

# FINAL REPORT: IIU concludes investigation into shooting on Kenaston Boulevard

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On November 6, 2015, at 2:00 p.m., the Independent Investigation Unit (IIU) was notified by the Winnipeg Police Service (WPS) of an officer-involved shooting that had occurred near the intersection of Grant Avenue and Kenaston Boulevard in Winnipeg. Members of the WPS had been pursuing a male (the Affected Person – AP), observed with a gun and operating a vehicle, throughout southwest Winnipeg. The pursuit ended at this intersection, following which five officers of WPS engaged with the armed male, who was shot and subsequently died from his injuries.

Because the death of a person resulted from the actions of a police officer, the IIU assumed responsibility for this investigation in accordance with section 65(1) of *The Police Services Act* (PSA). In accordance with section 70(1) of the PSA, the IIU was required to seek the appointment of a civilian monitor as this matter involved the death of a person. On November 9, 2015, the IIU requested the Manitoba Police Commission to appoint a civilian monitor. The initial briefing with the civilian monitor took place on November 12, 2015 followed by regular monthly briefings thereafter.

The size and scope of this investigation was significant. AP's Audi was followed and pursued over a distance of at least 22 kilometers -- from west Charleswood, through River Heights, to Tuxedo, until it was brought to a stop in a field near the intersection of Grant and Kenaston. (This distance does not account for a period of time when officers lost sight of AP).

The five WPS officers who discharged their firearms at AP were designated as subject officers (SO1 through SO5). Thirty-three other WPS officers, present or near the scene at the time of the shooting or involved in the motor vehicle pursuit, were designated as witness officers (WO1 to WO33). An additional 96 civilian witnesses were identified and interviewed (CW1 through CW96). Of those, 36 people witnessed all or part of the shooting. (For the sake of brevity and to avoid undue repetition, summaries of only the most significant and revealing statements by witness officers and civilian witnesses are included in this report.)

IIU immediately deployed its entire investigative staff, including its managers, to the scene of the shooting.

The work of the IIU investigators included the following:

- Attended and examined the scene of the shooting, including the retention of 19 WPS vehicles and the AP's vehicle, pending forensic analysis;
- Collected, examined and retained exhibits;
- Canvassing for witnesses;
- Ensured involved officers were segregated in accordance with *Independent Investigation Regulation 99/2015*;
- Reviewed the findings of AP's autopsy, including photographs and forensic reports;
- Reviewed the video, 3D video, and photographs from the forensic examination of the scene (see Appendices 1 and 2);
- Received and reviewed cellular video recorded at various times during the pursuit of AP's vehicle;
- Examined and obtained photographs of the firearms used by the subject officers;
- Examined and obtained photographs of the firearm possessed by AP;
- Reviewed and transcribed cellular calls between AP and friends and family members;
- Reviewed and transcribed 911 calls;
- Reviewed police radio transmissions;
- Reviewed all file materials from WPS;
- Obtained statements from the five designated subject officers;
- Interviewed and obtained statements from the 33 designated witness officers;
- Interviewed 96 civilian witnesses;
- Reviewed the report and findings from toxicologist specialist;
- Reviewed the report and findings from the forensic firearms specialist;
- Mapped out the path of the police pursuit (Appendix 3);
- Regularly consulted with the civilian director;
- Prepared the investigative file and report to the civilian director.

Once IIU investigators completed their work, the civilian director in November 2016 requested that Manitoba Prosecution Service independently review and assess the IIU investigation file. That review was completed in January 2017 and was of considerable benefit in finalizing this report.

### **IIU Investigative Findings**

#### **AP Conduct before Pursuit:**

AP was a 24-year-old male resident of Winnipeg who had spent the previous few years working in Alberta. In April 2015, due to a downturn in that economy, he was laid off and returned to Winnipeg. Without steady employment, his debts grew and were not managed nor serviced. His driver's license was recently suspended and close friends expressed concern over bouts of depression and mental health issues.

During the evening hours of November 5, AP was at the residence of a friend, CW1. CW1 stated AP was in good spirits initially, but his mood changed as the evening progressed. AP consumed approximately six bottles of beer and snorted five or six “lines” of cocaine. AP told CW1 he had “... *a bad problem...*” with cocaine and was considering seeking assistance from the Addictions Foundation of Manitoba. CW1 was aware that AP used cocaine frequently.

At 11 p.m., AP departed CW1’s residence to see his girlfriend, CW2, at the end of her work shift. CW1 stated that AP was “*super paranoid*” and “*really antsy*” when he left.

CW2 told investigators she worked until 10:30 p.m. that evening, arriving home between 11:15 and 11:30 p.m. AP showed up there 15 minutes later. She believed he had been drinking liquor and was high on some unknown drug. She described him as “... *anxious, on edge and not happy at all.*” A discussion precipitated into a dispute that ended when CW2 told AP to sleep in another room of the house.

CW2 stated that at some point during the night, AP was in her room and tried to get into bed with her. He left after she told him to depart and she went back to sleep. She was not sure where AP went, although she subsequently received a photo radar ticket for the Audi (which was registered in her name), which had been speeding southbound on McPhillips Street at Jefferson Avenue at 4:36 a.m. on November 6.

A number of deleted e-mail and text messages were discovered on AP’s cellular telephone, supporting CW2’s assertion that AP had been out of the house in the early morning hours of November 6.

CW2 stated she got up between 7:30 and 8:00 a.m. on November 6. AP met her in the kitchen of the home and she believed he was not sober, but was unsure if he was under the influence of liquor or drugs at the time. The dispute of the prior evening continued and AP departed the residence at approximately 9:00 a.m., after which time they spoke on the telephone. CW2 stated that during the call, AP told her he was “...*going to get drunk and make some bad decisions...*”, but did not elaborate on what he meant.

Between 9:30 and 9:50 that morning, CW1 was asleep at his apartment on Sterling Lyon Parkway when AP woke him and demanded access to the firearm hidden under the bed. CW1 said AP was breathing heavily, yelling, demanding and was emotionally unstable, one moment crying and the next threatening. Fearing an assault, CW1 retrieved the firearm and gave it to AP. AP told CW1 he was going to go out and rob two people with it in order to pay his girlfriend money he owed her. AP stated that, following the robberies, he intended to drive his car into a tractor-trailer unit.

CW1 described the firearm as an air gun that fired small BB projectiles, but said it was not operational as it lacked a magazine and ammunition. It resembled an Uzi mini submachine gun<sup>1</sup> and was purchased by CW1’s roommate at a local store in Winnipeg.

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<sup>1</sup> An automatic weapon which is designated as a prohibited firearm under the Criminal Code of Canada

AP told CW1 not to phone the police or his girlfriend. As AP left, he kissed CW1 on the cheek, told him he loved him and whistled as he walked away. CW1 stated he spoke with AP twice by cell phone, approximately 40 to 60 minutes later. AP called the first time and said, “*Peace bro, I love you.*” During the second call (while police were in pursuit), AP said he was “*going out in a coffin today*” and that “*this*” was happening. CW1 said he pleaded with AP to stop and to come back but AP said, “*No, it’s done*” and hung up.

Other witnesses (CW3 through 6) observed AP leaving the apartment block the morning of November 6 in a white Audi. Described as unusual, aggressive and agitated, as if he was “*on something,*” they said the male in the Audi raced through the parking lot and did not appear normal, but confused or as though he was on drugs.

At 10:57 a.m., WPS received a 911 call from CW7, a motorist driving south on Kenaston approaching the intersection with McGillivray Boulevard. While stopped at a red light, he noted a white Audi come up quickly behind him, pass his car on the right and drive through the red light, then continue southbound on Kenaston. He lost sight of the Audi but saw it again eight minutes later turning left onto Waverley Street from Arbour Meadow Gate. The white Audi drove north and he did not see it again.

A second individual, CW8, made a similar report to 911 of a white Audi travelling south on Kenaston at 11:00 a.m. The vehicle was driving very fast on the shoulder of the road.

Approximately one hour later, CW9 was driving north on Kenaston between 12:05 and 12:10 p.m. and was stopped at a red light at the intersection with Corydon Avenue when she spotted a white Audi coming south on the sidewalk on the west side of Kenaston. The car was travelling very fast, moving off the sidewalk and back into the southbound lane of travel as it drove through a red light.

