

FINAL REPORT: IIU concludes investigation into injuries from “less lethal” firearm used by BPS officer

On February 23, 2017, the Brandon Police Service (BPS) notified the Independent Investigation Unit (IIU) of a confrontation between BPS officers and a male (later identified as the affected person (AP)) at Brandon, Manitoba, during which a less-lethal firearm with beanbag round was deployed. Several discussions took place between the BPS Chief of Police and the civilian director. On February 27, the following information was provided to IIU:

“During the day and evening of Feb. 13th, 2017 the BPS became aware of a situation involving the above noted subject and his girlfriend. AP has beaten his girlfriend with a pool que [sic], he had held her against her will, had threatened her life, etc. She was only able to get away from him by using a shovel to jab him in his leg. As a result she was able to get free and report this matter to BPS. AP was taken to Hospital by a friend and was able to elude the police after treatment, thus getting back into his house.

Beginning around 2200 hrs on Feb. 13th, BPS undertook efforts to make contact with AP. He refused to answer his door and all other attempts to make contact with him. At around 8:30 AM on Feb. 14th, BPS obtained a warrant for his arrest as well as a Feeney warrant to enter his home. However, there was information that AP may have access to firearms within his residence....Incident Command was established, with BPS negotiators and tactical members being deployed under the direction of an Incident Commander. During the day, extensive attempts were made to make contact with AP. He ignored all of these attempts. Police even tried to text message with him to seek his surrender. Police were able to determine he was communicating with other people and it was evident he has no intention to give himself up to face the serious charges facing him.

At approximately 3:40 PM, BPS tactical members, under the direction of Incident Command, deployed 2 OC gas canisters into AP’s residence. He continued to refuse to leave the residence and submit to arrest. Therefore, two more canisters were deployed. He did then leave the residence with his dog. AP resisted his lawful arrest by BPS tactical members and his dog made a menacing approach towards a tactical team member. A bean bag round was deployed against AP striking him in the torso and one was also deployed against his dog. The deployment had the desired effect of compliance to arrest in the case of AP.

From the information presented to me the effect on AP as a result of the bean bag round was no serious injury and any injury sustained, if any, would have been of a trifling nature. A member of our Criminal Intelligence Unit spoke to AP at the Hospital. The only concern he had concerning an injury was the one inflicted by his girlfriend that required a number of staples to close. He showed our member his leg. The staples were noted and the leg was swollen as a result of this injury inflicted by his girlfriend in her efforts to get

away from him. As for the dog, it was examined as well and found to be ok. The dog was then turned over to a local kennel for safe keeping.

On Feb. 23rd at 2:30 PM I contacted you and gave an overview of this matter. I then was able to determine after the fact that any injury that may have been inflicted upon AP as a result of the bean bag round, if any, was trifling in nature. I confirmed that with you on Feb. 24th during a follow up phone call. It was agreed by us during the conversation that given the minimal if any injury this situation would not fall into the mandate of the IIU. To date, AP has not made any type of complaint against the BPS to my knowledge as a result of this incident.

Should for any reason this situation change we will have a fully documented account of all of our efforts in regards to this matter”

As a result, it was determined that this matter did not fall within the mandate of the IIU, that no independent investigation into this matter would be commenced and the file would be closed.

On September 10, 2020, BPS notified IIU that new evidence had been obtained that would materially change the initial notification from February 23, 2017.

This subsequent notification read in part:

“On 2017-02-14 AP was involved in a high risk barricaded situation that involved activation of the Brandon PS Emergency Response Team – including an Incident Commander, Crisis Negotiators and the Tactical Response Unit. AP was arrestable for a number of CC offenses and was considered both suicidal and a threat to Police. During the course of the incident a bean bag impact munition was deployed and AP was struck with the projectile allowing for Police to take him into custody. A second bean bag impact munition was deployed and struck his dog which was a threat for Police as they were taking AP into custody.

On 2017-02-23 and 2017-02-24 [the previous BPS Chief of Police] contacted IIU Civilian Director by phone and followed up with an email on 2017-02-27...[which] advised, “I was able to determine after the fact that any injury that may have been inflicted upon AP as a result of the bean bag round, if any, was trifling in nature.”

AP lodged a complaint with The Law Enforcement Review Agency (LERA) on 2017-03-14. On 2020-06-04 LERA responded to AP advising that they declined taking further action and closed the file. The closure letter contained a synopsis of medical information relating to AP being struck with the bean bag round and speaks to a hematoma that became infected and required medical treatment.

