**17:30:18**

AP Walks behind counter and produces machete.



	
<p><b>17:30:39</b></p>	<p>Six customers rush to exit store.</p> <p>ClickMediaPlayer Lite</p> <p>Options Help</p> 
<p><b>17:30:40</b></p>	<p>Two staff members run to back office at rear of store after opening cash drawer</p>
<p><b>17:31:00</b></p>	<p>AP empties cash drawer and cigarette drawer.</p>
<p><b>17:31:20</b></p>	<p>First 911 call from civilian observer outside store.</p>
<p><b>17:31:22</b></p>	<p>911 call from staff member locked in back room of store.</p>
<p><b>17:31:32</b></p>	<p>AP moves box of cartons of cigarettes outside counter area</p>
<p><b>17:31:53</b></p>	<p>AP attends to front door, pushes it twice, finds it locked</p>

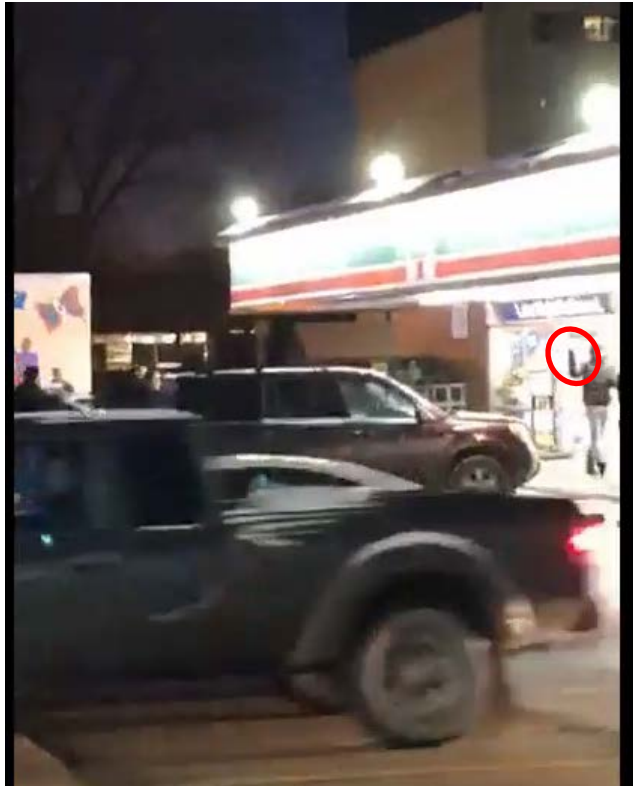


<p><b>17:31:57</b></p>	<p>AP starts to hit glass door with machete.</p> 
<p><b>17:31:58</b></p>	<p>911 Call Taker enters call for dispatch</p>
<p><b>17:32:23</b></p>	<p>AP goes to rear of store near back office where staff are hiding</p>
<p><b>17:32:30</b></p>	<p>Police Communication Center dispatch police to robbery in progress.</p>
<p><b>17:33:03</b></p>	<p>AP returns to front door</p>
<p><b>17:33:06</b></p>	<p>AP starts to hit glass door continuously with machete again.</p> 
<p><b>17:33:19</b></p>	<p>First Police Car arrives on scene</p>
<p><b>17:33:49</b></p>	<p>Second Police Car arrives on scene</p>
<p><b>17:34:20</b></p>	<p>Third Police Car arrives on scene</p>
<p><b>17:34:56</b></p>	<p>Fourth Police Car arrives on scene, (TST)</p>
<p><b>17:34:57</b></p>	<p>Fifth Police Car arrives on scene, SO in this vehicle, parks at rear lane Arlington/Ellice</p>
<p><b>17:35:14</b></p>	<p>Sixth Police Car arrives on scene, (TST)</p>
<p><b>17:35:23</b></p>	<p>SO attends to front of store</p>