#### **First Contact and the Pursuit:**

At 12:21 p.m., WO1, a school liaison officer with WPS, was driving a marked police vehicle (police vehicle 1) northbound on Oakdale Street in Charleswood, when she noted a white Audi driving southbound towards her. The Audi slowed and WO1 saw the driver’s window being lowered. Anticipating the driver wished to speak with her, the officer also slowed her vehicle, at which time she observed the male driver pointing a firearm at her. WO1 believed the firearm to be an Uzi submachine gun.

The Audi continued south on Oakdale and turned east onto Ridgewood Street, stopping a short distance east of the Oakdale corner. The male driver held the submachine gun out of the vehicle’s sunroof, then drove very quickly west then south to Wilkes Avenue, where it drove east at a high rate of speed. WO1 followed the Audi at a distance, without emergency equipment activated, and lost sight of it somewhere between Liberty Road and Loudoun Road.

Other WPS units began to converge in an effort to locate the Audi: WO2 and WO3 in police vehicle 2, WO4 and WO5 in police vehicle 3 and WO6 and WO7 in police vehicle 4 spotted the Audi eastbound on Sterling Lyon Parkway in front of the IKEA store at 12:25 p.m. None of the officers noted any weapons at this time and the vehicle was lost from sight as it continued east across Kenaston.

At 12:28 p.m., CW2 reported AP drove past her home. CW2 said AP had called her several minutes earlier, stating police were pursuing him, that he was in possession of a gun, and he had robbed two persons to get money he owed her. (This investigation was unable to find any evidence of AP committing these robberies. WPS computer records disclosed no robbery calls in the period suggested by AP).

During the call, AP said he would be coming to CW2's home. CW2 described AP as "*freaked out*" on the phone. CW2 and some family members went outside their home and waited until AP arrived. He slowed the Audi but did not stop. AP spoke briefly to CW2 through the open driver's window and drove off.

CW2 immediately telephoned 911 and spoke with a police operator. During that telephone call, CW2 advised the operator there was something wrong with AP, that he was in a car, may have had a gun, and thought the police were already following him. CW2 further advised that AP stated this was going to be the last time he could talk to her. CW2 provided background information on AP, including his state of mental health, financial issues, drug and alcohol use, and expressed concern for his well-being. This information was broadcast over police radio.

At 12:29 p.m., WO4 and WO5, in police vehicle 3, observed the Audi travelling northbound on Waverley at Buffalo Place. Within seconds, WO1 noted the Audi driving north on Waverley, south of Wilkes. These officers all stated the car was travelling at a high rate of speed, and lost sight of it again.

One minute later, 911 received a telephone call from CW11, who was driving with his wife on Waverley at Wilkes. CW11 reported an Audi travelling north on Waverley towards Taylor Avenue in the southbound lanes. At the same time, 12:30 p.m., CW12 made a call to 911. CW12 reported an Audi was driving between 100 and 120 km/hr north on Waverley at Taylor, in the southbound lane. He believed the car continued north on Waverley towards Grant before sight was lost.

Between 12:30 p.m. and 12:36 p.m., police did not have sight of AP. However, other evidence gathered partially addressed this gap. At 12:33 p.m., the Audi was captured on photo radar travelling 88 km/hr westbound on Grant at Renfrew Street. At approximately 12:35 p.m., CW13 was driving west on Grant when she was passed by a fast-moving white Audi (estimated speed of 80 -100 km/hr). The vehicle continued west past her vehicle and made a u-turn at the Superstore entrance at Grant and Kenaston, then drove east until it reached Centennial Street where it turned south and she lost sight of it.

An analysis of AP's cell phone also showed activity at this time. AP had recorded two video clips, the first at 12:33:42 p.m. to 12:34:41 p.m. and the second at 12:34:47 p.m. to 12:36:32 p.m.

In the first video clip, AP is seen driving a vehicle and holding what appears to be a black Uzi submachine gun in his hand. He states on the video "*Hey guys, I just want to let you guys know before I go, I um, I had a good life OK? I had fun, I uh ... I'm so sorry guys ... Well guys ...*" AP is very emotional during this clip, ranging from sobbing to whistling.

In the second video clip, AP does not speak at all. He is driving his vehicle, passing the firearm from hand to hand, and pointing it out of the driver's window at least two times. Whistling is heard during a portion of this clip.

Frame capture of AP holding his firearm from video 2:



At 12:37 p.m., SO4, alone in police vehicle 5, was driving west on Grant, at the Grant Park Shopping Centre, when he observed the Audi make a u-turn from eastbound Grant to westbound, right in front of him. SO4 followed the Audi as it turned left onto Cambridge Street, but lost sight after it turned right onto Taylor. SO4 did not activate his emergency equipment, choosing to follow the Audi until other police vehicles could assist.

CW14 was eastbound on Taylor Ave leaving the Taylor Tennis Club at approximately 12:43 p.m. The Audi was westbound on Taylor on her side of the road, but returned to the

westbound lane prior to reaching her. CW14 saw a police vehicle approximately five cars behind the Audi. Emergency equipment was not activated on the police vehicle.

At 12:39 p.m., WO9 was stopped in police vehicle 6, in an effort to deploy a tire deflation device on Taylor and Campbell Street. He observed the Audi approach westbound on Taylor, then turn abruptly into a back lane and start driving north. The Audi continued north in the alley to Mathers Avenue, where the driver pointed a firearm at police vehicle 7, occupied by WO10 and WO11, who were driving eastbound on Mathers. The Audi continued north onto Grant where it turned and drove west in the eastbound lanes for two blocks before returning to the proper lane of travel. Police vehicle 7 began a pursuit of AP's vehicle at 12:40 p.m. with emergency equipment activated, and reported the Audi was travelling between 80 and 100 km/hr.

Over the course of the next minute, a number of events took place related to the pursuit. First, the Audi received another photo radar ticket, again at Grant and Renfrew. At that time, AP was traveling westbound on Grant at 92 km/hr. Next, the pursuit continued to the Superstore intersection near Kenaston where the AP's vehicle made an abrupt u-turn, driving east on Grant. Then AP immediately made another u-turn, driving back west.

Police vehicle 7, which had also made a u-turn, tried to block the Audi at Grant as the car approached, but AP drove around the police vehicle. WO10 and WO11 both stated the driver of the Audi pointed a firearm at them as it drove past their police vehicle, then continued west on Grant through a red light at Kenaston. Police vehicle 7 was damaged executing a u-turn at this time and was unable to continue the pursuit. Police vehicle 3, operated by WO4 and WO5, had been behind police vehicle 7 as they drove west down Grant and took over as primary vehicle in the pursuit as the incident moved past Kenaston. WO4 stated the Audi accelerated rapidly as it proceeded westbound on Grant. GPS records obtained for police vehicle 3, confirm it was travelling 119 km/hr in an effort to maintain contact with AP.

At 12:41 p.m., AP placed a 911 call from his vehicle and began talking to a police operator. The phone line remained open for the next 32 minutes, until the shooting. During that time, AP is heard yelling at WPS officers, in addition to speaking to the 911 operator.

At 12:42 p.m., AP turned from westbound Grant to northbound Shaftesbury Boulevard. At that point, police vehicle 3 was several blocks behind the Audi. Police vehicle 8, operated by WO12, had just departed the WPS West District Station and was eastbound on Grant, in an effort to deploy a tire deflation device, when the Audi turned north in front of him onto Shaftesbury. WO12 did not have time to stop his vehicle to deploy the device and turned behind the Audi, becoming primary vehicle in the pursuit.

CW15 was driving and recalled being passed by the Audi, which he estimated was travelling between 90 and 100 km/hr at Mountbatten Avenue. The car then drove to Corydon and turned eastbound. He observed a number of police vehicles following the Audi, and estimated they were 10 seconds behind AP.

Police vehicles 3 and 8 reported that AP turned from northbound Shaftesbury to eastbound Corydon at 12:43 p.m. One minute later, WO12 reported seeing the driver of the Audi pointing a firearm out the driver's window at civilian vehicles in the opposite lane of travel, as the Audi turned onto Tuxedo Avenue and proceeded northeast.

At approximately the same time, a vehicle being driven by CW16 southwest on Tuxedo passed the Audi. CW16 noted the driver was holding a gun in his right hand, as it drove by, and was being pursued by several police vehicles, all with emergency equipment activated.

At 12:45 p.m., the WPS officers involved in the pursuit noted the Audi reach the corner of Tuxedo and Kenaston. It then turned and drove northbound in the southbound lane.