AP communicated with the Police Service for some time after receiving the LERA report, asked for and was granted a meeting...on 2020-07-08. AP further disclosed the injury he claimed that was caused by the bean bag and further stated that during the arrest that a pre-existing injury to his spine was aggravated and has since required surgery with rods being placed in his neck. AP voiced other complaints regarding his treatment by the Brandon Police Service...AP to provide a written account of all of his grievances so that there was a factual record of the claims.

On 2020-08-12 a written statement was provided ...and... reviewed on 2020-08-28.

Based on the information recently obtained that was not available in 2017, it was determined that AP may have sustained injuries as a result of the discharge of a firearm (bean bag round) as well as additional injuries requiring surgery to his spine, during his arrest which in turn required notification to the IIU...”

The IIU civilian director determined that the less-lethal firearm discharging the bean bag round was a firearm for purposes under the Police Services Act (PSA). Any injury resulting from its use would constitute a serious injury pursuant to IIU regulation 99/2015. According to the most recent notification, AP suffered real injuries because of the deployment of the less lethal firearm. Accordingly, this was now determined to be a mandatory investigation by the IIU into the conduct of the BPS member who discharged the less lethal firearm. A team of IIU investigators was assigned to this matter.

The agency information obtained by IIU investigators included:

- BPS occurrence summary report
- BPS daily arrest & major incident report
- BPS officer notes
- officers' supplementary reports
- 911 call audio recording
- domestic violence report
- incident commander's report
- incident debrief notes
- Tactical Response Unit (TRU) commander's report
- crisis negotiator text messages and photographs
- incident scribe notes
- crime scene and victim photographs
- photographs of text messages between AP and BPS
- in-car video of transport of AP
- charge documents including probation order and recognizance for AP
- Copy of original LERA complaint
- LERA correspondence
- BPS training materials on “less than lethal” munitions
- BPS Use of Force Policy materials

The civilian director designated the BPS officer who discharged the less lethal firearm as the subject officer (SO). IIU investigators interviewed 16 BPS officers who had been designated as witness officers (WO1 – 16). IIU investigators met with and interviewed AP. IIU investigators intended on interviewing a civilian witness (CW) to the incident. When contacted by IIU investigators, CW advised that she was traumatized by the incident and was not sure if she could provide any more information than she had provided previously to police. When she was advised that her participation was voluntary, CW responded that she did not want to participate in an interview with IIU investigators.

Facts and Circumstances

AP

AP stated that the day before the incident, he was at his residence with a female. His recollections that day were “*blurry*” as he ingested “*about 100 Valium*”. AP states that he does recall kicking down his bathroom door resulting in a large gash in his leg and required 30 staples to close. AP stated that he also smashed a cell phone, that he wanted to die and did not want any paramedics to attend. AP stated that the female left his residence and had called the police. AP stated that CW attended and took him to the hospital. AP stated that his behaviour there was described as “*obnoxious and loud*”. He was prescribed pain medication and when he returned home, fell asleep on the couch. AP stated that over the ensuing hours, police officers had “*set up*” outside of his residence. AP stated that he woke up to the sounds of distraction devices, loudspeakers and a “*robot*” that the police were using. AP stated that police then “*shot out his windows and some type of canister came in with pepper gas*”. AP stated that police had surrounded his residence and were armed. AP stated that he got up but because of his injured leg he had trouble walking. AP stated that he opened the back door of his residence and was met by a police officer who had a “*gun pointed*” at him. AP was told to put his hands up and he complied. AP stated that the police officer ordered him to exit the backyard through a side gate. AP stated that he complied with that direction. AP stated that his dog came running out of the house but stayed in the backyard. The side gate is spring loaded so the gate closed and the dog was secured there. AP stated that four other police officers approached him, with their guns drawn and ordered him to get on his knees, with his back towards them. AP stated he complied with that direction. AP stated that he started to turn his head towards the police officers to explain that he could not move his leg and was then shot in the back. AP stated that he was not reaching for anything when he was shot. The impact caused him to fall face down to the ground. AP stated that the police officers then approached him and repeatedly punched and kicked him. AP stated that one police officer was repeatedly “*kneeing*” him on top of his neck. AP stated that he was handcuffed and one of the police officers leaned over his fence and shot his dog with a bean bag round. AP stated that shooting him and his dog was unwarranted.

