

Final Report: IIU Concludes Investigation into Deployment of Less Lethal Firearm by Winnipeg Police Service

On May 17, 2021, the Winnipeg Police Service (WPS) notified the Independent Investigation Unit of Manitoba (IIU) of an incident where a police officer discharged a less lethal firearm, striking and injuring a female suspect. The matter was initially the subject of a complaint to the Law Enforcement Review Agency (LERA) initiated by AP on March 11, 2021. When it was determined that because of the circumstances of this matter, a notification to the IIU was warranted and was provided on May 17, 2021.

According to an excerpt from this notification:

“On 2021 02 19 at approx. 19:50hrs, the affected person (AP) attended to a residence on Lorne Avenue and entered while obtaining what appeared to be a firearm and scissors from within the house. The residents were able to flee and contact police. WPS attended and located AP within the residence. AP continued to brandish what appeared to be the firearm and scissors despite numerous challenges. Less than lethal bean bag shot gun deployed. AP dropped the weapons and was taken into custody. AP treated for bruising and minor laceration to right chest.

Nature of Injuries:

- *Swelling and bruising to the right forearm*
- *Swelling and bruising to the right inner thigh*
- *Laceration to the right chest*
- *Swelling and bruising to the left lower abdomen”*

The IIU civilian director has previously determined that the less lethal shotgun is 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. AP suffered the referenced injuries because of being struck with the less lethal projectile. Accordingly, the IIU is mandated, under the PSA, to investigate the conduct of the WPS officers in this matter. IIU investigators were assigned to this investigation.

The information obtained by IIU investigators included:

- officers’ notes and narrative reports
- call history
- audio of 911 telephone calls
- photographs of AP
- photographs of the less lethal firearm

- Forensic Identification Reports
- medical reports for AP
- WPS Use of Force Report

The civilian director designated the WPS officer who discharged the less lethal firearm as the subject officer (SO). Additionally, the civilian director designated four other WPS officers as witness officers (WO1-4). IIU investigators also met with and interviewed AP. IIU investigators met with and interviewed a civilian witness (CW).

Affected Person (AP):

AP stated that the incident happened around 8:00 p.m. AP stated that she was on her way to give a haircut and perm to a friend. AP stated that she took a cab to an unknown residence, though she had been there four years prior. AP stated that the cab driver pointed out the residence to her. AP stated that she entered the residence and went to the basement as instructed by her friend. She said she did not see anyone inside the residence. AP stated that she then realized that she was in the wrong residence because her friend was not there and also noticed children's toys in the basement. AP stated that a female came down the stairs and was swearing at her. AP stated that she dropped her purse and the contents fell out, including scissors, make up and hair dye. AP stated that the female questioned her and AP apologised advising that she was in the wrong house. AP stated that the female screamed at her, was being rude and mean and AP believed that she would be beat up by her. AP stated that the female told her she was going to call for the police. AP stated that she did not threaten the female and was not holding anything in her hands. AP stated that she put the scissors back in her bag and never pointed them or anything else at the female. AP stated that she remained in the basement waiting for the police to arrive. AP stated that she was picking up her belongings when a male police officer shot her with a "bean bag weapon", from the top of the stairs while she was at the bottom of the stairs. AP said she was struck once on the breast, once on the leg and once on the stomach. AP stated that she was holding her 'hairdressing' equipment and makeup when she was struck with the "bean bag". AP stated that the scissors were on the ground and denied that she was holding a toy when struck. AP stated that she had taken Prozac and Tylenol at the time of the incident. AP stated that she does not drink alcohol and does not use illicit drugs. AP stated that she did not know why she was arrested. AP denied handling, holding or pointing a toy gun at police or the female.

Medical Reports:

AP provided IIU investigators with a consent for the release of medical information. The medical records detailed that AP was admitted to Health Sciences Center (HSC) on February 19 at 9:03 p.m. and discharged at 12:23 a.m. on February 20. The medical records detail that she had injuries to her right breast, left abdomen and right thigh, as a result of being struck three times by beanbag rounds. The breast injury was the most significant and was described as

"Significant R breast wound at nipple. Open wound w/active bleeding. Nipple is still attached but split off and displaced"

AP had stated that she had been drinking alcohol but denied drug use. The records also stated AP was on the following medications: omeprazole, diazepam, T3, alprazolam, fluoxetine and temazepam (all for treatment for mental disorders).

