

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

On April 18, 2020, at 5:09 a.m., Winnipeg Police Service (WPS) notified the Independent Investigation Unit of Manitoba (IIU) of an officer-involved shooting that occurred a short time earlier that morning.

An excerpt of the written version of this notification read, in part:

“On the April 18, 2020, at approximately 4:01 a.m., the WPS was contacted by a male who indicates while throwing garbage out at the rear of a residence on Adsum Drive, he was confronted by two males who demanded cash. One male was armed with a shovel and one with a handgun. He indicates being struck twice by the male with the shovel and ultimately escaped. Officers responded into the area and encountered both males. One adult male (later identified as the affected person (AP)) was shot in the chest after being confronted and a youth male was taken into custody.

AP was transported to HSC and pronounced deceased. The youth male was transported to Children’s Hospital with a hand injury and remains in custody...”

As this matter concerned the death of a person, which resulted from the actions of a police officer, the IIU assumed responsibility for this mandatory investigation in accordance with section 65(1) of *The Police Services Act* (PSA). Furthermore, in accordance with section 70(1) of the PSA, the IIU was required to seek the appointment of a civilian monitor as this matter involved the death of a person. IIU requested the Manitoba Police Commission to appoint a civilian monitor. Finally, a team of IIU investigators was assigned to this investigation.

Among the information obtained and reviewed by IIU investigators, included:

- investigative summary completed by WPS Homicide
- Forensic Identification Service (FIS) reports and photographs
- computer aided dispatch (CAD) report
- audio recording of 911 calls
- call histories
- audio recording of WPS radio transmissions
- narrative reports and notes of WPS officers
- video recorded statements of various civilian witnesses
- physical evidence seizures, including the discharged WPS service firearm
- pathology report
- WPS policy on use of service firearms

- subject officer's use of force training file
- subject officer's firearm qualification reports
- expert opinion on use of force report

The civilian director designated the WPS officer who discharged his service firearm as the subject officer (SO) and three other WPS officers as witness officers (WO1 – WO3).

IIU investigators also met with and interviewed two civilian witness (CW1, CW2). A third civilian witness (CW3) refused to meet with or be interviewed by IIU investigators. However, IIU investigators did receive and review a videotaped interview of CW3 that was conducted by WPS officers.

IIU investigators received and reviewed reports from a subject matter expert (SME) on use of police dogs, a pathologist (PW1) who conducted the post-mortem on AP and a toxicology expert from the RCMP (PW2).

Following the completion of the investigation, the civilian director requested an expert opinion report on the use of lethal force and use of Police Service Dogs from a recognized Canadian expert in this field.

Scene Examination and Witness Canvass:

WPS Forensic identification officers attended and processed the scene. The scene was fully photographed in daylight and at night to give a lighting perspective to the location where the officer involved shooting occurred. A metal bar (an aluminium bracket measuring approximately 42 inches in length), five expended 40-calibre shell casings along with bullet fragments and a fired bullet were recovered.

IIU investigators conducted a canvass for witnesses and video on Adsum Drive, Pipeline Road and Larter Crescent, in the vicinity of the shooting. A single witness with relevant information was identified. No video footage was located that would assist IIU investigators. There were no responses to the IIU published media appeal for witnesses.

Summaries of Civilian Witness Interviews

CW1 resides at a residence on Adsum Drive. At approximately 4:00 a.m., CW1 stated that he was taking his garbage bins to the rear parking area of his residence when he was approached by two males. CW1 stated that one male was in possession of a handgun (which was pointed at CW1) and the other male was in possession of a shovel, with a wooden handle. CW1 stated that he was struck by the shovel and the two males threatened and demanded money of him. CW1 stated that he was able to run away, made it back to his residence and telephoned 911 for assistance. CW1 had declined medical attention. CW1 stated that police officers attended to his residence at which time he provided his statement to them.

CW2 resided at an apartment on Adsum Drive. CW2 stated that he was sleeping when, at approximately 4:15 a.m., he was awakened by the sounds of voices outside. Within seconds, CW2 stated that he heard smashing sounds, as if someone was striking cars with an object. CW2 stated that he then heard a voice yell out, "*show me your hands, show me your hands*". CW2

stated that he believed that this was a police officer yelling out those commands. CW2 stated that he did not hear anyone respond. CW2 stated that he then heard the sounds of three gunshots, followed by someone saying, “*show me your hands*” two more times. CW2 stated that he looked out his window and saw a flashlight in the back lane.