AP stated that his “*concept of time from that period is still cloudy*”. AP stated that he was detained at the Brandon Correctional Center (BCC) and was seen by a nurse. AP stated that he was in a “*lot of pain*” but the nurse said he was fine. AP stated that a day or two later, he realized that he had a “*football sized hematoma*” on his back. AP stated that a day after he was detained at BCC, he was taken to Brandon Hospital. AP stated that the emergency room doctors were rude and did not provide any treatment to him. Over the next few days, the pain to his back, neck and leg worsened. AP stated that he was returned to hospital and went through “*a barrage*” of medical tests. AP stated that the injury to his back required surgical intervention to relieve the pressure. The wound was cleaned out, packed and required constant dressings. Following five weeks of custody, he was released from BCC and saw a doctor at the Brandon Clinic. AP stated that he was referred to an orthopedic surgeon. AP stated that he has lasting injuries and complications from his neck injury that he attributes his neck injuries to his encounter with Police. AP provided IIU investigators with a written consent for the release and review of his medical reports and information.

Review of Medical Reports and Information

February 20, 2017 - Brandon Regional Health Centre

The report notes:

39 yr. male, abscess/hematoma r flank area - was shot w/beanbag Tuesday, had small abrasion and hematoma now more tender and swollen. C-85 Abscess back and Infected Hematoma L Back.

February 24, 2020 - Prairie Mountain Health Patient Summary

AP was brought in for severe agitation with seizure disorder due to drug withdrawal. There was an abuse of Diazepam (Valium) and notes a course of treatment as recommended by a psychiatrist. It is also noted that AP had some pain due to a wound on the back, which was cleaned and dressed. Prior to changing the dressings Fentanyl 25-50 mcg sublingual was ordered.

April 3, 2017 - Brandon Clinic Medical Corporation

This document is a referral for a neurological examination and states:

Thank you for seeing [AP] who is a 39 year old male patient of mine who has been suffering from a tingling and numbness sensation in his hand at the right side. He is indicating to me that since some before he had some people jumping over his neck and at that time he had some pain and tingling radiating to the right arm and hand at C5-C7.

I am sending him today for x-ray for his neck and I do appreciate if you can help him with your further evaluation and recommendation for his case.

August 21, 2017 - Brandon Regional Health Centre

This is the follow up to the above referral of 2017-04-03. It is noted that AP has several underlying issues such as short term memory loss (due to multiple sport injuries), ADHD (Attention Deficit Hyperactivity Disorder), anxiety, depression and drug/alcohol abuse. A CT scan was conducted, which has some abnormal findings but more in line with “*Carpal Tunnel Syndrome*”. It is recommended that a MRI be conducted on the cervical spine

March 15, 2018 - Brandon Medical Clinic

This is a referral to an orthopedic surgeon for further evaluation and treatment in relation to suspected neck injury, which states, in part:

The patient has had several incidents of being hit on the neck before after which he developed some radiculopathy and tingling sensation, especially in the upper back and arms. We sent the patient for an MRI recently after recommendation from yourself and the MRI shows multi level degenerative changes with asymmetrical n convertrebral osteophytes and facet arthropathy corresponding to multi level neural foraminal narrowing. This is associated with mild central stenosis present at C5-6 and C6-7 and is most marked at these two levels.

July 13, 2018 - Orthopaedic Surgeon

This is the response to the above referral, in which it is stated, in part:

Thank you so much for asking me to see this patient. As you know, he is known to me and I had done the previous L4 to S1 fusion for him many years ago. The patient in the meantime has had a change of career and is now working in the construction business. The patient is 41 years old. He was assaulted in February of last year. The result of this was somebody stomped on his neck. Soon thereafter he developed severe pain in his neck and right arm pain. Since then, this has not really responded to conservative measures. He has had the whole gamut of measures which have not been successful. The patient is aware of subjective weakness of the right hand and paresthesia in both the right arm and right leg.

Review of the imaging confirms severe disc disease at C5-6 and to a lesser extent C6-7. Certainly, the timing of the injury and the development of the exostosis is very close together and I believe there has been an underlying condition even though the patient did not admit to that. Furthermore, the MRI scan shows significant changes interestingly more towards the left than towards the right although the patient's symptoms are clearly subjectively and objectively on the right side.

