

FINAL REPORT: IIU investigation into WPS officer-involved shooting in Winnipeg's North End concludes

On October 7, 2020, at 1:11 p.m., Winnipeg Police Service (WPS) notified the Independent Investigation Unit of Manitoba (IIU) of an officer-involved shooting that occurred in the City's North End a short time earlier.

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

“On October 7th, 2020 at approximately 12:36 hrs Winnipeg Police Service (WPS) members were dispatched to the area of (a residence on) Boyd Avenue for a report of a male, later identified as the affected person (AP), armed with a gun in the rear lane. Members subsequently attended to the area and located the AP in the rear lane of Boyd between Salter and Powers.

The AP was carrying a black object in his left hand, which appeared to be a gun. Winnipeg Police members engaged with the AP and directed him to drop the weapon, but he refused to comply. Suddenly the AP spun around and pointed the object at members of the WPS who were in attendance. It is believed that each one of the Subject Officers (SO1, SO2, and SO3) fired one round from their respective service firearms. As a result, the AP sustained a single gunshot wound to his left hip area, which exited his lower back.

WPS members approached the AP and provided first aid assistance whilst awaiting the arrival of the Winnipeg Paramedic Service. The AP was subsequently conveyed to the Health Sciences Center for treatment for his injury. As of the last report, the AP is in stable condition and will not require surgery as the fired round did not strike any of his vital organs. The AP is expected to be released from hospital later this afternoon.

The WPS Identification Unit processed the scene and is still holding same...”

As this matter concerned an injury to a person resulting from a discharge of a firearm by a police officer, the IIU assumed responsibility for this mandatory investigation in accordance with section 65(1) of The Police Services Act (PSA). A team of IIU investigators was assigned to this investigation.

The information obtained and reviewed by IIU investigators included:

- WPS briefing documents
- WPS call history
- WPS officers' notes and narrative reports
- Audio of telephone calls to 911

- WPS radio transmissions
- Video footage taken by various eyewitnesses
- Testing report regarding discharged firearms
- Firearms' qualifications for WPS officers
- NICHE report list
- WPS Forensic Identification Service (FIS) reports
- Scene photographs

The civilian director designated three WPS officers who each discharged a firearm as the subject officers (SO1-3) and eight other WPS officers were designated as witness officers (WO1-8) (of which IIU investigators interviewed five for this investigation¹). IIU investigators also met with and interviewed AP and eleven civilian witnesses (CW1-11). IIU investigators reviewed an interview of another civilian witness given to WPS.

Scene Examination and Canvass:

The scene of this incident included the back lane between Boyd Avenue and College Avenue, and the south boulevard of Boyd Avenue. A single expended 40 caliber Smith & Wesson casing and a single expended 12 gauge shotgun shell were found behind the rear of a residence on College Avenue.

A black plastic cylindrical tube object measuring approximately six inches in length along with a shotgun pellet and a mushroomed spent bullet were all found at the rear of a residence on Boyd Avenue. A piece of plastic wadding, consistent with that of a fired shotgun shell was found nearby.

A brown plaid jacket and a black long sleeved shirt belonging to AP were located near the cylindrical tube, pellet and spent bullet and both were found to have a hole, approximately one centimetre in diameter, in the lower left side.

A single spent .223 REM casing was located by a resident on Boyd Avenue next to a tree outside the front of her house and it was turned over to WPS FIS officers.

A canvass for witnesses and video footage was conducted by IIU Investigators and several witnesses were identified and interviewed. Some useful video footage of the incident was also obtained by the IIU.

AP

IIU investigators initially met with AP while he was an in-patient at the Health Sciences Centre (HSC). AP appeared medicated and at times was difficult to understand. AP stated that he had been walking around and was carrying something in his hand that he had picked up off the ground. AP stated that he recalls police officers telling him to get down on the ground. AP stated that he recalls being shot. AP stated that he could not remember what was in his hand but recalls police officers telling him to put down the weapon.

¹ It was determined that the narrative of WO6, reviewed by IIU investigators, was determined to be sufficient on its face and no interview was required. WO7 arrived on the scene after the officer involved shooting and his narrative was deemed sufficient on its face. WO8 was on the periphery of the scene and only heard the sounds of gunshots. His interview was not required in these circumstances as well.

IIU investigators re-attended HSC five days later to meet with AP again. AP was more coherent during this second interview.