CW3 was identified as the other male with AP when he was shot by a WPS officer. IIU Investigators attempted to interview CW3 who declined to provide a formal statement. However, in the course of his contact with IIU investigators, CW3 did state that “*they*” had seen a dog in the back land and that they started to run. CW3 stated that he was unaware that this was a police dog. CW3 stated that he jumped a fence and was confronted by a police officer, armed with a shotgun and who threatened to kill him. CW3 stated that AP was not armed with any weapon. CW3 stated that he did not see AP shot by police.

CW3 had been interviewed by WPS officers and the interview was video recorded. IIU investigators were provided with a copy of the interview, and the following information was noted:

CW3 acknowledged that he had been with AP that morning but did not know if AP had a weapon in his possession. CW3 admitted to being in possession of a BB gun, describing its appearance and how it worked. CW3 stated that he had been drinking vodka and beer with AP that night and morning. He had taken the BB gun out that night after he had been drinking. CW3 stated that they had been drinking “hard” but could not say how drunk AP was. CW3 stated that he had blacked out at the time and did not recall seeing police before he was arrested. CW3 did recall that he saw a police dog when he was arrested. CW3 stated that he saw police officers with shotguns and he was placed in handcuffs. CW3 stated that the police had taken possession of his BB gun. CW3 stated that he was in a yard when he was arrested and he did not know or see what occurred in the back lane respecting AP and made no mention of hearing gun shots.

Summaries of Witness Officer Interviews

Following the incident and prior to interviews, all witness officers and SO were segregated from each other in accordance with WPS policy and PSA provisions. Involved police officers are segregated to prevent potential collusion or tainting of their observations and recollections. IIU investigators were satisfied that these protocols were adhered to and have no concerns in respect to any suggestions of collusion or tainting of the evidence.

WO1 is a WPS K9 (dog) handler. WO1 has been with WPS for 12 years. WO1 stated that morning, he attended to CW1’s residence and met with SO and WO2. WO1 stated that SO and WO2 spoke with CW1. WO1 stated that he had briefed himself on the robbery allegations from the call history that was broadcast over the police radio and through a mobile data terminal. He conducted a tracking of the area with his police dog and was lead to a back lane of Adsum Road, between Larter Crescent and Pipeline Road. WO1 stated that he had his flashlight in one hand and the lead of his dog in the other. WO1 stated that he was aware that SO was also in the vicinity. WO1 stated that his attention was drawn to two males in the back lane. WO1 stated that he ran towards these two males, while shouting loud verbal commands, “*Winnipeg Police K9. Stop. Drop your weapons or I will send in my police dog.*” WO1 stated that he could see that

one of the males (later identified as AP) was holding a long, skinny object that appeared to be a metal pipe. WO1 stated that it was his belief that this object, if used improperly, was capable of causing grievous bodily harm or death. WO1 stated that the second male appeared to be holding a black object in his hand. WO1 stated that he stopped and confronted AP, yelling, "*drop the metal pipe*". WO1 stated that AP refused to comply and swung the object several times. WO1 stated that SO joined him and was also commanding AP to drop the pipe. WO1 stated that AP responded by saying, "*come on, come closer*". WO1 stated that he did not deploy his police dog as he was fearful AP would kill it with the metal pipe, as he continued to swing it aggressively. WO1 stated that he would protect his police dog. WO1 stated that SO had his service firearm drawn as AP was now holding the metal bar like a baseball bat and was starting to walk towards SO. As AP was within 5 feet of SO, WO1 stated that he heard the sounds of 5 to 6 gunshots followed by the sight of AP falling to the ground. WO1 was in possession of a Glock 22 service pistol with an attached flashlight, a Taser, a baton, and OC spray (*oleoresin capsicum spray*). A round count of WO1's service pistol and ammunition was conducted and all of his available rounds were accounted. WO1 did not discharge his service pistol.

WO2 was partnered with SO on the morning of the incident. WO2 stated that at 4:05 a.m., he and SO were dispatched to attend a call for service at a residence on Adsum Drive, where there had been reports of an attempted robbery and that the victim had been assaulted by two males, one armed with a shovel and the other in possession of a firearm. Following their arrival at the residence, where they met up with WO1, they spoke with the victim. WO2 stated that they became aware of a second incident of an attempted break-in of an apartment block on Adsum Drive. WO2 stated that the description of the suspects matched that of the males involved in the robbery. WO2 stated that he and SO drove to the apartment block. WO2 stated that he went to the rear of the apartment building and that SO and WO1 were elsewhere searching for the suspects. WO2 stated that he heard a radio transmission that "*they*" (SO and WO1) could hear noises across the street. WO2 stated that he started to make his way to the police cruiser car and when he heard gunshot sounds followed by a radio transmission from WO1 that a male was down and that a second male was running eastbound. WO2 stated that he made his way to the back lane and approached SO, who was standing over a male (later identified as AP) and had his service firearm pointed at him. WO2 stated that the back lane was completely dark with no lighting. WO2 stated that he attended the male and rolled him over. The male was non-responsive. An ambulance was immediately requested to attend. WO2 stated that he observed an object, he believed was a metal pipe, on the ground toward the centre of the back lane. WO2 stated that SO advised him that he had shot AP but gave no further information. WO2 stated that he did not observe the shooting.