This is a hard case to decide seeing that the pathology is more towards the opposite side of the patient's symptoms. However, he has had more than 18 months of treatment without much success and I believe the best solution would be surgery.

November 20, 2018 - Prairie Mountain Health (Pain Clinic)

This is a pain management plan for AP. It is noted that AP has been having issues with his lower lumbar spine since 2004 and had surgery to his back in 2009, which resulted in a fusion of his spine from L4 to S1. AP has recently been working in construction and may have suffered a workplace injury.

November 27, 2018 - Orthopaedic Surgeon

It is stated that AP suffered another injury due to work in the construction field which is believed to have happened that September. The injury is believed to involve the spine as well.

September 6, 2019 - Orthopaedic Surgeon

AP had returned for a visit and was still experiencing issues with his back. He is awaiting surgery for a L3-4 disc herniation. The injury is related to the workplace accident.

November 8, 2019 - Prairie Mountain Health/Brandon Regional Health Centre

This is a post-operative report stating that AP has had surgery, is currently in hospital, is recovering and should be discharged shortly.

June 17, 2020 - Clinical Note

AP had a telephone visit and is still having pain issues due to the L spine problems. The note references additional back surgery to be conducted. Medication will be adjusted and AP is currently using Hydromorphone.

July 24, 2020 - Clinical Note

AP was upset that WCB paperwork had been sent in without notice to him

Medical Information from the BCC

IIU investigators received and reviewed BCC medical information from February 14 to March 3, 2017, which includes intake form and patient logs for AP.

Intake Form - Completed upon AP's admission to BCC, it states that he was admitted with a wound to his left knee which had been caused "*by a shovel*". The knee was red and swollen but staples had been administered a day previous and were intact. The form also references an "*abrasion to the head*" and an "*abrasion to the right flank*". AP was reported to be a heavy alcohol user averaging 26 oz. per day and was using street drugs such as Methamphetamine, Cocaine, Opiates and Marijuana daily. He was also reported to be suffering from anxiety and depression.

Medical Progress Notes

02-14 - Wound to left knee w/staples is red with moderate swelling. Dressing will have to be monitored and changed. Offender still under influence of Meth and Alcohol.

02-15 - Information was received from Emergency, AP to be given a routine dose of Valium in relation to alcohol dependency. Wound to knee will be monitored and dressings changed.

02-16 - Valium orders re-written.

02-17 - Wound to left knee is "*red, hot and swollen*" and is "*cellulitic*¹". Drastically outside of mapped area. AP is sent to the Emergency Room (BGH) for assessment. Returned back to BCC the same day. Orders are given to dress the wound daily and observe for changes in erythema. Crutches if allowed, otherwise elevate and limit activity.

02-18 - New dressing to knee received. Wound condition is greatly improved. Medically Stable.

02-19 - AP is given bactroban and medipore for knee wound. Wound is greatly improved. No longer a need to change the left knee dressing. AP is asking for pain medication and complaining of swelling of area on his back related to a "*bean bag*" gun injury during his arrest. Upon assessment area noted to back on right side, 11 cm in diameter and raised 6 cm. Area is discoloured (dark red) and warm to the touch. AP is sent to Brandon Hospital for assessment.

02-20 - AP is returned to BCC from Brandon Hospital. Wound to back has been treated, drained and packed. Prescription for clindomycin and instructions for daily dressing changes.

02-21 - Wound dressing to back is changed. AP complaining of severe pain and angry that wound dressing was not changed earlier. Sero-purulent drainage occurred after dressing removed. Wound is red and warm to the touch. Redness is outside of previous mapping area so marked again with black marker. Saline applied to wound and re-packed and new dressing applied.

¹ Affected by a common, potentially serious bacterial skin infection

02-21 - AP may have experienced a seizure, possibly lasting a minute. AP cannot remember anything. AP is admitted to Brandon Hospital. Will receive a CT scan in the morning.

02-23 - AP is still at Brandon Hospital. CT scan has been done but had to be sent to Winnipeg for review and results still pending.

02-24 - AP is returned to BCC from Hospital.

02-25 - Wound much improved, no edema or pain at site. Drainage and repacking/dressing of wound.

02-27 - Dressing to right flank area changed. Scant serous drainage. Irrigated and re-packed, minimal discomfort. AP states that right arm and side since injury has experienced numbness and nerve pain. To notify if worsens further.

03-03 - AP released. Given medication. Dressing changed and packed prior to release.

