



**IN THE MATTER OF AN INVESTIGATION INTO AN INCIDENT RELATED TO AN
ARREST IN BRANDON**

FINAL REPORT OF THE CIVILIAN DIRECTOR
OF THE INDEPENDENT INVESTIGATION UNIT

Civilian Director:	Roxanne M. Gagné
IIU File Number:	2023-0058
Date of Release:	March 7, 2024

Introduction

On October 2, 2023, the Brandon Police Service (BPS) notified the Independent Investigation Unit of Manitoba (IIU) of an incident.

The written notification disclosed the following information:

“On September 30, 2023, at 9:59 a.m., police received a call that the subject had just threatened his neighbor. The neighbor had a hatchet and sharpened bar and stated, "come fight me, I'll put you down." Police attended to the residence regarding the threat, and warrant. A family member of the subject also contacted police, concerned for his mental health.

Police searched the residence where the subject was believed to be and was subsequently located in the basement area. The subject was still in possession of the hatchet and was screaming at police to shoot him. The subject refused numerous requests to drop his weapon. Police deployed a less lethal round/beanbag as well as a Taser.

The subject was arrested, examined at the scene by EMS, and then transported to hospital for further medical clearance. The subject had an impact wound to his knee and it was dressed with gauze and a bandage by hospital staff. Once cleared medically, he was transported to Brandon Police Service and was lodged in cells to appear in the morning and have an assessment by Mobile Crisis Unit, when sober. He was later released by the Courts.

Given the nature of the injury, the Civilian Director of the IIU was advised of the allegation and in turn requested a Part 7 notification.”

As this matter concerned a serious injury as defined under section 1(1)(f) of the IIU regulations, the IIU assumed responsibility for this investigation in accordance with section 66(4) of *The Police Services Act* (PSA). IIU investigators were assigned to this investigation.

IIU investigators obtained the following information from BPS, among other items:

- 38 photos - AP's injury to his left knee, less-lethal Remington firearm, one sock round, Taser and Taser debris, scene images, live sock rounds, a hatchet and a crowbar
- CEW logs
- BPS detention video - AP being lodged at the BPS HQ
- Bail brief, release order, booking-in sheet, custody log
- Occurrence Summary
- Officer Notes X3
- Police radio/dispatch audio records
- General Report
- 911 calls X2
- Use of Force Reports - SO and WO3
- CAD reports X2

The civilian director designated one subject officer and four witness officers.

Facts and Circumstances

Scene Examination

This incident occurred on September 30, 2023, in the basement of a residence on the 800 block of Frederick Street. Scene photos were obtained by BPS officers at the time of the incident and supplied to the IIU.

Affected Person

On October 12, 2023, IIU investigators spoke with AP in person. He declined to provide a statement and consent to obtain his medial records. Further contact was made by phone later that same day and again he declined to give a statement, but he did say that he was alone in the basement with police when the incident occurred.

Civilian Witnesses (CW1-3)

CW1

On October 12, 2023, IIU investigators obtained a statement from CW1. He advised that at approximately 9:30 a.m. on September 30, 2023, he was inside his home when he observed his next door neighbour (AP) in the back of their residences, holding a hatchet and a crowbar. AP was shouting and hitting the base of a basketball net with the hatchet and the crowbar. He stated that AP appeared inebriated and was agitated. He stated that AP was a methamphetamine user and a drinker. Suddenly, AP saw that CW1 was watching him. AP turned his attention to CW1 and began shouting threats at him while swinging the hatchet and crowbar towards him. AP was shouting at CW1 to come outside and made threats that he would kill him. CW1 believed if he had stepped outside, AP would have used the objects on him. CW1 said he was "*scared shitless.*" CW1 described the hatchet and crowbar. He stated that when AP was threatening him, he was presenting the sharp end of the hatchet towards him. CW1 called the police. Police officers arrived shortly thereafter. The occupants of AP's residence slammed the door in the faces of the police. The police left but came back a few hours later, at approximately 12:30 p.m. CW1 saw several police vehicles and uniformed officers. Police had asked the occupants to exit out the back of the residence. He noticed a male police officer had what he believed to be a non-lethal firearm. He heard the police shouting, "*we are the police*" and "*come out.*" The officers appeared calm. CW1 began recording on his cell phone. He saw two police officers enter AP's residence via the back door. He could hear banging and crashing sounds. Police brought AP outside.

CW2

BPS supplied a 911 and CAD related to a call made by CW2. At 12:18 p.m. CW2 had called BPS to report that her son, AP, had contacted her and suggested he was going to harm himself. The comments included "*I'm gonna do something to myself now, goodbye mom.*" As a result of this call, BPS officers re-attended the residence due to mental health concerns.

On October 18, 2023, IIU investigators contacted CW2. During the conversation, she confirmed she was the mother of AP and said he lived in Brandon. She confirmed that on September 20, 2023, at around 1 p.m., her son contacted her. He made comments that made her fear he would harm himself. She confirmed she called BPS to inform them of her fear. CW2 was quite elusive during

the conversation with IIU investigators and advised that she did not want to give a statement, stating *"No. I don't want to get involved."*

CW3

On October 12, 2023, IIU investigators attempted to obtain a statement from CW3; however, she declined.