CW17 was driving his vehicle south on Kenaston and was passed by the Audi. CW17 stated he saw a firearm in the Audi driver's right hand as the car moved by him.

CW18 was also driving south on Kenaston when AP drove past her. CW18 stated the driver of the Audi was pointing a black gun at her as it passed her car. The Audi turned west and drove towards the Rady Jewish Community Centre (Rady). She said the police vehicles pursuing the Audi had their lights and sirens activated.

The Audi turned from northbound Kenaston to westbound Willow Avenue. Video surveillance from a parking lot camera at the corner of Willow and Doncaster Street showed the Audi pursued westbound by eight police vehicles, all with emergency lights visible. The video had no sound, so it was unknown if sirens were similarly activated. On police radio recordings, WO14 voiced that the driver of the Audi was pointing a firearm out the car window as he drove past Carpathia Road.

The Audi arrived at the corner of Willow and Doncaster, in front of Rady, where it collided with police vehicle 9, operated by WO13. WO13 stated he had been some distance behind the pursuit as it went north on Kenaston, so he turned onto Doncaster to "parallel" the Audi. As AP proceeded west on Willow, WO13 drove straight at it at a low speed, as he wanted to stop the chase for fear of someone getting hurt. Immediately the police vehicle behind contacted the Audi with its rear bumper in an effort to pin the fleeing vehicle. For the next two minutes, AP remained pinned between the two police vehicles. Other WPS units arrived on scene and several officers exited their vehicles.

WO13 exited his police vehicle 9 and took cover behind it. He then moved to a tree nearby with his sidearm drawn. He was able to see the lone occupant of the Audi holding something that looked like a firearm. He could hear other officers yelling at the car, telling the person inside to drop the gun.

WO14, the sole occupant in police vehicle 10, was immediately behind AP as he drove west on Willow. WO14 observed WO13's vehicle collide with the front of the Audi and drove his car softly into the rear of the Audi in an effort to contain it, after which time he exited his

police vehicle and took cover. He saw the driver of the Audi point an “Uzi” at a WPS officer to the south, so he drew his service pistol and stated he would have shot at AP then, but there were civilians exiting Rady in his line of fire. A short time later, the Audi began to push the police vehicles pinning it and managed to drive off to the south on Doncaster.

WO9 was also behind AP as the pursuit made its way west on Willow. Once the Audi was pinned between the two police vehicles, WO9 observed the driver moving his car back and forth, pushing the police vehicles holding it. He believed the driver of the vehicle was trying to escape. He entered WO14’s car (vehicle 10) and drove it forward, again pinning in the Audi. At that time, he could see the silhouette of the driver, who was holding a “*submachine gun or pistol*” in his right hand. The gun was pointed up to the roof of the car. WO9 tried to take cover behind the dashboard of the police car but was not successful. He put the car in park and exited the car for a safer position outside. The Audi pushed police vehicle 10 out of the way and drove off to the south on Doncaster.

WO15 and WO16 were in police vehicle 11 and approached the Audi from the south on Doncaster. As they pulled up, WO15 observed AP point a firearm at WO16. WO15 drew his service pistol and was going to shoot at the driver but observed a WPS officer in his line of fire. WO15 observed the Audi ram its way out and drive off, pursued by a number of police vehicles.

WO16 stated she observed the Audi pinned between two police vehicles at Willow and Doncaster. She saw something in the driver’s hand that appeared to be a firearm, but did not see the firearm pointed at anyone. WO16 assisted in moving some civilians in the parking lot to the south of the Audi into positions of cover behind parked vehicles, and while doing so heard sounds of vehicles colliding, shortly after which AP’s vehicle broke free and drove south on Doncaster.

WPS officers who arrived at Willow and Doncaster at this time saw the driver of the Audi with a firearm. WO12 could see a silhouette of AP waving a gun around inside the car. WO4 and WO5 saw the driver of the Audi pointing an Uzi submachine gun out the driver’s window. WO2 observed the driver of the Audi holding an Uzi submachine gun in his hand and went to the front doors of Rady to warn those inside to keep under cover.

CW19 was parked on Doncaster in front of Rady when the pursuit made its way to the area. He was approximately 30 metres away when he witnessed the Audi being pinned by two WPS vehicles and observed officers pointing guns at the car, telling the driver to exit the vehicle. He did not see the driver or a firearm inside the Audi. CW19 watched the car move back and forth, pushing the police vehicles holding it in place, until there was sufficient room for it to drive off and proceed south on Doncaster to Tuxedo Ave.

CW20 shot a short video of part of the incident from the main entrance to Rady. The video clip, six seconds in length, showed a police vehicle with emergency lights activated, stopped in front of a white Audi. CW20 did not see the occupant of the vehicle or any firearm

because WO2, who could be seen in the video approaching the location where CW20 was recording, moved him away from the door.

CW21 shot some video footage of the Audi breaking police containment at Willow and Doncaster from his second-floor office of Rady. CW21 did not see the occupant of the Audi, nor did he see any firearm. His video, lasting two minutes and four seconds, captured the end of police efforts to contain AP's vehicle and showed the Audi pushing a WPS vehicle out of the way, then driving south on Doncaster. Fifteen police vehicles could be seen pursuing AP's vehicle from that point. Three of the first four police vehicles in the procession did not have emergency lights activated as they drove after the Audi.

WO17 and WO18, in police vehicle 12, were positioned south of Rady at the intersection of Tuxedo and Doncaster when AP's vehicle broke out of containment. WO18 stated that as the Audi drove towards them, the driver pointed a firearm at him out of the driver's window, forcing him to take cover behind a nearby hydro pole. WO17 had a similar recollection, stating AP pointed a "*submachine gun*" at them as the car was moving south on Doncaster. WO17 added the Audi pushed its way past his police vehicle.

CW22 was driving west on Tuxedo when he observed the Audi passing two uniformed WPS officers at the north intersection of Tuxedo and Doncaster. The Audi was southbound on Doncaster, pursued by police vehicles with emergency equipment activated. As the Audi approached the officers, who were out of their police vehicle with guns drawn, the male driver was seen waving his hand out the driver's window. CW22 was not certain if the subject had something in his hand at the time. The Audi passed the two police officers and turned right onto Tuxedo. CW22 noted one of the officers moving behind a tree or hydro pole. The other officer, who did not move, raised his service pistol and pointed it at the car. CW22 stated the Audi then drove east on Tuxedo and climbed up on the median to pass a number of other eastbound vehicles stopped at the traffic light at Kenaston and Tuxedo. The Audi made an abrupt right turn onto Kenaston and drove south. While making that turn it collided with three other vehicles stopped on Tuxedo at the traffic light.

Three vehicles with which the Audi collided were operated by CW23, CW24, and CW25 respectively. CW23 said she had noticed eight police vehicles in the area earlier, all with emergency lights and sirens activated. Between 12:30 and 12:45 p.m., she was in her vehicle stopped in traffic on Tuxedo at Kenaston, facing east. She was in the curb lane with vehicles in front and behind her. She noticed three police vehicles crossing Kenaston heading west. She heard police sirens and vehicles honking when a white car drove between the right and left lanes of stopped traffic. The white vehicle scraped along the driver's side of her vehicle before it headed south on Kenaston. She did not see the vehicle again.

CW24 was driving east on Tuxedo and noted many police cars around Rady. He was stopped in the left lane at the traffic light at Kenaston. He pulled over to the right as much as possible to clear the road for police. At that point, he saw a white Audi driving between the rows of stopped vehicles. He said it hit some vehicles behind him and then hit his vehicle as it tried to go between the rows of cars stopped at the light. CW24 stated there was a lone

male occupant in the Audi. He did not see any firearms in the Audi. He last saw the Audi southbound on Kenaston and said there were many police cars with lights and sirens blaring.

CW25 said he was driving two children to school at 12:50 p.m. and was stopped at a red light on Tuxedo at Kenaston, facing east. He heard police sirens from behind. Then a white Audi struck his vehicle on the rear driver's side. The Audi did not stop, but continued past him and turned south on Kenaston. He did not see the Audi again and did not see any occupants.

WPS radio records indicated AP's vehicle turned south onto Kenaston at 12:48 p.m. CW26 was at Lockston and Kenaston when, at approximately 12:50 p.m., she observed a white Audi travelling at a high rate of speed, being chased by many police cars. The Audi was north of her location travelling south bound. It drove up on the boulevard towards her but returned to the driving lane prior to reaching her. She could not identify the driver and did not see any weapons.