WO3 was the street supervisor on duty at the time of the shooting. WO3 stated that he was aware of a robbery allegation that had been voiced over the police radio, detailing the allegations, and that SO and WO2 were dispatched to speak with the victim. WO3 stated that he was also aware that WO1, a dog handler, was also responding to this call. WO3 stated that he was also aware that WO1 and SO were conducting a track for suspects in this area. WO3 stated that he drove to the search area. WO3 stated that he heard the sounds of gunshots and made his way to the back lane. WO3 stated that he could not recall the number of gunshots he heard. WO3 stated that

when he attended to the back lane, he saw a male (later identified as AP) down on the ground and police officers standing around him. WO3 stated that he saw a metal object laying beside AP. WO3 stated that SO approached him and advised that he was involved in the shooting and did not say anything more about what had occurred.

Subject Officer

Pursuant to the provisions of the PSA, a subject officer cannot be compelled to provide his or her notes regarding an incident nor participate in any interview with IIU investigators. In this case, the subject officer declined to attend for an interview, however did provide his notes and a prepared statement to IIU investigators.

The prepared statement included the following information:

- SO was working with WO2 and was dressed in full WPS police uniform;
- SO and WO2 responded to a firearms call at a residence on Adsum Drive, arriving there at 4:12 a.m. WO1, a WPS dog handler, was also at this scene;
- The victim had reported that at 4:01 a.m., two males had attempted to rob him at gunpoint and that he was assaulted with a shovel.
- At 4:14 a.m., a radio broadcast reported a damage call occurring at an apartment block on Adsum Drive that SP believed was related to this firearm's call;
- SO wrote that they attended the apartment block and split up from WO2. WO1 had also attended to the apartment block and joined up with SO;
- At 4:18 a.m., SO wrote that he and WO1 heard banging sounds coming from the north easterly direction of their location;
- That both SO and WO1 (with his service dog), moved towards that direction;
- SO wrote that he was previously assigned to a WPS Tactical Support Team and had experience assisting WPS dog handlers when tracking for subjects;
- SO wrote that in this instance, he was the assisting officer to the Dog Handler, which meant he would provide security in case there was any threat to them;
- SO wrote that WO1 was approximately 20 feet ahead of him when he began tracking with his service dog. SO caught up with WO1 and they entered the back lane between Pipeline Road and Larter Crescent;
- SO wrote that he saw two males, walking side by side and approximately 75 feet north of his position in the back lane. SO wrote that one male (later identified as AP) was carrying a long, thin item in his right hand, possibly the shovel that the victim had earlier described. SO believed that these two males were the same males involved in the robbery;
- SO wrote that he drew his service firearm, to have it in "*weapon readiness*" as he was also aware that previous information had advised that, in addition to the shovel that was used to strike the victim, one of the two males was armed with a firearm;
- SO was positioned to the right of WO1;

- SO wrote that both police officers announced their presence and stated, “*stop, police*”. SO wrote that both males stopped and turned their heads towards the two officers. Then, one of the males ran northbound in the back lane and AP remained in the back lane;
- SO wrote that AP had a bar in his right hand and raised it above his head “*as a baseball batter would hold a bat*”. AP had taken an “*aggressive, bladed fighting stance with his left foot forward and the bar cocked over his right shoulder... ready to swing*”;
- SO wrote that he approached AP and stated, “*Winnipeg police, get down on the ground*”;
- SO wrote that he used a flashlight to illuminate AP and was able to positively identify that he was holding a 3 foot metal bar;
- SO wrote that both he and WO1 continued to state to AP, “*stop, put down the bar. Drop the bar, put it down*”;
- SO wrote that AP responded, “*No! You come here! You get over here! Come on!*” According to SO, AP had an “*angrily tense expression on his face, and appeared to be wanting to confront and fight officers*”;
- SO wrote that AP then swung the bar, at head height, towards the officers “*at full force*”;
- SO wrote that AP began to edge towards the police officers, noting that he believed that AP wanted to fight and then swung the bar a second time;
- SO wrote that he continued with to give AP verbal commands to drop the bar. AP continued to refuse to comply;
- SO wrote that AP took two to three steps forward and towards SO, who now feared for his own and WO1’s safety;
- SO wrote that he decided to discharge his service firearm to protect his own and WO1’s lives;
- SO wrote that he believed AP intended to use the bar as a weapon and feared grievous bodily harm or lethal injury as a result;
- SO wrote that AP charged at him from the east side of the back lane towards his position and when he was approximately seven feet away, SO pointed his service firearm at the centre of the AP’s torso area and fired five rounds at him;
- AP fell face down on the west side of the back lane;
- SO wrote that he continued to command AP to, “*Show me your hands. Move your hands from under your body. Show me your hands*”;
- SO wrote that he radioed WPS dispatch that shots had been fired and an ambulance was required.