LERA complaint letter

A handwritten letter, dated March 11, 2021, was forwarded to LERA outlining AP's complaint. AP wrote that she had intended to give a friend a haircut but had forgotten the address. She entered into the basement of the house and realised she was in the wrong place. She was confronted by a female. AP wrote that as she went to leave she got scared, dropped the contents of her purse and also noticed children's toys on the floor. The police came running down the stairs and "bean bagged" her. She was grabbed by the hair, dragged outside where police were kicking her all over her body. She wrote that she was handcuffed and thrown in the back of a police car. Police called her mother.

In addition, IIU investigators were provided with a hand written letter purportedly written by AP's mother that was attached to the LERA complaint. This letter detailed that:

- AP had to undergo plastic surgery for her injury.
- AP has long-term disabilities.

The letter contained a description of her injuries. The writer of this letter also noted that AP,

"Wasn't intoxicated, she had two beers at her sister's place, then phoned a taxi cab to give a friend a haircut and always carries her hairstyling scissors to give people haircuts".

Also, the letter noted that AP went to her friend's house but forgot the house number. Finally, it noted that AP dropped the contents of her purse and as she went to leave, police arrived and grabbed her outside.

Forensic Identification Report:

The WPS Forensic Identification Report included photographs of a pair of scissors which appear to be household type rather than those of a hairdresser and a toy handgun-type firearm, black in colour.

Less Lethal Firearm:

The less lethal firearm used was a modified Remington 870 shotgun. The ammunition used was called a *CTS 2581 Super-Sock*. It was a commercially manufactured product and is *not* made by the WPS.

Civilian Witness (CW):

CW stated that between 8 and 9 p.m., on February 19, she was at home with her young children. CW stated that she was upstairs asleep when she was suddenly awoken by her children who said there was a person in the house who had gone down to the basement. CW stated that she rushed to the basement and found a female squatting down in a darkened corner. CW stated that she noticed make-up on the basement floor. CW stated that the female said, *"Come any closer and I've got a gun"*. CW stated that the female was pointing what she believed to be a handgun at her. CW stated that she went back upstairs, telephoned the police and then took her children outside. CW stated that she returned to the house to deal with the female intruder. As she re-entered the house, CW stated that she saw the female, now standing at the top of the stairs of the third floor of the house. CW stated that the female produced a pair of scissors and said *"I wouldn't if I were you"* and *"I dare you"*. CW stated that the pointed ends of the scissors were pointed at her. CW stated that she fled the house again and saw police arrive. CW stated that police entered her

home through the front door. CW stated that she heard police yell, “Winnipeg Police, drop the weapon”. CW stated that she heard the sounds of three bangs and believed that a weapon was discharged. CW stated that subsequently, she found two bean bag rounds inside the house.

Witness Officers (WO):

WO1 was on duty on February 19. She was partnered with WO2. WO1 stated that at approximately 8:00 p.m., they were dispatched to a call for service at a residence on Lorne Avenue related to a report that an unknown female had entered a residence, appeared intoxicated, and was armed with a gun and a pair of scissors. WO1 stated that in response to this information, she armed herself with her service shotgun. On arrival at the residence, WO1 stated that she and WO2 entered and announced their (police) presence. WO1 stated that she saw a female, later identified as AP, sitting at the top of the stairs. According to WO1, AP appeared upset, agitated and intoxicated. AP was holding a pair of scissors and a toy gun in her hands. WO1 stated that verbal commands were given to AP to drop the weapons without effect. WO1 stated that AP was pointing the toy gun at the police officers and saying “bang, bang”. WO1 stated that otherwise, AP was incoherent. WO1 stated that AP was considered a threat as she was holding the scissors, so police did not approach her. WO1 stated that though equipped with a conductive energy weapon (CEW – also known as a taser), it was not a viable option because of AP’s position at the top of the stairs (i.e. a positive deployment may have caused her to fall down the stairs and be injured). WO1 stated that within 30 seconds, members of the WPS Tactical Support Team (TST) arrived. SO was armed with a less lethal shotgun. WO1 stated that AP continued to say, “bang bang” and point the toy gun towards police officers. WO1 stated that SO announced he was going to deploy the less lethal shotgun and then did so three times, in quick succession. WO1 stated that AP dropped both of her weapons. WO1 stated that police were able to secure AP, who had blood visible on her right chest area. The toy gun and scissors were seized by police. WO1 stated that AP was clearly intoxicated.