**17:35:30**

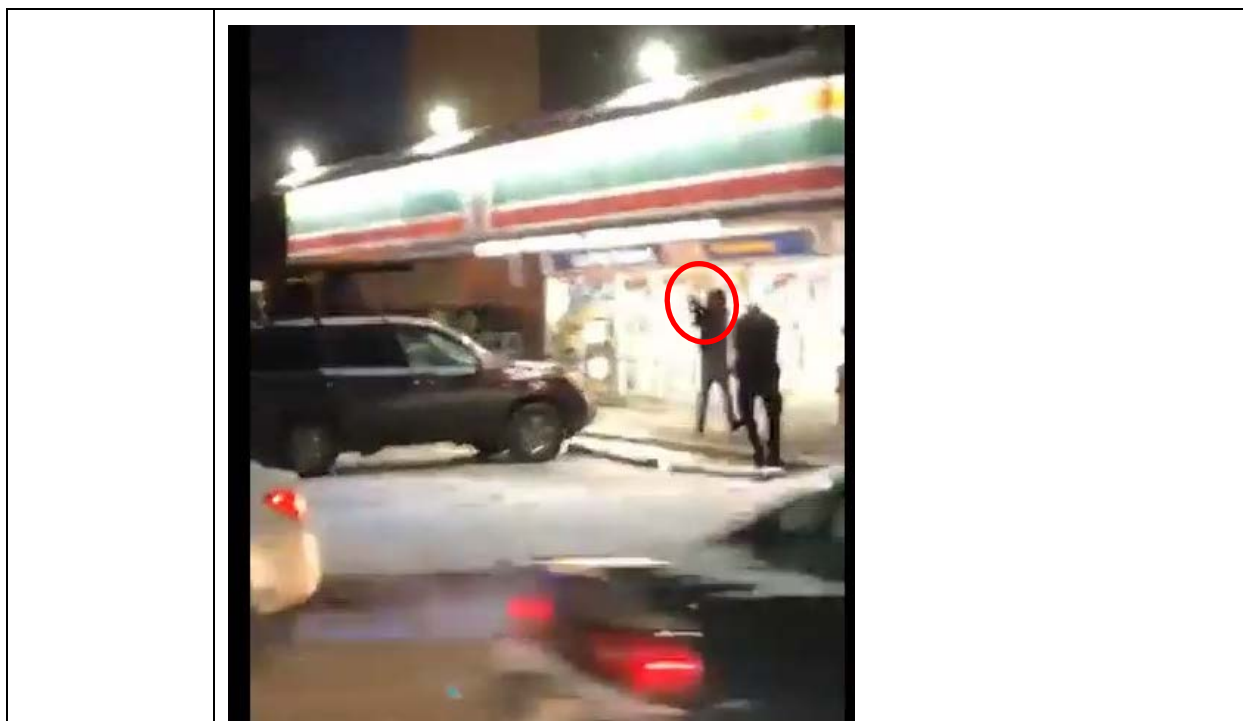
AP forces door open and exits store holding machete in right hand



**17:35:33**

AP raises machete above his head and holds it with both hands





<b>17:35:34</b>	AP advances towards SO, SO fires first volley of shots
<b>17:35:36</b>	AP turns away from SO, SO fires second volley of shots
<b>17:35:38</b>	AP falls to ground
<b>17:35:50</b>	AP disarmed and police move in
<b>17:36:10</b>	Police begin first aid on AP
<b>17:39:38</b>	Paramedics attend and take over care of AP

Further analysis of all the video has also determined that AP struck the front door of the store 137 times (117 of which occurred from the point of police arrival).

**Medical Report**

Although all attempts to meet with and interview AP were refused, a consent release for medical information concerning AP was provided to IIU investigators.

The medical records revealed the following:

- AP was shot five times - right neck, right deltoid, right forearm, left lower quadrant abdomen and right thigh
- AP underwent emergency surgery at HSC and remained in the intensive care unit (ICU) for three days.
- AP underwent orthopedic surgery to have a bullet removed from his right shoulder.
- AP responded well to treatment. The remainder of his inpatient stay was largely uncomplicated and he was discharged in mid December.

### **Round Count**

A round count of SO's service issued pistol contained one chambered cartridge and six cartridges in magazine seated in the firearm. SO also had in his possession two additional issued magazines, each loaded with 15 cartridges. Nine spent shell casings were located at the scene of the shooting. No other police firearm was examined as all evidence and the self-declaration by SO confirmed that his service pistol was the only weapon fired that evening.

### **CEW Download**

A data download on the CEW issued to WO2 documented that it was armed on November 21, 2019 at 5:34:26 p.m. The trigger was pulled at 5:35:32 p.m. and cartridge bay number one was deployed for four seconds.

This was the only CEW deployed on November 21, 2019 at the 7-Eleven store.