Witness Officers (WO1-4)

WO1

On December 12, 2023, IIU investigators obtained a statement from WO1. He advised that he attended in response to a wellbeing check. Information had been received from AP's mother (CW2) who had called BPS with concerns for her son who had made comments to her suggesting he may harm himself. WO1 was also aware that AP had been involved in an incident involving his neighbour earlier that same day and AP had been in possession of weapons including a hatchet.

Upon arrival, WO1 heard colleagues announce they were making entry into the residence. WO1 stood at the front of the residence. After a short time, he heard that AP was in custody and that a bean bag and Taser had been deployed. WO1 entered the basement of the residence. SO, WO3 and WO2 were present. The basement was in darkness but officers were using flashlights. AP was on the floor in handcuffs. No other persons were present. EMS were called. AP had been shot with a less-lethal firearm on the left knee. AP was taken to the front of the residence and WO1 searched AP. He found a knife in his pocket that was in the open locked position.

All officers in attendance were dressed in full police uniform. WO1 advised officers entered the residence under The Mental Health Act due to the information from the mother who had advised AP had made suicidal comments.

WO2

On December 19, 2023, IIU investigators obtained a statement from WO2. He advised that just after 10 a.m. a complaint was received from CW1, who advised he had been threatened by his next-door neighbour. AP had threatened CW1 with a crowbar and a hatchet. WO2 attended the residence but there was no answer at that time. Just after noon that same day, BPS received a call from AP's mother who had concerns for her son as he had made comments suggesting he may harm himself. Given both reported incidents, police suspected AP to be in possession of weapons. Further, given the concerns conveyed by his mother, police believed there was a mental health concern for AP. WO2 attended the residence along with SO, WO4 and WO3. CW3 answered the door stating AP had been at the home but had since left. That information was believed to be false as CW1 had advised that he had not seen AP leave the residence between the first call to police and the officers attending a second time. CW3 tried to close the door; however, WO2 entered the threshold of the doorway and advised of the information received. CW3 immediately ran down to the basement. WO2 followed her. As he reached the basement, he spotted a male. WO2 advised the male to show his hands and the male responded with, *"shoot me, shoot me."* The male would not show his hands. WO2 did not have a clear view of AP and could only see the top of his head as he was hiding behind a furnace. Verbal commands continued, to which AP did not comply. SO deployed a less-

lethal shotgun and struck AP; however, AP did not drop the hatchet. WO3 then deployed a Taser, and AP dropped the hatchet and fell to the ground. He was detained, handcuffed and taken into custody. The hatchet was two feet in length. EMS assessed AP and he was cleared.

WO3

On December 19, 2023, IIU investigators obtained a statement from WO3. WO3 attended AP's residence as there was concerns for AP's mental health and there was a potential AP may harm himself or others. As he approached the back door to the residence, SO and WO2 were already entering the residence. Officers believed AP to be in possession of a hatchet or axe type object. He entered into the residence. He heard WO2 announce "*contact.*" WO3 and SO ran down to the basement. The basement was quite dark, but he saw AP hiding behind a water tank. Commands were issued to AP to come out and to show the officers his hands. He did not comply with those verbal commands. AP responded with, "*just f* shoot me.*" WO3 saw AP holding a metal hatchet in his hand, over his shoulder. WO3 notified colleagues that AP had the hatchet. SO was armed with a less-lethal shotgun. WO3 drew out his Taser. Verbal directions continued for AP to drop the weapon. AP continued his responses for police to shoot him and was not complying. SO then announced "*bean bag,*" and WO3 heard the sound of the less-lethal shotgun being deployed. AP immediately stood up and at that point WO3 discharged his Taser on AP, which had a full lockout effect. Officers were able to handcuff AP. The hatchet was recovered beside AP.

WO4

On December 12, 2023, IIU investigators obtained a statement from WO4. He attended in response to a *Mental Health Act* call involving a male with a hatchet. There were life-threatening risks to persons inside the residence. A female came to the door and was talking with officers. The female eventually came outside and he stayed with her outside. He saw WO2 and SO go into the residence. After a short time, he heard colleagues announce "*show me your hands*" and "*less lethal.*"

Subject Officer - SO

On October 30, 2023, IIU investigators contacted SO to see if he wished to voluntarily provide notes or a statement. On December 19, 2023, SO declined to provide an interview but provided his notes and a Use of Force Report (*already received from BPS*). His notes reflected the Use of Force report.