Witness Officers

WO1 is a member of BPS and was the acting deputy chief on February 14, 2017. WO1 stated that at 11:00 p.m. on February 13, he was advised of the situation involving AP and that BPS officers were at his residence in an attempt to speak to him. AP told BPS officers that he was not coming out, but would “*deal with this*” the next day. WO1 stated that he directed BPS officers involved to prepare an entry warrant for the residence and to arrest AP. As the situation continued into the next day, it was becoming evident that AP was not exiting his residence. Given information that suggested AP may have firearms at the residence and that he had a propensity for violent behaviour, it was decided that resources from the BPS Tactical Response Unit (TRU) and the Crisis Negotiation Team (CNT) would be utilized. At approximately 5:00 p.m., WO1 stated that he was advised that the incident had been resolved and AP was in police custody. WO1 stated that he was further advised that oleoresin capsicum (known colloquially as pepper spray (OC)) canisters had been deployed by the TRU, that AP and his dog had been struck by “*bean bag*” rounds and that AP was taken to the hospital for medical attention.

WO2 was the commander of the TRU on February 14. WO2 stated that on his arrival at work in the morning he was briefed on the situation at AP’s residence. TRU team members were assembled for deployment. WO2 stated that reliable information suggested that AP had a propensity for violence and may have firearms at this residence. WO2 stated that he did not attend AP’s residence during the incident. As the situation unfolded, WO2 stated that he was advised that BPS officers were having a difficult time establishing contact with AP. A decision was made for the TRU to use two “*Aerial Distraction Devices*” (makes loud bang sounds in the air). Following deployment of these devices, AP started to send text messages to the negotiators. WO2 stated that a decision was made to deploy two OC canister rounds after negotiations broke down and it was obvious that AP was not coming out. A decision was made to deploy a two more OC canisters and shortly after this, AP came out the back door. WO2 stated that he was advised that AP was yelling and angry at police. He was reported as being non-compliant with commands and a decision had been made to fire a bean bag round at him to gain compliance. He was asked to show his hands and he would not show them.

WO3 was a BPS crisis negotiator on February 14. His assignment was to establish contact with AP and attempt to negotiate a successful resolution without injury to anyone. WO3 stated that he

was briefed on the background of the situation and was assigned to be the primary negotiator. WO3 stated that he attempted to establish telephone contact with AP several times by telephone without success. WO3 stated that a decision was made to attend the residence in person and attempt communication via text messages and loud hailer equipment. Following multiple attempts to establish a communication, AP sent WO3 four photographs, depicting his leg injury, by text messaging. AP then texted that he was "*tired and needed to rest*". Ultimately, AP exited his residence on his own accord and surrendered to the TRU members. WO3 stated that ended his involvement. WO3 stated that he did not witness the AP's arrest by the TRU.

WO4 was the assigned incident commander on February 14. WO4 stated that on arrival to the station that morning, he was briefed on the situation involving AP. As there had been previous intelligence information that AP may have weapons at his residence, BPS officers maintained a watch but did not attempt to enter. By morning, it was clear that AP was not coming out of his home and the situation was moved to the command assigned to WO4. WO4 stated that following his briefing, he met with the commanders of the TRU and crisis negotiation unit. It was decided that WO4 and the commanders would command from the BPS station and TRU team members would attend the residence. Other residences around AP's were evacuated. Once the TRU members arrived, the negotiation team was directed to attempt contact with AP. Several attempts were made to call AP but all were unsuccessful, going immediately to voice mail. Attempts to contact with the loud hailers also proved unsuccessful. The TRU team then deployed "*Aerial Flash Bangs*" (loud noise devices which are shot from a shotgun and go off in the air). Within ten minutes, AP sent a single text message of a photograph of his injured leg back to the negotiators. Negotiators then used text messaging to communicate with AP. At one point, AP yelled out of a window that his phone "*was not working*" and that the police must have done something to it. WO4 stated that BPS had not done anything to his phone and would not have had the capability to do so either. The communications with AP eventually ceased. WO4 stated that a new plan was put into effect calling for two rounds of OC Canisters to be fired into the house and for AP to be called to exit, failing which TRU members would enter the residence and clear it. After the two OC canisters, TRU members told AP to exit the residence. AP responded that he would but wanted to "*have a smoke first*". Additional OC canisters were fired into the residence which resulted in AP exiting through a back door. AP remained "*defiant*" and uncooperative with commands. WO4 stated that he was advised that a "*bean bag round*" had been used on AP and, sometime later, advised that a bean bag round had been used on AP's dog. WO4 stated that he was advised that AP had turned, possibly to go back into the house and when he was hit "*in the side*" by the bean bag round.