AP stated that he was walking around as he usually does. AP stated that he was homeless and was a “...*little out of it*”. AP stated that he was walking around looking for cigarettes to smoke. AP stated that people were staring at him and recalls that the police showed up. AP stated that he had his hands in his pockets and that he pulled something out, but could not recall what it was. AP stated that the police told him to stop and he froze. AP stated that he recalls that he made a movement with that object in his hand and that was when he was shot, causing him to blackout. AP stated that he was injured on his lower back. AP stated that he had been drinking and had taken some drugs that day. AP stated that he could not recall what drugs he had used but that he was a regular cannabis and methamphetamine user.

AP’s Medical Findings:

AP did not provide a written consent to IIU investigators to request, receive or review his medical records from HSC.

Civilian Witnesses:

CW1 was standing at the back porch window of his house when he noticed a male standing just outside his yard. CW1 stated that he had never seen this male before. CW1 stated that he saw the male pull what he believed to be a gun out of his waist band and remained standing behind his house. CW1 stated that he telephoned the police that there was a man with a gun standing just outside his home. CW1 stated that he remained on the line with the 911 operator, providing a description of the male and continued to observe him until police arrived. CW1 stated that he had an unobstructed view into the back lane and of the male. CW1 stated that the gun resembled a colt 1911, replica style firearm, dark in color, around four or five inches in length and sticking out approximately three inches from the male’s left hand. CW1 stated that police officers arrived 10 or 15 minutes after his call and that he heard police say, “*let me see your hands*”, “*show me your hands*” and “*get down*”. CW1 stated that once the police were there, the male stood still “...*like a statue*” and was hunched over. CW1 stated that he saw the male raise his hand towards the police, appeared to point the gun and pull the trigger. CW1 stated he then heard the sound of two “*bangs*” and the male dropped to the ground. CW1 had turned over a video that he had taken of part of this incident to IIU investigators.

CW2 lives with CW1. CW2 stated that she saw a male standing in the back lane and that he appeared to be holding a gun that was partially hidden in his left arm sleeve and was pointed towards the ground. CW2 stated that she could see the barrel of the gun and that it was approximately two to three inches in length. CW2 stated that the male was in a “...*frozen-like state*” and appeared to be crying. CW2 stated that she alerted CW1 as to what she saw. Moments later, she noticed that a police officer was standing across the street and was holding an “*assault rifle*”. CW2 stated that her attention was drawn away from the window when she heard the sounds of “...*two to three gun shots*”.

CW3 was at his home on Boyd Avenue, when he observed a male police officer with a rifle and a female police officer with a handgun standing by a tree on the opposite side of the street. CW3 stated that he heard the police officers shout, “*put the gun down*” and “*raise your hands*”. CW3 stated that he went upstairs and looked out a second-storey window into the back lane. CW3 stated that he saw several other police officers present. CW3 stated that he saw a male to his north east who appeared to be holding what he thought was a black coloured pistol in his left hand with the barrel pointed downwards. According to CW3, the male appeared to be under the influence of drugs and was “*out of it*”. CW3 stated that the police repeatedly telling the male to “*put down what’s in your left hand*”. CW3 stated that the male suddenly moved to the east. CW3 stated that he saw a police officer with a shotgun, fire a couple of shots. CW3 stated that he did not see or hear any other police officer discharge a firearm. According to CW3, it was about 10 minutes from when he saw the first two police officers out the front of his house to the time he saw the shotgun discharged. During that period of time, CW3 stated that the police were continuously talking to the male. CW3 stated that he believed the male had a gun in his hand as it looked like he was holding the handle and the barrel was visible.

CW4 stated that she saw a male running west in the alley between College Avenue and Boyd Avenue. CW4 saw that the male then ran between two houses. CW4 stated that she heard a siren and stood on her second floor balcony that faces the alley to watch. CW4 stated that she saw two police officers running westbound in the alley. CW4 stated that within moments, she heard someone saying, “*Put the weapon down. Put the weapon down. Can you hear what we are telling you?*” CW4 did not hear any response but around five minutes later, she stated that she heard the sounds of two gunshots.

CW5 was inside her residence on Boyd Avenue when she saw a police vehicle in front of house. CW5 stated that she opened her front door and observed a female police officer, with her gun drawn, standing next to a tree on the south side of Boyd Avenue. CW5 stated that there was a second on the ground next to the tree but was uncertain whether that person was in possession of a firearm. CW5 stated that she heard the female police officer say, “*Get down on the ground*” two or three times. CW5 stated that she closed the door and returned inside her home when she heard the sounds of two or three gunshots in quick succession.