CW27 was southbound on Kenaston at approximately the lunch hour and was north of the traffic lights at Lockston when he observed a white Audi coming up on him from the rear. The Audi drove up onto the boulevard on his right to pass him and, as it did, he could see it driving towards a crossing guard and two children on the right side of the road. The Audi then drove back into traffic and sideswiped an SUV type vehicle. He observed the crossing guard pull the two children back from the side of the road. Six to eight police vehicles, all with emergency lights and sirens on, pursued the Audi. CW27 did not get a clear view of the driver of the vehicle, nor did he see any firearm.

Sometime after 12:40 p.m., CW28 stated she and her niece, CW29, were driving south on Kenaston when a white Audi drove past them quickly on the boulevard between the north and south bound traffic. CW28 recalled being in the left lane north of Lipsett Hall (Lipsett) and noticed police emergency lights behind her. She was changing lanes to the right and was passed on the left by the white car. She noticed the Audi had a crack in the rear passenger bumper. She did not see the driver of the vehicle. CW28 observed two police officers running from the east towards the center of Kenaston, and one officer threw something on the ground. At that point, she lost sight of the Audi and did not see it again for roughly 30 seconds, when they were closer to Lipsett. CW28 noted the Audi in a field to the south of Lipsett, and saw it was driving left and right, "... *spinning out in the grass ...*" at which time police vehicles converged upon it. The police vehicles involved had emergency lights and sirens on.

CW29's recollections were similar to those of her aunt. At approximately 12:47 p.m., the Audi passed their vehicle on the boulevard between lanes of travel, moving very quickly, and continued south to the intersection of Kenaston and Grant, where it turned right across both southbound lanes and drove into the field south of Lipsett, entering the field at the northwest corner of the intersection. She did not get a good look at the driver. She did not see him holding anything. CW29 stated the Audi did at least two laps in the field, pursued

by WPS vehicles, and, after a time, it came to a stop. CW29 obtained some video footage of the incident on her cell phone.

CW29's video contained a running narrative, done by the witness during her recording of the incident. In the audio commentary, CW29 stated she observed police throwing someone to the ground following cessation of the pursuit. When asked about that comment in her interview with IIU investigators, she admitted she made that up and did not see that take place.

The two police officers referenced by CW28 were WO10 and WO11. They had managed to move their damaged police vehicle 7 from Grant, near the Superstore, to a position north of the office building situated near the northeast corner of the intersection with Kenaston. As the pursuit came back towards them, the officers retrieved a tire deflation stick from the trunk of their car and ran to Kenaston to deploy it in front of the Audi. Traffic at the time was quite heavy, requiring the officers to stop all vehicles travelling south on Kenaston in order to create a pocket in which the spike strip could be used. WO11, who had the deflation device, observed the Audi coming towards his position on the median between the north and southbound lanes, and was able to place the stick in front of the car, despite the vehicle driving at him in what the officer believed was an effort to run him over. WO11 observed the Audi drive over the device, turn abruptly to the west, and enter the field south of Lipsett.

CW30 was driving north on Kenaston near Grant and witnessed the efforts of WO10 and WO11 as they deployed the tire deflation device, but did not believe AP tried to run over one of the officers. She stated that if the driver of the Audi had wanted to hit the officer, it would have been easy for him to do so, yet he chose not to do it.

At 12:49 p.m., the Audi drove into the field at Lipsett and proceeded southwest across the grass until it reached Grant, where it turned west. WO13 was the first police unit behind the fleeing vehicle and, as it drove on Grant, he made the decision to try to force the car off the roadway in an effort to end the pursuit. He accelerated police vehicle 9 but the Audi decelerated abruptly, causing the officer to overshoot and end up in front of AP. Meanwhile, WO14, the second police vehicle behind the Audi as it drove west on Grant, collided with the rear of the Audi due to it slowing so quickly. The Audi was pushed to the north and WO14's air bag deployed, rendering him unable to travel any further.

The Audi turned north and drove over the curb of Grant, re-entering the grass field to the south of Lipsett. WO13 followed and noted AP was slowing down in the field. WO13 was able to pull ahead, turn around and drive into the front of the Audi. At approximately the same time, WO9, in police vehicle 6, drove into the front of the Audi beside WO13. WO12 in another police vehicle pulled up to the front driver's door of the Audi, pinning it shut. Other police units were arriving around the AP's vehicle, and WO13 and WO9 exited their vehicles and ran to positions of cover behind other police cars arriving to the east. WO12, who left the siren activated in his police vehicle, retreated to the south.

According to WPS radio records, the Audi stopped in the field at 12:50 p.m. and it did not move again. Fourteen additional police units arrived at the scene, parking all around AP, and the officers operating them exited their cars and took positions of cover.

### **The Shooting:**

From 12:50 to 1:13 p.m., for 23 minutes, WPS officers and AP engaged in a confrontation and standoff. AP was observed by the surrounding police to move “*erratically*” inside the Audi. AP was pointing the “*Uzi-style firearm*” under his chin, opening and closing the windows on the car and tapping the barrel of the firearm on the vehicle windows. A siren on one of the surrounding WPS vehicles, driven by WO12, remained on for most of the confrontation. Tactical officers SO1 and WO5 eventually turned it off two minutes and 42 seconds prior to the shooting.

The five subject officers and 33 witness officers were interviewed or gave statements during the course of this investigation. In addition, 36 civilians who witnessed the shooting were also interviewed. As stated earlier, only the most significant and revealing statements of witnesses are referenced below.

### **Subject Officers:**

Under the PSA, subject officers cannot be compelled to provide their notes to IIU investigators or to attend an interview with them.

### **SO1:**

SO1 attended the IIU offices and provided a full statement on his involvement in the incident. SO1 is a member of the WPS Tactical Support Team (TST) and was involved in pursuing the Audi south on Kenaston into the field south of Lipsett. Initially, his vehicle was parked to the north of the Audi and he was positioned near the passenger door of a police vehicle to the east of the Audi with SO3. There were sirens going off and it was difficult to communicate with the Audi’s occupant, whose first name he learned from radio talk. He could see AP inside the Audi, moving around in an agitated state. SO1 believed AP was under the influence of some substance. AP had a firearm that looked like an Uzi submachine gun pointed at his head, under his chin.

WO9, the TST supervisor on scene, approached SO1 about shutting off the police siren on the vehicle parked next to the Audi. He had his carbine rifle pointing at the Audi and recalled hearing the voices of multiple police officers trying to communicate with the occupant.

SO1 said AP exited the Audi only once, and could be heard saying repeatedly “*I’m gonna do it*” and “*I’m gonna get you to do it.*” AP, as he looked at officers surrounding him, took a breath and, while holding his firearm with both hands, lowered it and pointed it towards police officers where SO3 was positioned. SO1 stated he feared the officers were in danger from AP’s firearm and shot three rounds “*centre of mass*” at AP. SO1 stated there were

other shots fired, but did not know from where, and AP dropped to the ground. He assisted in performing CPR on AP until relieved by fire department personnel.

SO1 was asked about the possible use of less lethal intervention options in the situation, such as beanbag shotgun rounds. He acknowledged they were available for use and would have been considered had the matter gone on longer. He explained the first priority was to shut off the siren so communication could take place in an effort to end the incident peacefully. Once that was done, the shooting took place shortly thereafter. He said there was no time to use other options in the situation.

**SO2:**

SO2 attended the IIU offices for an interview and read his narrative report into the record, then stated he preferred not to answer any further questions. He did agree to review an aerial photograph of the shooting scene and showed his vehicle location and that of the Audi, but would not answer any additional queries about placement of officers around him.

SO2 was a member of the TST partnered with SO3. Upon learning that someone had pointed a firearm at WO1, SO2 drove his police vehicle to the Kenaston area. En route, the officer heard transmissions on the police radio that AP had pointed a firearm at a police vehicle.