SO was in possession of a Glock 22 service firearm with an attached flashlight, Taser, baton, OC spray (*oleoresin capsicum spray*), handcuffs and a flashlight. A round count of SO’s Glock pistol and two spare magazines seized was conducted. Each of the two spare magazines contained 15 live rounds of ammunition. The magazine removed from the Glock pistol was found to have nine live rounds of ammunition and one live round in the chamber. A total of five rounds were discharged from the Glock pistol.

Subject Matter Expert:

The SME was a non-designated WPS officer, who was a trainer in the field of Police Service Dogs (PSD). SME was involved in training all new PSDs and their ongoing maintenance. Each new PSD is assigned to a new handler. Each new PSD is taken through a 16-week initial training period and continues training throughout its career. SME advised that PSDs do not apprehend or arrest subjects; rather, that is the obligation of police officers. A PSD is used to assist in the apprehension process. A PSD is a tool to be used by a police officer. How this tool is used depends on a subject's behaviour. The handler will determine the decision on how the PSD will be used. Handlers are not trained to send the PSD at a visibly armed subject. A PSD is not expendable. A PSD is not an appropriate force option to use against armed subject because if the PSD was deployed and was severely injured or killed, the subject is still armed. The handler also has a duty to protect the PSD. The handler controls how the PSD will be deployed and compared to the use of an intermediate weapon, such as a baton, OC spray or "taser" (conductive energy weapon (CEW)).

Post-Mortem Report:

IIU investigators received a post-mortem report authored by PW1. The cause of AP's death was concluded as a result of "gunshot wounds". AP was found to have sustained five gunshot entrance wounds:

1. left shoulder into the chest;
2. the distal left arm;
3. superolateral left side of the chest;
4. inferior left side of the chest;
5. left side of the back through the chest and abdomen.

Toxicology Report:

IIU investigators received a toxicology report from PW2, a forensic specialist at RCMP Toxicology Services. The results of the toxicology testing on AP were;

- Subclavian Blood: 164 mg per cent of ethanol (alcohol) was detected;
- Urine (UAC): 285 mg per cent of ethanol was detected;
- Vitreous Humour (VAC): 240 per cent of ethanol was detected;
- Chest cavity blood: THC was detected.

As a result of these findings, PW2 noted that:

"Ethanol is a central nervous system (CNS) depressing drug found in alcoholic beverages (such as beer, wine, spirits). The effects of alcohol are dose-dependent and are related to the concentration of ethanol in the blood (blood alcohol concentration, BAC) and the tolerance of the individual to alcohol. Tolerance is the acquired ability through previous exposure to alcohol to withstand its effects. The effects of alcohol are progressive such that as BAC increases, so does the extent of the CNS depression. If an individual regularly consumes large amounts of alcohol, they may show fewer signs of alcohol influence at a given BAC."

BAC Commonly Observed Symptoms are:

- *Less than 50 mg per cent: Mild euphoria, talkativeness and relaxation. Generally associated with few, if any observable symptoms.*
- *50 to 100 mg per cent: Associated with impairment. Bloodshot or watery eyes, flushed face, diminished attention, balance and coordination.*
- *100 to 150 mg per cent: Mild to moderate intoxication. Deficits in fine and gross motor control emerge. Problems with balance and coordination, slurred speech.*
- *150 to 300 mg per cent: Moderate to severe intoxication. Staggering gait, impaired memory, confusion.*
- *Greater than 300 mg per cent: Significant mental and motor dysfunction including marked incoordination, decreased level of consciousness, diminished reflexes, coma, and potential death due to respiratory depression.*

Following the absorption of ethanol and its distribution through the body, the UAC and VAC are expected to be higher than the BAC due to the higher water content of these fluids as compared to blood. Ethanol can also be generated in body fluids after death as a product of decomposition (putrefaction). As such, some of the ethanol detected in the subclavian blood could have been generated posthumously. Urine and vitreous humour are less susceptible to this effect.