CW6 was at home at his residence on Boyd Avenue when he saw two police officers walking on the sidewalk, with firearms drawn. CW6 stated that there was a male police officer with a rifle and the other was a female police officer with a handgun. CW6 stated that these police officers went behind a tree on the opposite side of the street. CW6 stated that they were there for a while when he heard the sounds of two gun shots.

CW7 was at her home on Boyd Avenue, in a room at the back of the house facing the lane. CW7 stated that it was around 12:30 p.m. when she saw a police officer standing in the yard of another house and there was another male walking around, acting weird and looking “*very suspicious*”. CW7 stated that the male had his hands in his pocket but she did not see him holding anything. CW7 stated that the scene was scary and she did not want to watch. However, moments later, CW7 stated that she looked out her window again, she saw a police officer take aim, heard the

sound of two gun shots and saw the male fall down. CW7 stated that she did not hear anything before the sound of the gun shot.

It should be noted that IIU investigators wanted to conduct a follow-up interview with CW7 but she stated that she was busy and had no time to talk.

CW8 stated that between 12:30 and 1:00 p.m., she was looking out the front living room window of her home on Boyd Avenue when she observed a male and female police officer walking in front of the house. CW8 stated she went out onto her front porch to have a cigarette. CW8 stated that she saw the police officers pointing their guns towards the back lane. A short time later, CW8 stated that she heard the sound of a gun shot and immediately went back inside the house. CW8 believed that the male police officer was carrying a rifle.

CW9 stated that at approximately 12:45 p.m., he went out the back door of his home on Boyd Avenue. CW9 stated that he saw a police car, with its doors open and a male standing down the lane. CW9 stated that he decided to video record the activity and tried to get closer for a better view. CW9 stated that when he saw police officers with their guns drawn, he backed off. CW9 stated that the police officers were telling the male to put down whatever he had in his hand but it did not appear that the male was listening. CW9 stated that the male was crouched over doing something as if he was getting ready to do something. CW9 stated that he saw something in the male's hand but could not tell what it was. CW9 stated that the police officers were yelling at the male saying, "*put it down; put that down.*" CW9 saw that one of the police officers was armed with a shotgun. CW9 stated that the male turned around quickly and then he heard the sounds of three shots. CW9 was not certain whether the male shot first or if someone else shot at the male. CW9 provided IIU investigators with a copy of his video footage.

CW10 stated that she was sitting on her front porch at around lunchtime when she saw a male and a female police officer, with their weapons drawn, standing on Boyd Avenue. CW10 stated that they went across to the south side of the street. CW10 stated that the male police officer had a rifle and the female police officer had her handgun out. CW10 stated that she alerted a relation who began video recording the activity. CW10 stated that she believed the male police officer discharged his rifle first. CW10 stated that the male police officer was in a shooting position, kneeling next to a tree and that the female police officer was pointing her handgun in the same direction. CW10 stated that she heard a total of four gun shots. IIU investigators received a copy of the video footage.

CW11 stated that at around lunchtime, she was looking out the front window of her house on Boyd Avenue and observed two police officers standing near a tree directly in front of her home. CW11 stated that there was a male and a female police officer. The male police officer had a rifle pointed across the street. CW11 stated that she looked away for a moment and then heard the sound of loud gun shot. When she looked back, CW11 stated that she saw someone dropping to the ground. CW11 stated that she only heard the sound of one gun shot.