Upon arrival in the field south of Lipsett, SO2 parked his police vehicle roughly 20 metres to the east of the Audi's passenger side. He pointed his carbine rifle towards the Audi with his driver's door open as cover and, over the next several minutes, observed AP exit his car twice. During the first time, AP, according to SO2:

*“... aggressively stepped out of the passenger side door and stood upright holding the gun, which was consistent in appearance with an UZI style sub machine gun, at the center of his body pointing the muzzle up under his chin.”*

AP made comments about killing himself then got back inside the Audi for roughly two minutes, then exited again, holding the firearm in under his chin. SO2 said:

*“The male then stated ‘I can’t do it’, turned to my partner at the passenger side of the cruiser car and stated ‘buddy, you have a clear shot, so I’m going to make you do it.’ At the same time, the male lowered his gun and pointed it directly at my partner. At this time, I recognized that the male completed all components of a threat assessment; weapon, intent and delivery system. Without any hesitation or doubt I knew that if I waited any longer, my partner would be shot and killed by the male. At this time, I recall the metallic sound of the bolt assembly of my rifle compressing and the bolt sliding forward again. Sounds consistent of when the rifle is fired and another round is chambered. I observed the male drop his gun in front of him, his body slowly starting to lose its rigidity and collapse to the ground. “*

SO2 also relayed information regarding attempted communication with AP during the incident, stating he could hear efforts by other police personnel over the loudhailer in a police vehicle and voice communications.

*“The officers identified themselves as Winnipeg Police, advised him to put the gun down, roll down the window and put his hands out the window. Officers offered to help him and to ensure his safety asked him to follow their direction.”*

SO2 also wrote that the siren of a police vehicle near the Audi was going during these attempts to negotiate with the AP, and the siren was eventually shut off by two TST officers, *“... at which time I could clearly and loudly understand all the verbal direction being provided by the officers.”*

**SO3:**

SO3 provided IIU investigators with a prepared statement and declined to participate in an interview. SO3 was partnered with SO2. They assisted in evacuating civilians from the area of Willow and Doncaster before traveling to the field near Lipsett where the Audi was stopped. SO3 estimated his police vehicle was 15 metres from AP, and he was positioned behind the passenger-side front door with his carbine rifle pointed at the Audi. He attempted to communicate verbally with AP, but did not get a response, adding that *“... a police member was continually providing clear verbal directions & reassurance to AP with either a handheld loudhailer or cruiser car PA system.”* SO3 did not elaborate on what exactly was being said to AP.

SO3 wrote that he noted AP exiting the Audi once. The officer observed AP get out of the passenger side door of the Audi, holding the firearm pointed at his chin and pacing next to the car. He then wrote:

*“I briefly caught a glimpse of what I perceived to be the magazine well within the pistol grip handle of the weapon. Magazine well appeared to be empty, but AP quickly covered up the bottom of the handle with his other hand. I broadcast my observation, but I knew that that information had no bearing whatsoever on whether or not a round was chambered in AP’s weapon.”*

According to radio logs supplied to the IIU by WPS, this broadcast was done 24 seconds prior to AP being shot.

Regarding the rest of his contact with AP, SO3 wrote:

*“At no time did I feel it prudent or appropriate for me to resort to any other force option. My responsibility was to provide lethal cover. At the conclusion of the standoff, AP was stationary and facing east. He seemed to momentarily pause, and then brought the weapon from underneath his chin and began to level it towards the area to my left where I knew other officers were positioned. Recognizing the lethal threat to fellow members and having*

*already precluded other force options, I discharged my service rifle one to two times towards center mass. I recall hearing other shots. I did not fire again as I noted an immediate change in AP's behaviour as he collapsed to the ground. I fired only until the threat was neutralized."*

**SO4:**

SO4 provided IIU investigators with a prepared statement and declined to participate in an interview. SO4 wrote that he followed the pursuit to a field south of Lipsett. There, he noted the Audi was already contained by other units and stopped his police vehicle east of AP, facing the passenger side of the vehicle. SO4 wrote that he could see a male subject inside the Audi, and the male was holding a black gun that he believed to be an Uzi-style submachine gun.

Attempts at calling AP on his cellular phone were not successful. SO4 stated verbal commands and efforts to engage him via a loudhailer were also unsuccessful. SO4 then took a position next to SO2, facing the Audi with his sidarm drawn. His notations include the following:

*"The subject was behaving extremely erratically climbing about the inside of the vehicle unpredictably and occasionally opening the passenger side window a few inches and yelling out the window. At one point, SO2 related that the firearm was indeed a sub machine gun. As the subject moved about inside the vehicle, the subject would occasionally hit the muzzle of the firearm against the glass of the vehicle and it made a distinct metal against glass noise. I also observed the subject extend the collapsible stock on the weapon leaving me no doubt that this was indeed a real, live firearm."*

SO4 stated AP exited the Audi, holding the firearm pointed to the sky and under his chin. SO4 indicated AP made several comments, but did not provide details as to what was said. AP re-entered the Audi then exited again a short time later, holding the gun under his chin. This time the AP said, "I'm not going to kill myself, you guys are going to do it for me."

SO4 wrote:

*"Officers again pleaded with him that if he put down the weapon, he would not be hurt. The male stood there for a moment, said "sorry", and then brought the firearm down from his chin and pointed it directly at SO2 to my right. At that moment, fearing for the life of SO2, and given the capability of that weapon to deliver multiple rounds, I feared for my own life and all the other officers in the immediate vicinity, acting in the manner in which I was trained, I made the decision to use lethal force in order to eliminate this threat to lives. I discharged my firearm at the subject 4-5 times. The male fell to the ground and the firearm fell from his hand."*

SO4 assisted in guiding the ambulance into the scene and noted other officers performing CPR on AP.

**SO5:**

SO5 read from a self-prepared statement during his attendance at IIU offices. He declined to answer additional questions. He did review police officer positioning on the aerial photographs. SO5 did state he was unaware if there were other officers around where he was positioned at the time of the shooting.

In his prepared statement, SO5 wrote that he was the passenger in a police vehicle operated by his partner WO19. Upon arrival in the field south of Lipsett, WO19 parked their vehicle immediately southeast of the Audi, approximately 10 to 15 feet away from AP, who could be seen moving inside the car with a firearm in his hand. SO5, who was in possession of a duty shotgun, relocated to a position behind a police vehicle stopped further to the east.

SO5 recalled AP exited the Audi twice. The first time:

*“... the suspect male suddenly stepped out of the passenger side of the vehicle. His gun was pressed up under his chin. He was pacing back and forth along the passenger side of his car, telling everyone to stay back or he would kill himself. He seemed to just be looking around. He said he was sorry and then abruptly got back inside his car and shut the passenger front door.”*

Regarding the second time out of the car, SO5 wrote:

*“Soon after, he stepped out again, the gun still pressed against his chin. He paced again ... An officer said something to the effect of ‘you don’t have to do this; you don’t have to kill yourself.’ And the suspect replied something to the effect of ‘I’m not going to, I’m going to make you do it.’ ... Suddenly, the suspect’s facial expression completely changed. His face went calm, and he stopped pacing. I distinctly remember thinking that he had made his decision and he was about to do something life threatening. The suspect then turned and looked in the direction of WO19 and I. His gaze was calm and intent. I distinctly remember his look and facial expression. His face didn’t look tense and his eyes were fixed on us. He stated something similar to ‘I’m sorry man but you have a clear shot.’ And as soon as those words had come out, he moved towards my right, took the gun from under his chin and pointed it in our direction. As he was lowering his gun, I gripped my shotgun, tightening my hold, pulling it into my shoulder and fired.”*

SO5 fired two rounds from his shotgun, the first a slug round and the second a buckshot round. He stated he believed both struck the police vehicle behind which he was positioned. He observed AP fall to the ground. He was ushered out of the area by WO19, who took control of the shotgun and emptied it of ammunition.

Shotgun use within WPS is restricted to designated shotgun operators--officers of the service who self identify for additional training on that weapon. Training records supplied by WPS show that SO5 was not a designated shotgun operator on November 6. He had received

basic training on use of the shotgun during his recruit field training in May 2014. According to his prepared statement, SO5 had removed the shotgun from the holder in the police vehicle during the pursuit phase of contact with AP to ready it for use by WO19, who was a designated shotgun operator. WO19 was driving the police vehicle and unable to access it himself. SO5 also wrote:

*“The initial plan had been for me to ready the shotgun for WO19 and pass it off to him as soon as we could make a safe exchange, at which time I would have drawn my service issue Glock model 22. However, when we came to a stop at the final scene, we were extremely close to the suspect’s vehicle; only approximately 10-15 feet away. I immediately saw the firearm in one of his hands and could see him moving about and waiving (sic) his gun. I had no time to respond and based on my vulnerable position I just grabbed the shotgun, shouldered it and provided lethal force cover”*

He added that he was unable to pass the shotgun to WO19 after changing positions because it was not safe to do so, in that:

*“a huge gap in Lethal Force Cover would have been present and our area of responsibility would have been neglected as I would have passed the shotgun over, drawn my service issue Glock and re-acquired a sight picture on the suspect male.”*

IIU investigators interviewed WO20, a WPS expert in the area of shotgun training, concerning shotgun use by non-designated personnel. WO20 stated non-operators are not permitted to deploy shotguns unless faced with death/grievous bodily harm to him/herself or a third party and his/her sidearm is not readily available.