WO5 was the BPS intelligence officer on February 14. WO5 was familiar with AP from prior dealings. WO5 stated he advised the incident command that he had intelligence information on AP, specifically that he may have access to weapons. WO5 stated that he was then tasked to make contact with CW. WO5 stated that he subsequently learned that AP had been arrested and was in custody. WO5 stated that on February 15, he was advised that AP was taken to hospital. WO5 stated that he attended the hospital and met with AP in the triage area. WO5 stated that he noticed a small scrape on the left side of AP's face and his chin.

WO6 was working as a dog handler on February 14. WO6 stated that he and another dog handler, WO7, were assisting the TRU that day and were assigned to watch the south east corner of AP's residence. WO6 stated that he was aware that negotiations with AP were not successful

and that two OC canisters were fired into the house. WO6 stated that AP then exited his residence out of the back door. WO6 stated that AP was using a cane when he came down the steps. As AP was coming out of the residence, he was ordered to go to the ground. WO6 stated:

“The last I saw he was going to the ground, something happened and a 12 gauge bean bag round was deployed”.

WO6 stated he heard the discharge from a shotgun and believes this is the bean bag round that struck AP. He did not see AP hit as his view was obscured by his position. WO6 stated that he believed that AP was in a kneeling position when he heard the shotgun. WO6 stated that:

“...sometime in that scuffle, a dog came running out of the house and was also shot with the bean bag gun”.

WO6 stated that approximately eight to ten TRU officers came up to effect the arrest. AP went to ground, near the garage, and was handcuffed.

WO7 was a BPS dog handler on February 14. WO7 stated that he was assigned to assist in monitoring AP's residence. He was partnered with WO6 for this task. WO7 stated that at 3:43 p.m., TRU members had deployed OC gas canisters into the residence and AP exited through the back door. WO7 stated that he re-positioned to the back fence of AP's residence where WO8 was already located. WO7 stated that both he and WO8 encountered AP as he came out the door and yelled at him to get down on the ground. AP did not comply with that command and said that he *“...just wanted to have a smoke”*. WO7 stated that he told AP to put his hands up, walk out and get on the ground. WO7 stated that AP showed his open hands and moved off the back step. AP yelled that he could not get on the ground as he had *“hurt his leg”* and could not walk. AP then moved near a gate in the fence. TRU members were moving in to this position and took over directing commands at AP. WO7 stated that he moved from the fence and took up cover behind a tree with a view of AP and the TRU team. AP was standing and arguing with TRU members. AP was again instructed to go to the ground when his arms *“dropped to his side”*. WO7 stated that AP was shot with a *“less lethal bean bag round”* by a TRU member, the SO. WO7 stated that he believed AP was turning or in the process of turning his body when he was shot. WO7 believes AP was shot in the torso, in the middle of the back and towards the side. AP went immediately to the ground and was given instructions to move his hands out. WO7 stated that he moved in and took a hold of his right arm. As he was attempting to handcuff him, WO7 stated that a large bull mastiff dog came out of the house and charged towards TRU members. WO7 stated the SO discharged a less lethal bean bag round at the dog, stopping the charge. AP yelled, *“You shot my dog”* and resisted attempts to handcuff. With the assistance of another TRU member, WO7 was able to handcuff AP and he was brought to a sitting position. AP was calling out officers to fight him. AP appeared intoxicated and was slurring his words.

WO8 was assigned duties with the TRU on February 14. WO8 stated that he was briefed on the situation at AP's residence at the BPS station. WO8 stated that he and WO9 were assigned to go to the residence prior to TRU arrival and to position near the south west corner of the residence, in order to react to any possible *“break out”* by AP. WO8 stated that he repositioned to the rear of the residence with a view of the back door and backyard. WO8 stated that he was aware that OC canisters were fired into the residence and then saw AP moving within the residence. WO8 stated that he yelled commands at AP to come out of the house. AP swore back at him and stated that he would *“come out when he was ready”*. WO8 stated that he continued to command AP to

exit the residence for the next 15 to 20 minutes, at which time AP exited the rear door. WO8 stated that AP was carrying a walking cane in his right hand. TRU team members took over the commands at AP. WO8 stated that AP was either “*standing or kneeling*”. WO8 stated that he heard someone yell out “*Bean Bag, Bean Bag*” or “*Less Lethal*”. WO8 stated that he did not see who shot AP where on the body he was shot. Shortly after AP was arrested, a large mastiff dog came out of the house and charged through the gate. At this time, SO discharged a bean bag round at the dog.