Witness Officers

WO1 was partnered with SO1 this day. WO1 stated that she heard a police radio transmissions that a male was armed with a gun at the rear of a residence on Boyd Avenue. WO1 stated that they received a description of the male and that he was holding a firearm in his left hand. WO1 also stated that they received further broadcasts from other units on scene that “...*they had eyes on the male*” in the back lane, that he was armed with a gun and was not reacting to their verbal directions. WO1 stated that they arrived on scene at 12:46 p.m. WO1 stated that she drew her service pistol out due to the nature of the call and that SO1 was armed with a patrol rifle. WO1 stated that they were positioned on the north side of Boyd Avenue and were receiving broadcast updates on the male. WO1 stated that, from her position, she was able to see a male matching the description given. The male was bent over at the waist, facing Boyd Avenue and was turning his head east and west in the lane. WO1 stated that she could see that the male was holding a slim cylindrical pipe-like object, approximately five to six inches long, that she believed was the barrel of a gun, due to its appearance and the nature of the information received. WO1 stated that she could see the object coming out of his sleeve. WO1 stated that she and SO1 took cover behind a tree on the south side of Boyd Avenue but still had a clear and unobstructed view of the male. WO1 stated that she heard the voices of at least one other female police officer and male police officers giving verbal directions for the male to drop the object that was in his hand. WO1 stated that police officers said that they wanted to help him but he had to drop the object. WO1 stated that the male did not respond to the commands and was standing “...*like a scarecrow*”. WO1 stated that the stand-off continued for another ten minutes when, suddenly, the male stood straight up, pivoted his body westerly, lifted his left arm with the object in it and held it as if he was pointing a gun to where police officers were positioned. WO1 stated that she heard the sounds of two gunshots, fired in quick succession, and coming from the back lane. WO1 stated she was unsure whether the male or police had shot. After the second shot, WO1 stated that the male remained upright, with his arm still outstretched. WO1 states that she saw SO1 fire his rifle once, at the male. The object in the male’s left hand went flying in the air and he fell to the ground. WO1 stated that she did not fire her service pistol. WO1 stated that police officers, including herself and SO1, ran to the male (later identified as AP) where he was detained in handcuffs. First aid was provided and Emergency Medical Services were called to attend the scene to tend to AP. WO1 stated that another male police officer and female police officer, neither of which she knew, stated that each had also discharged their firearms.

WO2 was partnered with SO2 that day. WO2 stated that he heard a radio broadcast concerning a male, armed with a gun and located in a back lane of Boyd Avenue. WO2 stated that they received further updates as they were en route to the scene. WO2 stated that he armed himself with a rifle while SO2 armed himself with a shotgun. WO2 stated that SO3 was noted to be behind the passenger side door of a police car and WO3 was behind the driver side door. WO2 stated that police officers were shouting commands to the male (later identified as AP) in the back lane, who was hunched over at the waist and looking west towards the police car. WO2 stated that he and SO2 repositioned in a yard on the north side of the back lane. WO2 stated that he could still observe AP who was one house yard to the east of his position. WO2 stated that AP appeared to have a black metal pipe or cylindrical object, in his left hand and it was poking out

his sleeve. WO2 stated that although he could not determine what the object was, due to the information received and its appearance, he believed it to be a gun. WO2 stated that in addition to other police officers, he tried to communicate with AP, telling him to “*drop to the ground, drop the weapon, nobody wanted to hurt you*” repeatedly but with negative results. WO2 stated that AP suddenly twisted his body, his left arm rising upwards and pointed towards the police car. WO2 stated that he believed AP was readying to shoot. WO2 stated that he heard the sound of a bang, followed by two more bangs, almost simultaneously. WO2 stated that AP fell to the ground after the second or third bang. WO2 stated that he assumed that either the second or third shot came from SO2’s shotgun as he saw him rack the shotgun and a shell was ejected after hearing the last two bangs. WO2 stated that he had not discharged his firearm. WO2 stated that once AP was secured, medical assistance was requested to attend.

WO3 was partnered with SO3 that day. WO3 stated that they attended to a call concerning a male armed with a gun in the back lane of Boyd Avenue. WO3 stated that a description of the male was broadcast and that he was holding a gun in his left hand, pacing in the back alley and not saying anything. Upon arrival at the scene, WO3 stated that they entered the back lane at which point he saw the male (later identified as AP) who matched the description given. WO3 stated that he could see a black cylindrical object, openly displayed in the AP’s left hand. WO3 stated that he was of the opinion that the object was a gun, based on the information received and its appearance. WO3 stated that he announced “*gun*” to SO3, which she acknowledged. WO3 stated that each both drew out their service pistols and SO3 began shouting verbal commands to AP to drop the weapon. AP did not comply with these repeated verbal commands. WO3 stated that he radioed their observations and asked for backup to attend. The male's hoodie was pulled over the hand but the object could still be seen. WO3 stated that when additional police officers attended the scene, he moved away from their police car while SO3 remained next to the passenger side. WO3 stated that he spoke with both WO2 and SO2 and was also aware of the locations of WO1 and SO1. WO3 stated that AP suddenly pivoted his body towards SO3’s position and raised his left hand up. WO3 stated that the object in AP’s hand was pointed towards SO3. WO3 stated that he heard a loud bang followed by two additional popping sounds which he believed were the sounds of firearm discharge. WO3 stated that he thought AP had fired upon police. WO3 stated that he saw AP slowly fall to the ground. WO3 stated that he did not discharge his firearm but SO3 acknowledged to him that she had discharged her service pistol. WO3 stated that police officers moved in and handcuffed AP. Medical attention was given to the male as emergency services were called.