### **Witness Officers:**

#### **WO4:**

WO4, a TST officer, observed the Audi come to a stop after being obstructed by two police vehicles in the front and another marked cruiser car on the driver's door. WO4, who was partnered with WO5, stopped his vehicle approximately 10 feet behind the Audi's rear bumper and both officers exited with carbines and pointed them at AP's car.

WO4 recalled the siren was going on the cruiser car that pinned the driver's door of the Audi. He attempted to communicate with AP via a loudhailer in his police vehicle, telling him to put the gun in the back seat and exit the vehicle with his hands clearly visible. WO4 believed AP could hear him over the siren because when he asked AP to put his hands out the window, the window would go down partially, one hand would come out and then go back inside. WO4 could see the silhouette of a person in the driver's seat moving around frantically. A gun was waved around inside the car and AP appeared to be on a cell phone. Shortly after, the rear window steamed up and he could no longer see inside.

WO4 stated SO1 and WO5 managed to shut off the siren on the police vehicle beside the Audi. AP exited his car via the passenger door. WO4 could see AP holding a firearm at his chin. He was holding the firearm with both hands and yelled for police to leave him alone. He then got back inside the Audi. During this time police officers from all directions were calling out to him to drop the weapon.

A short time later, AP exited the car again with the firearm still pointed at his chin. He was pacing alongside the Audi, making comments to the police around him about making Winnipeg history and saying “*I'm going to die today and you're going to do it.*” AP looked to the east and said “*You guys are the closest, you guys are the ones who have to do this,*” and finally, “*Sorry guys, you're the ones,*” at which point he moved the gun from under his chin and pointed it to the east. Several shots rang out, and WO4 heard one to his immediate left where SO1 and WO5 were positioned. Other shots came from the east, but WO4 did not know who shot from there as a WPS vehicle parked immediately behind the Audi obstructed his view. WO4 observed AP fall down, at which point he and WO9 approached. WO4 said he took the “*Uzi*” firearm that was lying underneath AP’s right hand, moved it out of the way, and then began performing CPR on him.

Photo of AP's firearm located and seized at Lipsett



### **WO9:**

WO9 stated that, after driving his vehicle in front of the Audi, he and WO13 moved to a position of cover among police vehicles to the east, where SO2 and SO3 were situated. Both SO2 and SO3 had their carbine rifles deployed. SO1, whose vehicle was parked to the north, was also in the area, standing with SO3.

WO9 stated other police vehicles were arriving on scene at this time, and he was concerned about crossfire issues, along with some officers being too close to the Audi. WO9 was aware that an Uzi submachine gun, believed to be in the possession of AP, was capable of discharging a large number of rounds in a short period of time. WO9 gave commands to officers in the area, getting them to retreat to positions of cover.

Once a perimeter was established, WO9 then looked to ensure the Audi was unable to break containment again, as had happened at Willow and Doncaster. He tasked WO21 and WO22, who were positioned with WO9 to the east of the Audi, with gathering tire deflation devices from the trunks of nearby police vehicles, then running over to the south of AP and laying the devices in a barrier behind the car. WO9 then arranged for a traffic inspection pickup truck, operated by WO23, to be moved immediately behind the Audi to complete containment of AP.

Communication with AP was very difficult due to the active police siren, so WO9 devised a plan to turn it off. He and SO1 went to SO1's vehicle, parked to the north, and drove it behind the Audi. He had SO1 and WO5 attend and turn off the siren.

Once it was off, WO9 started to communicate with AP via a loudhailer. Shortly after, AP got out of the car and stood outside with the firearm pointed at his chin. WO9 could not recall what AP said. Several other officers to his east began to talk to AP. WO9 said he went to the rear of WO23's police vehicle and told them only one officer was to communicate. WO9 tried to get into a position to deploy his conductive energy weapon (CEW) but he could not get close enough for an effective deployment. WO9 estimated AP was out of the Audi for about 45 seconds, and then got back in, remaining there for a short time before getting out again.

WO9 did not see AP exit the second time, stating the reaction of other officers caused him to look up. WO9 observed AP with the gun to his chin. He tried to use the CEW but could not get close enough, at which point he heard multiple gunshots. WO9 did not hear what AP said prior to shooting, did not see anyone discharge their weapons, and could not tell from which direction the shots came. He approached AP, who was lying on the ground, and applied handcuffs, then had WO4 perform CPR. Following the incident, he was told by SO1, SO2 and SO3 they had discharged their weapons, at which point he arranged for them to go to separate locations in the area. He did not have any conversation with SO4 and SO5.

#### **WO12:**

WO12 was involved in the pursuit of the Audi and was one of the first police vehicles on scene in the field south of Lipsett. He moved his police vehicle against the Audi's driver side door to prevent the driver from getting out with the gun. As he came to a stop, WO12 was parallel with AP's vehicle, and he looked over, seeing the driver looking at him. AP had the "Uzi" pointed at his own chin. WO12 exited his car, leaving it running and the siren on, and took a position behind his vehicle, where he remained for about 15 seconds, before relocating further to the south at the behest of TST officers behind him. WO12 remained in

that location for the duration. He remembered an officer trying to communicate with AP via a loudhailer and by voice, but the communication was ineffective. WO12 could only recall some of the commands given by police to AP, such as “*Put the weapon down*”, “*Leave the weapon*”, “*Come out with your hands in the air.*” and “*Everything will be OK.*”

WO12 stated he observed AP exit the Audi twice. The first time, AP exited quickly and pointed a black “*Uzi-type firearm*” at his own chin. He was yelling, but WO12 could not recall what he said. AP remained outside the car for about a minute, then got back inside the car for a very short period of time before getting out again. At that point, WO12 heard him say, “*Are you ready to make Winnipeg history?*” and “*I don’t want to hurt you.*” AP then said, “*I’m sorry you guys*” and began lowering the gun from under his chin and pointed it to the east. WO12 heard multiple gunshots in a very short period of time. WO12 did not see who shot at AP, but believed all the shots fired came from police situated to the east of the Audi.

**WO13:**

WO13 took cover between two police vehicles to the immediate east of AP’s car. He stated there were three other officers in his immediate vicinity: SO4 and two TST officers whose names he could not recall. SO4 had his pistol drawn and pointed at the Audi, while other TST officers were positioned behind the doors of a police vehicle in front of him. He and SO4 had carbines out and pointed at the Audi. WO13 said there was a siren going on a police vehicle nearby, but he could hear an officer giving commands to AP over the noise. These commands were, “*...come out, we’re not going to hurt you*” and “*put down the gun.*” Later, after the siren was turned off, he could still hear an officer giving commands, but in a lower voice, making it hard for him to hear specific words. He was unsure if the commands were being done by loudhailer or by voice, and did not know who was trying to negotiate with AP.

WO13 could not recall how long they were positioned before AP exited from the Audi. AP had a firearm in his right hand and pointed upward, but WO13 could not recall if it was pointed at his chin. He did not remember AP saying anything, but could hear an officer somewhere to the south telling him to “*drop the firearm.*” AP was out of the vehicle for a very short time, estimated at less than a minute, then got back inside the car. WO13 believed AP was not sober and was either on drugs or alcohol based upon his jerky movements.

Approximately five to 10 minutes later, AP exited the Audi a second time. WO13 related that he was holding the gun in his right hand and had the firearm pointed directly at his chin. AP was moving a bit, looking at the officers to his east where WO13 was standing. AP said something like, “*Maybe I should go out in a blaze of glory.*” WO13 responded by saying, “*Is there anything we can say or do to make you put down the gun?*” because he felt the male was not responding to commands from other police officers. AP answered, saying “*Shoot me.*” WO13 repeated his question but AP did not respond.