WO9 was working in the crime support unit of BPS on February 14, when he received notice of a TRU call-out and was assigned to assist. WO9 stated he was sent to the residence with the TRU team and was positioned on the south side of the residence. WO9 stated that he was also assigned to carry the “*ballistic shield*”² (to provide protective cover for other TRU members). WO9 stated a decision was made to dispatch two “*barricade rounds*” (OC canisters) into the residence. He provided cover with the shield for the officer who deployed the OC canisters. WO9 stated that at approximately 3:30 p.m., TRU members positioned to the rear of the residence observed AP exit through back door and into his backyard. WO9 (carrying the ballistic shield) stated that he, WO10, WO11 and the SO were yelling commands at AP to get down on the ground and to which he refused to comply. The SO shot AP with a “*bean bag*” round in the rib area and he went down to one knee. WO9 stated that he, still holding the ballistic shield, approached AP and forced him to the ground. WO9 stated that other BPS officers assisted and they were able to get him into handcuffs on AP. As he was handcuffing AP, WO9 stated he heard but did not see a dog that had come out of the house and that the SO had discharged a bean bag round towards the dog.

WO10 was a team leader of the TRU and on duty at the BPS station on February 14. As a team leader, he was responsible for leading the TRU team at the incident scene. WO10 stated he met and was briefed by WO2 about the current situation involving AP. WO10 stated he assembled the TRU team and briefed them on what he had received. The TRU team attended AP’s residence and established an outer perimeter. Nearby residences adjacent to AP were evacuated. There were numerous unsuccessful attempts were made by crisis negotiators to establish contact with AP. At approximately noon, WO10 stated that he ordered two “*flash bang*” devices (distraction devices) be fired at AP’s residence. As negotiations were not proceeding in a positive fashion, WO10 stated that he approved the deployment of OC canisters into the residence. Within ten minutes after a second set of OC canisters were fired into the residence, AP came out of the rear door of the residence, which leads into a backyard. WO10 stated that he and three other TRU members started yelling commands to AP to keep his hands in the air. WO10 stated that within 30 seconds, AP was struck in the abdomen with a bean bag round fired by the SO. WO10 stated that AP was in the process of turning to face officers, when the bean bag round was discharged. When AP went to the ground, his hands started to go down towards his body causing police concern that he could have something under his jacket. WO10 stated that AP was pinned to the ground by police at which point, a large mastiff dog came running from the yard towards the police officers. SO discharged a second bean bag round at the dog and the dog retreated from its charge.

² Ballistic shields are protection devices deployed by police and military forces that are designed to stop or deflect bullets and other projectiles fired at their carrier. Ballistic shields will also protect from less serious threats such as thrown items, though they are typically used in situations where riot shields would not offer adequate protection

WO11 is a member of the TRU team and was called to attend for duty on February 14. Following a briefing on the status of the situation concerning AP, WO11 stated the TRU team were deployed to the residence. WO11 stated that they held containment of the residence for several hours while negotiations with AP were ongoing. Eventually, the TRU team was given the “go ahead” and deployed two OC canisters through windows of the residence. Shortly thereafter, AP exited the house through the rear door. There were several TRU members situated to the rear of the residence who were the first to encounter AP and they started yelling out commands to him. WO11 stated that he, WO9, WO10 and the SO approached AP and told him to get on the ground. The AP refused to comply and dropped his arms to his side appearing to reach for something at his waist line. WO11 stated that AP was facing the TRU members and was “shuffling” back and forth. WO11 stated that a “bean bag round” was discharged by SO, striking AP somewhere in the torso and he went down to the ground. WO11 stated that as he proceeded towards AP, a large bull mastiff dog came out from the backyard and charged at him. SO discharged a second bean bag round at the dog which stopped the charge and the dog retreated back into the yard.