WO4 was on duty that day and had heard radio transmissions that a male was possibly armed with a gun in area of Boyd Avenue. WO4 stated that he made his way to the scene and on arrival to the back lane, saw a male (later identified as AP) about three quarters of the way down to his east. WO4 stated that AP was hunched over and facing south. WO4 stated that AP appeared to have an object in his left hand, leading him to believe that it was some type of weapon. WO4 stated that there were other officers in the vicinity. WO4 stated that he saw SO3, standing behind an open passenger car door to a police car. WO4 stated that he saw a male police officer, who he did not know, standing behind the driver’s side car door. It appeared they were using the doors as a shield and both officers had their firearms out. WO4 stated that as he got closer to the

police officers, he could hear the officers saying, “*Drop the weapon, drop the gun, get on the ground*”. WO4 stated that he took up a position next to a garage while he continued to observe AP. WO4 stated that he could see that AP was holding an object that was protruding past his hand and was approximately four to five inches long. WO4 stated that this object looked like a barrel of a gun. WO4 stated that as he moved closer, he saw two other police officers. One of the police officers had a shotgun and the other had a rifle. WO4 stated that he had his service firearm out while maintaining a visual on AP. WO4 stated that he could hear police officers asking AP if there was anything they could do to help him and to drop the weapon but AP did not respond. WO4 stated that AP suddenly turned quickly towards the police officers standing by the police car. WO4 stated that he heard the sound of a gun shot but did not know where it came from. WO4 stated that he then heard the sounds of two more gun shots and then AP fell to the ground. WO4 stated that he did not know where the gun shots came from but he believed that AP shot first as it was so quick. WO4 stated that police officers converged on AP and placed him in handcuffs. First aid was performed on AP and an ambulance was called to rush to the scene.

WO5 was partnered with WO6 that day. WO5 stated that they had received information over the police radio that a male was armed with a gun at the rear of a residence on Boyd Avenue. WO5 stated that a description of the male was provided including that the male was armed with a gun in his left hand. WO5 stated that they arrived on the scene and observed that two other police units were also present. WO5 stated that he saw two police officers to his west in the back lane and a male who was standing and hunched over. WO5 stated that he could hear police officers voicing clear, verbal commands to the male over a loud hailer, such as, “*Put the weapon down. Is there anything we can do to help you? Winnipeg police, we have guns drawn on you. We need you to comply. Can you hear me?*” WO5 stated that when they reached the back lane, he saw the male (later identified as AP) approximately 80 feet away and four uniformed police officers who had taken partial concealment behind a fence on the north side of the back lane. WO5 stated that AP was holding what appeared to be a black cylindrical object, approximately eight to 10 inches in length, and sticking out from AP’s right hand. WO5 stated that he believed the object could have been an improvised weapon of some kind and, in his opinion, likely a gun. WO5 stated that he saw a police car in the back lane with both front doors open. A male police officer was by the driver’s side door and a female police officer was by the passenger door. WO5 stated that they both appeared to have their service pistols drawn and aiming towards AP. WO5 stated that within seconds of his arrival, AP turned quickly to his right and pointed the object at the police officers by the police car. WO5 stated that he believed he heard one gun shot and that AP fell to the ground. That was followed by a second and third gun shot (which he believed came from a female police officer standing next to the police car).

Subject Officers

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, SO1 agreed to attend and was interviewed by IIU investigators while SO2 and SO3 declined to attend for an interview, though each provided a prepared statement for review. Each subject officer also provided IIU investigators with a copy of their respective notes.