AP was out of the car for two to three minutes, during which time WO13 heard another officer's voice on the radio that there appeared to be no magazine in the gun held by AP. WO13 explained this meant little to him, as from his experience with firearms, there could have been a round in the chamber of the gun ready to fire.

WO13 recalled AP swearing and then lowered the gun, pointing it in the direction of police officers to the east. A number of shots followed, all at the same time. WO13 did not know how many rounds were fired, but was aware three officers in his vicinity--SO4 and the two unknown TST officers--all fired their weapons. He did not know if other officers fired and did not see any smoke from other guns. Within a minute after the shots were fired, officers moved in to do CPR once it was determined AP did not have access to his firearm.

**WO17:**

WO17 followed the pursuit to the field south of Lipsett where the Audi seemed to be bogged down and was hemmed in by police vehicles. WO17 stopped to the west, got out and took cover to the southwest of the Audi. WO17 reported he heard on the radio that a 911 operator was talking to AP, who claimed to have a loaded Uzi machine gun.

WO17 said TST officers continually tried to contact the driver using a loudhailer. Some of the commands the officer could remember being given included "*Show us your hands*" and "*You will not be harmed.*" WO17 stated there were other things said over the loudhailer, but he could not remember them.

WO17 recalled AP exiting his vehicle twice. The first time, WO17 said AP had a firearm pointed under his chin and called out to the police surrounding him, "*I don't want to hurt you guys. Just back off.*" He then got back inside his car briefly.

Upon getting out the second time, the AP still had a firearm pointed under his chin. He made comments to the surrounding officers:

*"I guess I should just go down in Winnipeg history," and "I'm sorry I have to do this to you guys. Please shoot me in the head and make it quick."*

AP lowered his gun into a pointing position and pivoted to the right, facing officers to the east. Multiple gunshots followed and AP dropped to the ground. WO17 was not able to say how many shots were fired, what type of firearm fired or who fired the shots.

**WO19:**

WO19, partnered with SO5, drove his police vehicle into the field and stopped approximately 1.5 car lengths to the south of the white Audi. WO19 stated that because he was driving the vehicle he had asked SO5 to ready the shotgun for his [WO19's] use, intending to take the weapon from his partner once the car stopped. However, when the police vehicle stopped:

*“At this time the writer was not able to safely take control of the shotgun as doing so would require us to take our attention away from the driver and temporarily lose control of lethal force over watch putting ourselves and all other Officers on scene at risk.”*

WO19 stated he and SO5 moved to the back of their police vehicle in an effort to seek cover, as the driver of the Audi could be seen holding a firearm with a demeanor described as extremely volatile. During this time WO19 stated he and other unidentified officers in the vicinity were attempting to communicate with AP:

*“... we requested he put his weapon down and make his hands visible telling him no harm would come to him if he simply cooperated. Our requests were met with negative results as the male continued to scream and act frantic.”*

A short time later, he and SO5 relocated to cover behind a police car further to the east of the Audi, at the request of WO9. WO19 took a prone position beside SO5, who was still holding the shotgun. WO19 stated he did not believe it was safe for him to assume control of the shotgun held by SO5 at that time, and he chose to talk with his partner about the type of ammunition contained in the shotgun, along with its effective range. According to WO19, SO5 decided upon the use of a slug round for the shotgun *“..., as it would be better suited to travel through material like a car door as opposed to double ought buck rounds.”*

WO19 indicated he observed AP rolling the front passenger car window up and down, yelling and tapping the end of the firearm he was holding against the car window. AP exited the Audi with the firearm pointed under his chin and began to pace back and forth. WO19 overheard AP make comments like *“I’m not going to kill myself. I am going to make you do it for me.”* AP then looked to where WO19 and SO5 were positioned, and said, *“Well, you guys are the closest, I guess it will be you.”* From where he was lying on the ground, WO19 observed AP lower the firearm from below his chin, then heard a series of gunshots. AP fell to the ground and was subsequently approached by TST officers and handcuffed.

WO19 indicated SO5 informed him he had discharged the shotgun. He escorted SO5 to the rear of a nearby police vehicle where he took custody of the shotgun and emptied a live round from the chamber of the weapon, then put it into the trunk of the police vehicle. WO19 indicated he remained with SO5 until WPS Major Crime Officers arrived and took custody of SO5 and his firearm.

#### **WO24:**

WO24 stated he and his partner, WO25, entered the Lipsett field from the south on Kenaston, climbing over the curb and driving to a position well east of the Audi. They got out and approached on foot, with WO24 taking cover. From his position, WO24 could see two TST officers positioned behind doors of a police vehicle parked between him and the Audi. He could not remember their names, but did recall both had carbines out and pointed at the Audi.

WO24 could hear a siren going off from a police vehicle near AP's car. Over the siren he could hear someone on a loudhailer talking to AP, telling him to drop the gun and giving commands to get out of the car and surrender. WO24 could not see inside the Audi as the vehicle had dark tinted windows.

WO24 observed AP exit the car twice, both times from the front passenger's side door. The first time he was holding a black firearm in his right hand and pointing it at his chin. AP told officers to go away and got back inside the vehicle. At some point after this, WO24 believed the siren on the police car was shut off.

A short time later AP got out a second time, again with the gun pointed at his chin. He remained near the car door and moved around in a confined area. WO24 heard him say "*You're going to have to kill me.*" WO24 did not believe this was said in response to anything said by police. An officer was still on the loudhailer trying to negotiate with AP at that time, telling him to "*drop the gun.*" WO24 recalled AP looking to two TST officers positioned in front of him and saying, "*I guess it's going to be you guys.*" He lowered the firearm from his chin in a deliberate motion, as if he was going to point the gun at the officers, then was shot. WO24 said both TST officers in front of him discharged their weapons. He did not know who else fired. AP fell to the ground and within seconds was attended to by TST officers who started performing CPR.

#### **WO26:**

WO26 was the only WPS dog handler involved in the incident. He stopped his police vehicle to the west of the group of cruiser cars arrayed around AP. He exited with his police dog and took cover with WO4 and WO5 behind the Audi. WO26 heard commands being given to AP, such as "*Drop the gun*" and "*Hands up*" by WO4. As the standoff went on, WO26 stated the commands changed:

*"... it did turn into a conversation and at certain points there was, they were conversing back and forth trying to initiate negotiations with this male to surrender and come out peacefully with his hands up, without a weapon and no one getting hurt ...."*

WO26 said there was a constant effort throughout the incident to communicate with AP inside the car and have him surrender. He could not recall if these efforts were made with the use of loudhailer or if officers yelled towards the Audi.

WO26 stated AP exited the car once, holding the firearm under his chin, and said he was going to shoot himself and that he was not going to harm police officers surrounding him. AP then turned to a group of officers to his east and started to apologize, then lowered his firearm from his chin and pointed it toward them, at which point he was shot. WO26 stated he heard a number of shots but did not see who discharged their weapons.

WO26 explained the situation encountered that day was not appropriate for a police dog deployment:

*"At no point with this male armed in somewhat of a stand-off did it go through my mind that I'm going to send my dog in, to engage this male. Being that he had a firearm, that he was armed with a firearm, that he was pointing at officers in the previous incidents, uh being the fact that he was suicidal and irrational and you never really knew what his next move was going to be, the last thing I would want to do ... is send my dog in to engage that male armed with a firearm in his state of mind. Um, common sense says it would distract the male, but is that male going to inadvertently drop that firearm in the direction of officers unintentionally because he's now focused on a dog that's coming in and attempting to engage him? Is he going to lower that firearm and shoot my dog and fire off a shot because I decided to take things into my own hands and attempt to engage him? So it's kind ah, a lot of jeopardy would be, would accompany me sending my police service dog in at that point on this male, so it wasn't an option. It didn't cross through my mind that that was going to be what we were going to do in attempts to help this situation. It wouldn't have helped the situation at that point, it would have hindered it and caused a lot of confusion and maybe some inadvertent actions and ultimately I'm not willing at this point to send my dog on a suicide mission for no results or negative results ...."*

**Civilian Witnesses:**

**CW31:**

CW31 was working at the front gate of Kapyong Barracks (Kapyong) and observed a white car driving west on Grant in front of his location when it was cut off by a WPS vehicle. Another WPS police car drove into the back of the white car, causing it to drive into the field to the north of his position. Both police vehicles had emergency equipment activated at the time. The white car drove northeast and was surrounded by other police vehicles. CW31 lost sight of the white car at that time, but heard police on a "megaphone" asking the occupant to get out of the vehicle. Specifically, he recalled hearing "*Driver, step out of your vehicle*" and thought there were other instructions as well, but he could not remember those. He believed the instructions went on for 15 to 20 minutes before he heard six or seven shots being fired. In his estimation, the shots were from the officers' service pistols and there was perhaps a shotgun blast. CW31 did not see the shooting as police vehicles, which were parked in his line of sight, obstructed his view. Investigators determined CW31's location was 118 metres south of the shooting incident.