In his report he indicated that he entered behind WO2 with a less lethal shotgun. WO2 went to the basement and found AP hiding. WO2 announced he had found AP. SO and WO3 went to the basement. SO entered the basement, which was dark and cluttered, and the only light was from the lights on police weapons. SO was informed by WO2 or WO3 that AP was behind the curtain, crouched, holding a hatchet. AP made comments to the effect of "*Shoot me*" and "*Kill me.*" WO3 was giving AP continual verbal directions to put the hatchet down and to come out from behind the curtain. The curtain was about one foot short off the floor. SO crouched down and looked under it. He saw AP's legs, bent in a crouched position. The curtain prevented the use of a Taser. AP was not complying with commands to give up the weapon. There was a fear that AP could attack officers with the hatchet as they were in close proximity to him. SO made a decision to deploy the less-lethal shotgun at AP; he fired once, striking him on the left leg. AP began flailing around.

The curtain was pulled back by officers and at that point WO3 deployed his Taser, which caused AP to fall to the ground and at the same time drop the hatchet.

Summary of other evidence

BPS supplied photos, including photos of the basement area that showed the spent sock round on the ground. The less-lethal shotgun used was a Remington 870 style shotgun used to deploy 'bean bag' (aka sock) rounds. There were also photo of AP's left leg showed an injury (bruising) to the inside of his left knee area, and photos of AP's black coloured 'Huskey' hatchet and crowbar.

Applicable Law

BPS officers were operating under the authority of *The Mental Health Act* (MHA), in particular, sections 12(1) and 12(2), which state:

12 (1) A peace officer may take a person into custody and then promptly to a place to be examined involuntarily by a physician if

(a) the peace officer believes on reasonable grounds that the person

(i) has threatened or attempted to cause bodily harm to himself or herself,

(ii) has behaved violently towards another person or caused another person to fear bodily harm from him or her, or

(iii) has shown a lack of competence to care for himself or herself;

(b) the peace officer is of the opinion that the person is apparently suffering from a mental disorder of a nature that will likely result in serious harm to the person or to another person, or in the person's substantial mental or physical deterioration; and

(c) the urgency of the situation does not allow for an order for an examination under section 11.

12(2) A peace officer may take any reasonable measures when acting under this section or section 9 or 11 or subsection 44(1) or 48(2), including entering any premises to take the person into custody.

Subsection 25(1), section 26, and subsection 265(1) (a) of the *Criminal Code of Canada* are also relevant to this analysis:

25 (1) Every one who is required or authorized by law to do anything in the administration or enforcement of the law

(a) as a private person,

(b) as a peace officer or public officer,

(c) in aid of a peace officer or public officer, or

(d) by virtue of his office,

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

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...without the consent of another person, he applies force intentionally to that other person, directly or indirectly

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. Section 25 of the *Criminal Code of Canada* establishes protections from liability for a police officer, who, in the course of enforcing the law, finds it necessary to use force. The facts and circumstances, coupled with training and assessments, must be considered to determine whether the use of force, the method(s) employed, and the degree of force used were necessary and justified in law.

The available intervention options may be considered individually or in combination. The type and use of intervention methods and tools is a dynamic process. This allows appropriate decisions to be made and assessed considering the requirements of the specific circumstances.

The nature of the choice and implementation requires continual evaluation by the police officer and recognition that the strategy may change at any stage.

The use of a less-lethal shotgun and Taser are intermediary intervention tools and use-of-force methods. Proper training, control, assessment of the situation and consideration of all other forms of reasonable options are factors to be assessed to determine appropriateness.

Conclusion

Following due consideration of all the circumstances of this matter and a careful, thorough review of all evidence and material facts obtained in this investigation, I am satisfied that:

- On October 12, 2023, at approximately 9:30 a.m., AP had threatened CW1 while swinging a hatchet and a crowbar towards him.
- A few hours later, AP's mother called police concerned for the well-being of her son, that he may harm himself, given the comments he made to her "I'm gonna do something to myself now."
- Police had grounds to take AP into custody under *The Mental Health Act*.
- Police believed AP to be in possession of a hatchet.
- Police considered the potential of life-threatening risks to AP and other persons inside the residence.

- AP was located in the basement of the residence, in darkness, behind a curtain.
- Police gave continual verbal directions to put the hatchet down and to come out from behind the curtain.
- AP was not complying with commands to give up the weapon.
- The curtain prevented the use of a Taser.
- SO feared that AP could attack officers with the hatchet as they were in close proximity to him.
- SO announced "bean bag" and deployed the less-lethal shotgun at AP, firing once, striking him on the left leg.
- AP was flailing around. Officers then pulled back the curtain and WO3 deployed his Taser which caused AP to fall to the ground and drop the hatchet.
- Photos of AP's left leg showed an injury (bruising) to the inside of his left knee area.
- Appropriate medical attention was given to AP for his injury.
- AP declined to provide a statement and did not consent to obtain his medical records.

In considering all the circumstances, I am satisfied that the use of force was reasonable in the circumstances. The outcome of this event could have unfolded tragically. The police officers were dealing with an unstable individual who was in possession of weapons. Fortunately, police were able to take AP into custody safely with minimal injury.

Therefore, no charges are recommended against the subject officer, and the IIU investigation is now completed and closed.