SO1 was interviewed by IIU investigators. SO1 stated that on this day he was partnered with WO1. Among his equipment, SO1 stated that he was in possession of a patrol rifle and .40 calibre side arm pistol. On arrival at the scene and due to the nature of the call that an armed male was in the back lane, SO1 stated that he armed himself with the patrol rifle. SO1 stated that when he was in the back lane he could see the subject male (later identified as AP) who was holding an object, in his left hand, which was sticking out of his fist and appeared to be a barrel. SO1 stated that based on his observations coupled with the information received from others on scene, he believed AP was in possession of a gun. SO1 stated that AP appeared to be *“off in his own world”*. SO1 stated that he was aware that other police officers were in the back lane. SO1 stated that he could hear verbal commands shouted at AP (although he could not hear exactly what was being said). SO1 stated that he saw AP move, raise the object as if he intended to use it and then heard gunfire in the back lane. SO1 stated that he believed that police officers in the back lane had been fired upon first but did not know how many shots there were. SO1 stated that it did not appear that AP was hit by gunfire and in fact, turned towards SO1’s position. SO1 stated that he still considered AP to be a threat. SO1 stated that, in his mind, there was no safe way to take the armed AP into custody and there were no other use of force options open to him. SO1 stated that as the threat existed, the rifle was the most appropriate and accurate weapon under the circumstances as the threat still existed and SO1 had the safest line of sight. SO1 stated that he was focused on AP and shot at him one time with his rifle. SO1 stated that AP had fallen to the ground but he could not see what happened to the object. SO1 stated that he did not know if he struck AP but was now satisfied that the threat had been eliminated. SO1 stated that he moved in on AP who was no longer holding an object in his hand.

SO2 did not attend to an interview with IIU investigators and instead provided a prepared statement. In his statement, SO2 wrote that he was partnered with WO2 and that they attended the scene to assist WO3 and SO3. On arrival, SO2 wrote that he observed a male (later identified as AP) who had something in his hand and was not responding to verbal commends. SO2 wrote that he was aware of reports to police that AP was allegedly armed with a handgun. SO2 wrote that he saw that WO3 and SO3 were by their police car, had drawn their service pistols and were pointing them towards AP. SO2 wrote that he saw that AP was holding a dark coloured object in his left hand. SO2 wrote that he heard other police officers shouting for AP to drop his gun. SO2 wrote that he armed himself with a service shotgun. SO2 wrote that he and WO2 repositioned themselves approximately 20 metres from AP. SO2 wrote that he saw that the object AP was holding in his left hand was black and appeared to be a firearm barrel. SO2 wrote that due to distance and other obstructions, a conductive energy weapon (CEW), i.e. taser, was not suitable to use in these circumstances. SO2 wrote that within moments, AP suddenly rotated his body and pointed the object towards him and WO2. SO2 wrote that he believed AP shot at the police officers then heard return gunfire. SO2 wrote that he believed that AP posed a lethal threat to him and others. SO2 wrote that he discharged his shotgun at AP, saw that he dropped the object and then roll on to his stomach.

SO3 did not attend to an interview with IIU investigators and instead provided a prepared statement. SO3 wrote that she was partnered with WO3 that day. SO3 wrote that information was received concerning a male was seen holding a gun in his left hand in the back lane of Boyd

Avenue. SO3 wrote that a description of this male was also broadcast. SO3 wrote that they made their way to the scene and upon arrival, she saw the male (later identified as AP), who was holding a “*black metal cylinder*” object sticking out of his left sleeve and appeared to be the barrel of a firearm. SO3 wrote that they stopped their police car, opened the doors and used it as cover. SO3 wrote that they both drew their service pistols and pointed them at AP. SO3 wrote that she verbally commanded AP to,

“*Drop the object in your left hand, do it now*”

“*Show us your hands*” and

“*You are surrounded by police, for your safety, drop the object in your hand*”.

SO3 wrote that in moments, she saw AP suddenly move to his right and raised the object in her direction. SO3 wrote that she believed that AP would shoot her, another officer or at anyone else in the vicinity. SO3 wrote that she discharged her service pistol once in order to stop this threat of grievous bodily harm or death. SO3 wrote that as she shot, she heard two gun shot sounds. SO3 wrote that she was unsure where those gun shots came from but could see that AP had been struck and he dropped the object.