WO12 was partnered with WO13 and were assigned to traffic duties on February 14. WO12 stated that at 7:44 a.m., he was subsequently assigned to participate in this matter and was directed to take position on the perimeter of AP’s residence at 0744 hours. He was also tasked with evacuating several houses nearby AP’s residence. WO12 stated that he was also responsible for traffic-related duties and keeping vehicles out of the area. WO12 stated that when AP was taken into custody, he was directed to transport him to the BCC. WO12 stated that AP was complaining of pain to his leg and a sore back from the bean bag round during the drive to BCC. On arrival at BCC was examined by the duty nurse.

WO13 was partnered with WO12 when they were originally assigned to traffic duties on February 14. WO13 stated that they were reassigned to assist other BPS officers at AP’s residence. Subsequently, WO13 stated that he and WO12 were directed to transport AP to BCC. AP was complaining that he was pain from his knee injury. On arrival at BCC, the duty nurse was summoned and examined AP.

WO14 was on duty during the evening shift on February 13 when she became aware of an incident at AP’s residence. At approximately 10:00 p.m., WO14 stated that she attended AP’s residence and observe a vehicle leaving from the driveway. WO14 stated she initiated a traffic stop of this vehicle shortly thereafter. There was a lone occupant in the vehicle identified as CW. WO14 stated that she was advised that AP was at the hospital most of the day dealing with a serious leg injury. WO14 stated that she directed CW to return home and not to AP’s residence. WO14 stated that she was directed to return to the BPS station and to prepare an application to obtain an entry warrant to AP’s residence. WO14 stated that she did not return to AP’s residence and ended her shift when the application was completed. This was the extent of her involvement in this incident.

WO15 was working on general patrol on February 13. WO15 stated that she dispatched to attend AP’s residence in response to a call for service respecting a domestic violence incident. WO15 stated she met with a female occupant of AP’s residence at the BPS station and obtained a statement concerning the allegations. This was the extent of WO15’s involvement.

WO16 was on duty at the BPS station on February 13, when, just before midnight he was assigned to monitor AP's residence. WO16 stated he was briefed in respect of allegations made against AP that day. His duties were to assist with other BPS officers to monitor the residence through the night and to arrest AP if he exited the residence. On February 14 at 8:00 a.m., WO16 stated he was relieved of his duties and he returned to the BPS station, where he learned the TRU team had been assigned to this matter. WO16 was assigned to assist TRU at AP's residence. WO16 states that he returned to AP's residence and took up a position to view of the front and the top floor windows of the residence. WO16 stated he was not involved in the arrest and apprehension of AP. WO16 stated he heard the sound of two shotgun blasts which correspond to the deployment of two bean bag rounds.

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 to participate in any interview with IIU investigators. In this case, SO declined to provide his notes and to be interviewed.

Review of the Use of Force Report

IIU investigators received and reviewed a use of force report prepared by SO in this matter. According to the report, OC spray canisters were fired into the residence and less lethal bean bag rounds were discharged at AP and his dog. The SO was the BPS officer that fired the bean bag rounds. According to the SO's report, AP was exhibiting a "*moving resistance*" type of behavior and was not complying with officer commands to raise his hands and to get down on the ground. The report acknowledges that AP was facing away from officers when he was shot with the bean bag round but had tried to turn towards officers. AP was struck in the "*abdomen area*". The report references AP's propensity for violence, attitude towards police, methamphetamine use and the belief that he may be in possession of weapons as considerations in deciding to use the less lethal beanbag rounds as a standoff weapon.

Conclusion

Among the factors determined by the IIU investigation included:

- AP was shot with a single bean bag round and sustained an infected hematoma to his lower back requiring hospitalization and treatment;
- witness officers' accounts of the circumstance of February 13 through 14, 2017, varied from the recollections of AP and from each other. Given that the witness officers were required to detail involvements from more than four years prior, this is not an unusual occurrence;
- there were discrepancies as to AP's position and actions at the time he was shot with the bean bag round.

The entire investigative file was referred to Manitoba Prosecution Service (MPS) with a request to provide a Crown opinion on this matter. On January 24, 2022, MPS provided IIU a comprehensive and thorough opinion. MPS advised IIU that it was not recommending any criminal charges against SO.

In that opinion, MPS provided the following statement:

MPS has reviewed the IIU investigation of SO at the request of the IIU. 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 a conclusion has been made that there is no 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.

IIU has completed its investigation and this matter is now closed.

Final report prepared by:
Zane Tessler, civilian director
Independent Investigation Unit
January 28, 2022

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