WO2 was partnered with WO1. WO2 stated that he and WO1 were dispatched to a call for service in response to a report that an unknown female had walked into a house, was in the basement, was holding a gun and scissors, was intoxicated and had made her way to the second floor. WO2 stated that they arrived on scene at 8:00 p.m. and met up with WO3. WO2 stated that he was also aware that members of TST were also assigned. WO2 stated that they entered the residence through the front door and he observed a female, later identified as AP, seated near to the top of a staircase. AP was incoherent, was yelling and screaming. WO2 stated that he had drawn out his Taser when he saw that AP was holding a black handgun and a pair of scissors. AP was pointing the handgun at police. WO2 stated that he believed that the handgun was likely a toy but still wanted to take cover just in case it was real. WO2 stated that police issued commands to AP to drop the weapons but she did not comply. WO2 stated that he did not use his taser because of his and AP’s positioning. WO2 stated that TST members, including SO, arrived at the residence. SO was in possession of a less lethal shotgun and he too issued verbal commands to AP to drop the weapons without success. WO2 stated that SO discharged the less lethal shotgun three times, causing AP to fall backwards. WO2 stated that police attended to AP and handcuffed her.

WO3 stated that he was dispatched to attend an address on Lorne Avenue in response to a complaint reporting that a female had entered a residence and may be in possession of a handgun. On arrival at the residence, WO3 stated that he met with WO1 and WO2. WO3 stated

that the police officers approached the door and observed a female, later identified as AP, at the top of the stairs. AP was holding a handgun in one hand and a pair of scissors in the other hand. WO3 stated that police commanded AP to drop the weapons. WO3 stated that a taser could not be used because if a good contact had been made, AP could fall down the stairs. WO3 stated that TST officers, including SO, arrived at the residence. WO3 stated that SO had a less lethal shotgun in his hands and he commanded AP to drop the weapons. WO3 stated that SO discharged the less lethal shotgun three times at AP. Police officers approached and secured AP.

WO4 was a member of the WPS TST and was partnered with SO on February 19. That evening, they responded to a call for service at an address on Lorne Avenue on reports that a female had entered into a residence and was armed with a gun. WO4 stated that upon arrival, two or three general patrol officers were already present. SO had armed himself with the less lethal shotgun which WO4 described as an intermediate weapon¹. WO4 stated that on entry to the residence, he could hear police officers giving verbal commands to drop the gun. WO4 stated that he saw a female, later identified as AP, sitting on the top of the staircase and holding a black coloured object in the shape of a pistol in her right hand. AP was waving her hands in the direction of the police officers at the bottom of the stairs and was yelling something he could not make out. WO4 could not tell if the pistol was real or fake. WO4 stated that SO yelled at AP to drop the gun and then deployed the less lethal shotgun three times at her. After the third deployment, WO4 stated that SO made his way up the stairs. WO4 stated that the use of a taser would not have been appropriate as it was not possible to get a good target. WO4 stated that in his view, the less lethal shotgun was the most appropriate option at that time. WO4 stated that the area was well lit and that SO had a better view of AP. After AP was struck by the three less lethal shotgun deployments, she was handcuffed. WO4 stated that he then noticed a pair of scissors as well as the pistol.

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, SO provided his notes, narratives and use of force reports to IIU investigators. SO did not agree to participate in an interview with IIU investigators.

A review of the material provided to IIU investigators shows that SO was in possession of a Less Lethal Shotgun. Upon his arrival and entry to the residence, SO wrote that he heard voices stating, "*Drop the gun*". SO wrote that he observed AP holding an edged weapon, which appeared to be a pair of scissors and that she was also pointing a gun towards police officers. AP was crouched down at the top of the stairs on the second level of the house. SO wrote that other means of force by police, such as a Taser, were not appropriate in the circumstances, because of the distance and her positioning. SO wrote that he yelled at AP to drop the gun, however she did not comply. SO wrote that he made the decision to deploy the less lethal shotgun based on the possibility the handgun was real, the uncertainty as to her intentions and for her and police officer safety. SO wrote that he deployed the less lethal shotgun three times at AP aiming for her large muscle groups in her leg and her abdomen to elicit pain compliance and cause her to drop the weapons. AP did drop the weapons. SO wrote that AP was approached, found to be bleeding

¹ an intermediate weapon, for example a baton, Taser or pepper spray, is one used by police to temporarily incapacitate an individual posing a risk or threat

from her right breast and immediate medical attention was sought. The handgun was found to be a toy, solid black in colour with no orange markings.

Conclusion:

Sections 25(1), 26 and 265(1) (a) of the Criminal Code of Canada state:

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, or*
- (d) by virtue of his office is,*

if he acts on reasonable grounds, justified in doing what he is required or authorized to do and in using as much force as is necessary for that purpose.