WPS Firearms Training Records for Subject Officers:

WPS training records received by IIU investigators documented the following information:

SO1 – Rifle qualification 2020-05-26

SO2 – Shotgun qualification 2020-05-15

SO3 – Glock qualification 2019-08-27

Summary of 911 telephone calls

911 audio calls and WPS call history records received and reviewed by IIU investigators detail detailed that a call was placed at 12:36 p.m. from CW1’s home where it was reported that a male was behind the house and armed with a gun. CW1 advised the operator that he could see the male holding the gun “...*in his left hand*”. According to police radio transmissions, the first WPS unit arrived on scene at 12:44 p.m. and that shots were reported fired at 12:55 p.m.

Summary of Video Footage and Analysis

CW1:

CW1’s video footage was 57 seconds in duration and depicted AP standing hunched over and almost motionless in the back lane behind his house. CW1 is heard speaking and mentioned that police had at gunpoint. At the 51 second mark, a dark coloured object is visible in AP’s left hand. The video footage did not show the shooting.

CW9:

CW9 provided IIU investigators with two pieces of video footage taken on his cell phone from a distance.

Video Footage #1: depicts a view facing east from the west of Power Street. The rear of a marked police vehicle was visible in the back lane, with its left and right side doors open. A police officer is observed to be standing on the north side of the back lane to the left of the police vehicle. A second police officer was standing on the north side of the threshold of the back lane. AP is also seen in the video footage, standing to the right of the police vehicle but further east in the back lane. AP is static and hunched over. At approximately the one minute and 39 seconds mark, a male voice is heard saying,

“I dunno, he's got something in his hand, they've told him to drop it but he doesn't want to drop it”.

At approximately the one minute and 46 seconds mark, AP's body suddenly moves and then immediately, a gun shot sound is heard. AP falls forward and drops to the ground. A second gun shot sound is heard and then, at approximately the one minute and 52 second mark, a third gun shot sound is heard. A female voice is then heard shouting,

“They just shot him”.

A police officer moves from the passenger door of the police vehicle towards AP and then other police officers begin to approach AP. The video footage ends.

Video Footage #2: depicts the same view as Video Footage #1. This footage depicts the aftermath of the shooting and showed a fire truck arriving at the five minutes and 45 seconds mark. At the seven minutes and 59 seconds mark, an ambulance is now present and at the scene.

CW10:

IIU investigators received a copy of the four separate videos shot by CW10's relation.

Video #1: Depicts an eastern views from the west of Power Street down Boyd Avenue. The video shows SO1 and WO1 standing at a tree on the south side of Boyd Avenue. One police officer was kneeling and aiming a rifle northbound. The second police officer was visible standing with a sidearm displayed.

Video #2 & 3: depicts the same view as described in video #1. These videos show the same two police officers in the same position by the tree.

Video #4: depicts the same view as described above. The camera view moves north to the back lane between Boyd Avenue and College Avenue, in an easterly direction. At approximately the 34 second mark, a female voice is heard saying,

“They just shot him for nothing”.

The video footage does not capture the sight or sounds of any firearms being discharged.

CW11:

A co-resident at CW11's residence provided IIU investigators with cell phone video footage shot in the presence of CW11. The cell phone video footage captures SO1 and WO1 outside their

house. SO1 appears to be holding a rifle. The cell phone video footage does not show the shooting but a female voice is heard saying,

“They got him”

as SO1 and WO1 move north across the street. AP, is shown rolling on the ground in the back lane. A number of police officers then move towards AP and surround him.

CTV/Winnipeg Free Press:

The IIU obtained copies of video footage of an interview conducted by CTV and the Winnipeg Free Press with a witness to the incident.

A woman was interviewed by CTV News in regards to this incident and stated that she had filmed the shooting that had also appeared in a WFP article. That video footage appears to have been shot from an elevated view and shows a police officer, pointing a shot gun and a male voice is heard saying,

“You have numerous loaded firearms pointed at you. Put it down”.

During her interview, the woman said she saw one police officer aiming *“a big gun”* and a second police officer holding a gun from behind a car in someone's driveway². The woman stated that she heard the police tell the man to get on his knees and to drop his weapon. The male was told to get on the ground but she did not think he did anything as the police shot him. The woman said she could not see the man but thought he was shot three times.

In a second video footage, believed to have been filmed by this woman and provided to WFP, a police officer is seen holding a shotgun and another police officer is hiding behind a dark coloured car. The sounds of three gun shots are heard. The police officer with the shotgun is observed to reload after the sounds of the gun shots were heard. A male voice is heard saying,

“Don't move, roll over on your stomach”

AP is not visible in the footage.