THC is the primary psychoactive component of cannabis products. The effects of cannabis consist of a mixture of CNS depressant, stimulant, and hallucinogenic effects which can include feelings of euphoria, relaxation, altered time perception and elevated mood. The use of cannabis also increases heart rate and blood pressure, impairs learning, memory and fine motor coordination, can cause undesirable mood changes (panic reactions and paranoia), and can diminish concentration and attention. Smoking or vaporizing cannabis and/or its derivatives (e.g., cannabis oil, wax) is the most common method of use, but THC can also be taken orally by consuming edible products containing the drug. The specific effects of cannabis on an individual will depend on the dose of THC consumed, the route of administration, and the tolerance of the individual to the drug.

The effects that a combination of alcohol and THC could have on a person are dependent upon the individual's tolerance to these drugs, the dose of each drug, and the timing of their administration in relation to each other. It can be expected, however, that the combined use of multiple drugs that affect the CNS would result in greater impairment of mental and/or physical processes than would be expected following their individual use”.

Use of Force Opinion:

Following the completion of investigative file, the civilian director requested that a Use of Lethal Force opinion be obtained from an expert in this field. In this regard, an expert in Use of Force analysis was engaged. This individual has an extensive background in law enforcement. He has been certified as an expert on use of force and deployment of PSDs, in Alberta and British Columbia.

Before outlining the opinion rendered by the expert, two matters should be referenced. First, the opinion offered by the expert is not a binding legal opinion. While the expert has referred to existing policy and law in the use of lethal force by police officers, it nevertheless remains his opinion. Second, it is important to remember that the opinion offered by the expert is still an opinion. It is not to be assumed that it is determinative on the issues considered. It is to provide an assistance to understand the technical nature and unique processes involved in matters such as this officer involved shooting.

The expert summarized his opinion as follows:

“After reviewing all of the information provided and in the absence of additional and substantiated information, it is clear that based on the risk assessment of a reasonable police officer, both SO and WO1 believed that they were authorized to take AP and CW3 into custody for numerous Criminal Code offences, including robbery with a firearm, assault with a weapon, attempt break and enter and mischief to property. As a result, they were authorized by the Criminal Code to use force in order to effect the arrest.

In my opinion, SO used an appropriate intervention in consideration of the totality of the circumstances before him. The force utilized was not in excess of that which was necessary. As a result, his actions were aligned with his training, WPS policy and proportionate with similarly trained law enforcement officers in a Canadian policing context. In my opinion, WO1 used a less desirable intervention option in consideration of the totality of circumstances before him. However, WO1 was limited in his ability access another more desirable intervention option due to the necessity of him having to maintain control of a police service dog under what can only be described as extremely demanding circumstances.

The force utilized by WO1 was not in excess of that which was necessary. His actions were aligned with his training, Winnipeg Police Service policy and proportionate with similarly trained law enforcement officers in a Canadian policing context. Furthermore, following the shooting of AP, WO1 had the presence of mind to re-deploy his service dog in an effort to locate a second armed suspect, who he located nearby. WO1 showed restraint and good judgement upon locating CW3. WO1 provided verbal direction to CW3 and maintained a safe distance that allowed the other responding police officers to safely take CW3 into custody without further injury”

WPS Firearm Policies

The WPS policies on firearm discharge and use of lethal force were reviewed. It is concluded that SO was acting in the lawful execution of his duties and was adhering to the WPS policies, in drawing his handgun and in discharging it at AP.

Conclusion

Following the receipt and review of the expert report on use of force, the entire investigative file was referred to Manitoba Prosecution Service (MPS) on March 15, 2021, with a request to provide a Crown opinion on this matter.

On November 8, 2021, MPS provided IIU with a Crown opinion in which it advised that it was not recommending any criminal charges against SO.

MPS provided the following conclusion:

“Manitoba Prosecution Service (MPS) has reviewed the IIU investigation of SO. While it is always in the public interest to hold police officers accountable, there must also be a reasonable likelihood of conviction for MPS to prosecute a matter. In this case, after considering all of the evidence and expert opinion, we have concluded that we are not satisfied there is a reasonable likelihood of conviction. When MPS is consulted for charge authorization in any criminal matter, we employ the same standard for proceeding with criminal charges”

In this investigation, the IIU mandate was to determine whether consequences should flow from the actions of the subject officer, in light of all the circumstances and information known to him at that time. Following a detailed review of this IIU investigation and file material, MPS has advised that they are not satisfied there is a reasonable likelihood of conviction of SO and therefore there are no grounds to justify any charges against SO for his use of lethal force.

Accordingly, IIU has completed its investigation and this file is closed.

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