(3) Subject to subsections (4) and (5), a person is not justified for the purposes of subsection (1) in using force that is intended or is likely to cause death or grievous bodily harm, unless the person believes on reasonable grounds that it is necessary for the self preservation of the person or the preservation of any one under that person's protection from death or grievous bodily harm.

(4) A peace officer, and every person lawfully assisting the peace officer, is justified in using force that is intended or is likely to cause death or grievous bodily harm to a person to be arrested, if

- (a) the peace officer is proceeding lawfully to arrest, with or without warrant, the person to be arrested;*
- (b) the offence for which the person is to be arrested is one for which that person may be arrested without warrant;*
- (c) the person to be arrested takes flight to avoid arrest;*
- (d) the peace officer or other person using the force believes on reasonable grounds that the force is necessary for the purpose of protecting the peace officer, the person lawfully assisting the peace officer or any other person from imminent or future death or grievous bodily harm; and*
- (e) the flight cannot be prevented by reasonable means in a less violent manner.*

26 Every one who is authorized by law to use force is criminally responsible for any excess thereof according to the nature and quality of the act that constitutes the excess.

265 (1) (a): A person commits an assault when... (a) without the consent of another person...he applies force intentionally to that other person, directly or indirectly

A police officer is also entitled to arrest anyone to prevent a breach of the public peace. A police officer is authorized to use force in the lawful execution of his duties, and as much as is necessary for that intended purpose. Moreover, a police officer is authorized to use force to defend or protect himself from the use or threat of force by another person, provided it is

reasonable in all of the circumstances. If the force used is in excess of what is necessary or reasonable in the circumstances, such force is not justified and the acts may constitute an assault under the Criminal Code of Canada.

Where it is determined that reasonable grounds exist to believe a criminal offence has been committed, the IIU civilian director may charge the subject officer accordingly. The determination of whether reasonable grounds exist is based on a careful assessment of all the available evidence. The totality of the circumstances must be considered in assessing these grounds. The purpose of emphasizing the totality of the circumstances is to avoid concentrating on individual pieces of evidence. Accordingly, consideration of the evidence cannot be piecemeal.

Moreover, determination of whether the necessary reasonable grounds exist must not be based solely on speculation. The absence of evidence on essential elements of the offence means there is an absence of necessary reasonable grounds. Therefore, in those circumstances, there is no legal support for the laying of a criminal charge. That is how the law is to be applied.

This investigation was undertaken by IIU because AP had sustained an injury from the use by police of a firearm (in this matter a less lethal shotgun that discharges beanbag rounds) during her detention and arrest. The existence of an injury does not presuppose that a criminal offence has occurred. The mandate of IIU does not include authorizing criminal charges in the absence of evidence to support that significant decision. It would be wholly inappropriate to authorize the laying of criminal charges in the absence of the required reasonable grounds to support such authorization. The laying of a charge solely for the sake of laying a charge is not in keeping with the mandate of this office. This legal analysis and process is not restricted solely to investigations related to police officer conduct, but is the very cornerstone of any justice system in a free and democratic society, regardless of the matter under consideration.

On review of this investigation, I am satisfied that:

- SO was lawfully placed and acting in his capacity as a police officer in the execution of his duties during his interactions with AP.
- AP was armed with weapons, including what may have been a handgun.
- AP was also in possession of a pair of scissors and could have caused significant harm to others.
- AP was intoxicated and incoherent.
- AP was unlawfully in the residence.
- SO assessed the situation as potentially dangerous and there was a heightened need to restrain and disarm AP, and prevent any further harm to her and others.
- Other less lethal force options (taser) were not employed as it was determined that it would likely cause more harm to AP.

In this investigation, part of the IIU mandate is to determine whether consequences should flow from the SO's actions in consideration of all the circumstances and information known at the time. On careful review of the available evidence and material facts obtained in this

investigation, I am not satisfied there are reasonable grounds to believe that SO exceeded the ambit of justifiable force during his contact with AP.

In summary, a less lethal force option was used to de-escalate a potentially dangerous situation. The police chose not to employ lethal options in dealing with AP. AP was unlawfully in the residence, under the influence of intoxicants and was in possession of a pair of scissors and a handgun. AP sustained injuries as a result of the use of the less lethal shotgun, which prevented her from harming anyone else and ended this situation peacefully. It is my view that the force used by SO was necessary, reasonable in the circumstances and in compliance with Section 25 of the Criminal Code of Canada.

Accordingly, I am not satisfied that reasonable grounds exist to charge SO and no charges will be authorized against him.

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

Final report prepared by:

Zane Tessler, civilian director
Independent Investigation Unit
April 27, 2022

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