Attempts by IIU investigators to locate and interview this female were met with negative results. CW3 stated that he saw a woman filming the incident from the second floor of a neighbouring residence on College Avenue. IIU investigators attended that residence but a male resident, who refused to identify himself, provided no information on any video recorded at that location.

Issues and Conclusion

This investigation must consider whether the actions of any, some or all of the three subject officers to shoot AP were justified at law. In this incident, police were responding to a call for service regarding an armed man standing in a back lane. Based on the information provided and actual observations of AP by witnesses and various police officers, it was reasonable to believe that the male was in possession of a handgun in his left hand. If he was in possession of a handgun, AP posed a significant risk to both public and police safety. AP did not respond to any

² A review of other statements and information would infer that these two police officers were SO2 and WO2

and all verbal commands to surrender his weapon. Based on the circumstances as known, it made sense for all police officers to arm themselves as they exited their vehicles and prepared to confront AP.

Applicable Law:

Sections 25 (1), (3), (4) and Section 26 of the Criminal Code of Canada are applicable to this analysis:

25 (1) Everyone 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

(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

(e) the flight cannot be prevented by reasonable means in a less violent manner

26. Everyone 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

(c) the act committed is reasonable in the circumstances

Effectively, the question is whether the decisions of the subject officers to discharge their respective firearms at AP were reasonable in the given circumstances. The reasonableness of an officer's use of potential lethal force (force that is intended or likely to cause death or grievous bodily harm) must be assessed in regards to the circumstances, as they existed at the time the force was used and in light of the exigencies that were present. In particular, these actions are also to be considered in light of the dangerous and demanding work engaged in by police and the expectation that they react quickly to all emergencies.

Where potential lethal force is used, there must be a reasonable belief, held by a subject officer, that the use of potential lethal force was necessary for his or her own self-preservation or the preservation of any one under their protection, from death or grievous bodily harm. The allowable degree of force to be used remains constrained by the principles of *proportionality, necessity and reasonableness* (see *R. v. Nasogaluak*, [2010] 1 S.C.R. 206).

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.”

Was it reasonable, in these circumstances, for the subject officers to fire at AP to prevent the injury or death of any of them or any other police officer or person in the vicinity?

From a review of all of the available evidence:

- A call for service was made by a civilian through a 911 telephone call to advise that a man was standing in a residential back lane and may be armed with a handgun;
- The location and description of the male and the firearm were broadcast over the police radio resulting in several police officers responding;
- All police officers who responded including all subject officers were lawfully placed and in the lawful execution of their duties at all relevant times in this matter;
- AP appeared to be under the influence of some substance;
- AP appeared to be in possession of a dark, metal, cylindrical object held in his left hand and partially obscured by his sleeve. Virtually every witness believed the object to be a gun based on its appearance and handling;
- All police officers at the scene armed themselves with a variety of issued and service firearms based on the nature of the call and observations at the scene;
- Police officers repeatedly shouted commands to AP to drop his weapon. Police officers offered him aid and assistance if he required. Police attempted to de-escalate the situation without immediately resorting to force;
- AP refused to comply with each and every command made by police officers to drop the weapon and surrender;
- AP made a sudden movement of his body and arm as he turned and focused on police officers while raising and aiming the object in his left hand at them;
- The available choices to police were now limited. A reasonable and honest belief held by the police officers that there was a real likelihood that AP could have delivered a potentially lethal injury with his firearm existed;
- There were numerous witnesses to the officer involved shooting;
- Various video footage scenes captured the interaction between police officers and AP;
- Each of the subject officers discharged their respective firearms once at AP;
- AP refused to provide IIU investigators with a medical release and IIU is unable to confirm the number and nature of his injuries other than he was shot and suffered an injury but did not die.

This objective evidence materially corroborates the evidence of all the witnesses. I am satisfied that the extensive evidence gathered from all of the referenced sources provides substantial support for the conclusion that the decision by SO1, SO2 and SO3 to shoot at AP was necessary in order to prevent the injury or death of any or all of them and all other police officers in the vicinity.

Following this detailed review of this investigation, it is my view that the use of potential lethal force by each of the subject officers was authorized and justified by law. There are no reasonable grounds to support any charges against any or all of the subject officers.

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

Final report prepared by:

Zane Tessler, civilian director
Independent Investigation Unit
December 14, 2021

Ref #2020-0048