### **Issues, Applicable Law and Conclusion**

This investigation must consider whether the actions of SO to fire upon AP was justified at law. In this incident, police responded to a call for service concerning a robbery in progress at the 7-Eleven at Ellice Avenue and Arlington Street. Information also confirmed that a male suspect was armed with a machete, store staff were locked in a back office and the suspect was repeatedly striking at a locked glass door. On arrival, police officers, attended to the parking lot of the 7-Eleven store. The male suspect was observed inside the store and repeatedly striking at the front door with a machete. When the male suspect was able to open the door, he left and walked at a quick pace eastbound along the front of the store. SO had positioned himself approximately 20 feet east of the front door. The male suspect walked directly towards SO. The male suspect was armed with the machete, which was held in his right hand and raised to his head level. It was apparent to all witnesses that the male suspect was preparing to strike with the machete. The male suspect then brought his left hand up to grab the machete. The male suspect was now holding the machete with two hands with the machete still raised and poised to strike at SO or anyone that may get in his way. The male suspect posed as a real threat to cause death or grievous bodily harm. SO, in particular, was both a potential target of the male suspect and the last line of defence of the public. SO discharged his service revolver nine times (five times initially, a pause of less than a second followed by four additional shots) and hitting the male suspect five times. When the male suspect had fallen to the ground, SO ceased shooting at him. AP was apprehended and taken to hospital for treatment of his injuries.

Sections 25 (1), (3), (4) and Section 26 of the Criminal Code of Canada 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 decision of SO to discharge his firearm at AP was reasonable and necessary for the self preservation of that police officer or the preservation of anyone under his protection from death or grievous bodily harm in the given circumstances. Reasonableness of a police officer's use of force must be assessed in regards to all of 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 in by police and the expectation that they react quickly to all emergencies and exigencies.



Where lethal force is used (intended or likely to cause death or grievous bodily harm), there must be a reasonable belief by the subject officer that the use of lethal force was necessary for their own self-preservation or the preservation of anyone 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).

In that decision, the Supreme Court noted, at para. 35:

*“Police actions should not be judged against a standard of perfection. It must be remembered that the police engage in dangerous and demanding work and often have to react quickly to emergencies. Their actions should be judged in light of these exigent circumstances.”*

Also, see *R. v. Power* 476 Sask. R. 91 (CA), where at para. 35, the court notes:

*“On the basis of the foregoing, a determination of whether force is reasonable in all the circumstances involves consideration of three factors. First, a court must focus on an accused’s subjective perception of the degree of violence of the assault or the threatened assault against him or her. Second, a court must assess whether the accused’s belief is reasonable on the basis of the situation as he or she perceives it. Third, the accused’s response of force must be no more than necessary in the circumstances. This needs to be assessed using an objective test only, i.e. was the force reasonable given the nature and quality of the threat, the force used in response to it, and the characteristics of the parties involved in terms of size, strength, gender, age and other immutable characteristics.”*

In this matter, AP had committed an armed robbery of the store. He was armed with a machete. He was bent on escaping the store and was repeatedly striking at the door to gain an exit. When the door was opened, AP walked out, carrying the machete in a raised position. AP walked directly at SO with the raised machete. Several officers commanded him to drop the machete. AP refused to comply with these orders. AP then grabbed the machete with two hands and kept it in the raised position, ready to swing or strike with it. AP was at a very close distance from SO. Stopped vehicles and onlookers were behind SO. AP was in a position to cause death or grievous bodily harm to SO or any of the onlookers and motorists if he was to continue to walk east. The threat posed by AP was real, substantial and required to be neutralized.

Therefore, was it reasonable, in these circumstances, for SO to fire at AP to prevent the injury or death of himself or any other person in the vicinity?

The next step is to determine whether the evidence from the various 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 evidence made sense, was consistent with statements given by numerous officers and with statements by witnesses. Minor variations in

the recollections of various witnesses are not unusual or unexpected. When considered as a whole, I am satisfied that this finding of consistency is appropriate in these circumstances. There is further corroborative evidence in support when the video surveillance evidence is considered.

More importantly, the eyewitness evidence and statements are consistent in that:

1. AP was in possession of a machete.
2. AP walked directly at SO while holding the machete, first with one hand and then both hands, in a raised and ready position.
3. The distance between AP and SO was close.
4. AP had the capability of striking SO.
5. SO was the only police officer to discharge a firearm.

This objective evidence materially corroborates the evidence of all the witnesses, including SO. I am satisfied that the evidence gathered from all sources provides sufficient support for the sole conclusion that the decision by SO to shoot AP was necessary to prevent the injury or death to himself or anyone in the vicinity.

In this investigation, the IIU mandate was to determine whether consequences should flow from the actions of SO, in light of all the circumstances and information known to him at that time. Following a detailed review of this investigation, it is my view that the use of lethal force by SO was reasonable, necessary and justified in law.

In conclusion, there are no grounds to justify any charges against the subject officer.

The IIU investigation is complete and this file is closed.

**Final report prepared by:**

Zane Tessler, civilian director  
Independent Investigation Unit  
August 11, 2020

*Ref 2019-072*