**CW32:**

CW32 was working in an office building to the east of Lipsett and was looking out his west-facing third floor window when he observed a white car driving west in the field. A police vehicle beside it forced the white car to turn north, where it was surrounded by other police vehicles. The white car was boxed in and stopped facing north towards Lipsett with the passenger side facing his office window. CW32, who keeps binoculars in his office, took

them out to get a view of the incident unfolding in the field. He noted the weather was cloudy, but it did not obstruct his view.

CW32 stated police officers exited and were taking cover behind car doors and their vehicles. He could see a police dog on a chain behind the white car, as well as other officers. The attending police, including at least one officer with a carbine, had firearms drawn and pointed at the white car. No police officers approached the white car. CW32 then gave the binoculars to his daughter who was there with him, and he returned to work.

After 20 minutes, his daughter stated someone got out of the white car. CW32 returned to the window, took the binoculars and observed a male standing outside the passenger side of the white car. The male was wearing dark clothes and fluorescent green running shoes. The passenger door of the car was open, the male had one arm raised, and CW32 believed he was surrendering. He then noted the male's other hand held a dark object. He increased magnification on the binoculars and said the dark object appeared to be a pistol, and it was pointed upward at the male's chin. The male appeared to have his finger on the trigger. He saw the male get slowly back into the car via the open passenger door and shut the door. Approximately one minute later, the male exited the car, shut the passenger door behind him, held up one arm and had the gun under his chin again. The male seemed very agitated, angry and was pacing beside the passenger side of the white car, then stopped and faced two officers to the east who were taking cover behind an open passenger door on a marked police vehicle. The firearm in the male's right hand was pointed under his chin, then it dropped quickly and, in a fluid motion, he pointed it at the two officers. CW32, who could not hear voices from the scene through his office window, did hear three loud bangs and observed the male drop to the ground. CW32 was unable to tell which officers discharged their weapons, stating he was focussed on the actions of the male subject outside the white car.

### **CW33:**

CW33 was at work on the third floor of an office building to the east of the field. She stated that she had just finished her lunch and her attention was drawn to the sounds of sirens coming from outside on Kenaston. She looked out the window and saw police vehicles pursuing a white car into the field opposite her office block. The back of the white car was closest to Grant and the front of the car was facing the direction of Kenaston. The white car was moving at a steady speed in the field, followed by police vehicles.

CW33 said police officers exited their vehicles with their guns drawn and were behind their car doors. Their hands were pointed toward the white car. She could not see what the police officers were holding. There was a standoff for around 20 to 25 minutes. CW33 said the passenger side of the white car was visible to her. CW33 did not see anyone get out of the white car.

CW33 said she felt anxious and walked away for a few minutes. When she returned to her office and back to the window, she saw a man standing by the passenger side of the white

car, surrounded by police and he was pacing from side to side. She said the man looked scared and nervous. His hands were by his side and she did not see the man holding anything in his hands. CW33 said she felt anxious and she closed her eyes. She then heard the sounds of what she described as gunshots--five to six popping sounds. She opened her eyes and saw CPR being conducted on the man.

**CW34:**

CW34 worked on the second floor of an office building to the east of Lipsett. She stated that co-worker drew her attention to police cars on Kenaston. She was unsure of the time but it was before she ate her lunch. She usually eats at her desk, anywhere between noon and two o'clock. She did remember that the incident was all finished by 2:00 p.m.

She saw a white Audi come south on Kenaston, jump the west curb and cross a field to the west of her office. The vehicle drove south on the field and back onto the pavement on Grant, then drove west. The Audi slowed down and then turned right, jumped the north curb on Grant and went back into the field. The police vehicles chased it into the field, where they surrounded the Audi and brought it to a stop by boxing it in. She could not see the driver, saw nothing sticking out of the windows, and it appeared to her that the windows were dark. The Audi stopped facing northeast.

She did not see anyone get out of the Audi at that time, although the view was partially obstructed by the trees between her and the scene. Many police officers got out of their vehicles and seemed, by their body positions, to be on full alert. They got behind their vehicles and put on bulletproof vests or other safety clothing. They made their way carefully, keeping an eye on the Audi. All the police were facing the Audi and in CW34's opinion, they seemed getting ready for something. She could not see weapons in any police officers' hands due to the distance from her viewpoint, but she said their stances indicated that they were probably holding guns. She could not hear anything from the scene due to distance and the fact that the windows in her office were sealed.

At one point, about half an hour after she first saw the chase, she had turned aside to talk to co-workers and when she looked back she noticed a civilian male had exited the Audi and was on the passenger side of the vehicle. He was pacing back and forth beside the car and gesturing with his arms. Then he suddenly stopped and made a quick movement, described as "... *the arms went up.*" It was too far to see whether he had anything in his hands. The man was just a dark figure, but she could see his limbs and body. She describes the "*quick movement*" as the man lifting his arms higher than his waist, "*I don't know if he got to the shoulder height.*"

When the man made this quick movement, she heard gunshots, more than one but she could not estimate how many in total, all within a very short time of each other, and the man dropped to the ground. Some police officers then approached the man and started CPR. She

could see by the movement of an officer's arms that he was doing chest compressions on the man.

Two ambulances were parked at Lipsett. A gurney was brought over to the scene and the man was loaded onto the gurney and wheeled back to the ambulance. After a while, the ambulance drove away, at a normal speed, without lights or sirens.

**CW35:**

CW35 witnessed the shooting incident from a restaurant situated directly to the east of the field and initially saw a white car surrounded by police vehicles. An ambulance arrived a short time later. CW35 saw police officers exit out of their cars and they appeared to be positioning themselves. After approximately 15 to 20 minutes, a male got out of the passenger side of the white car. He appeared submissive and raised his hands for less than one minute. The male appeared to be showing his hands then got back into the car and remained there for approximately 10 to 15 minutes.

CW35 stated the male got out of the car again, but did not appear submissive this time. His hands were down by his side, at which time CW35 was unable to see if he was holding anything. The male seemed agitated, unstable, volatile and erratic. After approximately two minutes the male lifted his right arm outstretched at 90 degrees. CW35 then noticed something in the male's hand, described as dark or black, approximately two or three hand lengths in length, and it extended from his right arm. CW35 could not see that the object was a firearm but it was something that appeared substantial in length and he assumed it was a firearm. The male then fell to the ground. He believed police had shot the male, but he was unable to hear any gunshots inside the restaurant. Police officers went to the male and appeared to be engaged in CPR. Paramedics came to the male and took him away by stretcher.

**CW36:**

CW36 was at the same restaurant at approximately 12:15 p.m. He was paying particular attention to time as he had a work commitment later in the afternoon. He was frequently checking his watch prior to the shooting incident and remembered their food arrived at 12:38 p.m. At that time, the incident had not yet started. CW36 was seated in a booth on the west side of the restaurant adjacent to Kenaston and he had a clear view out the window beside him.

At approximately 12:45 p.m., CW36 looked out to see police vehicles with their emergency lights on driving south on Kenaston and west on Grant. He was unable to hear sirens inside the restaurant due to crowd noise. He also saw a white car surrounded by roughly six police vehicles in a field to the west that he knew as Kapyong Barracks. Additional police vehicles converged upon the white car, which had visible damage to the back passenger wheel. As

the police cars arrived, CW36 observed officers exiting and moving behind the vehicles, with their focus on the white car.

Between 12:50 and 1:00 p.m., CW36 noticed two or three heads, believed to be police officers, moving from police vehicles parked behind the white car towards the driver's side of the white car. The heads disappeared briefly then reappeared, moving back to the police vehicles to the rear.

At roughly 1:00 p.m., CW36 saw a man dressed in black exit the passenger side of the vehicle. He was outside for less than 30 seconds, during which time he put his hands in the air and, “*... kind of moved them around to show he had nothing going on and had nothing in his hands.*” CW36 could not see if the male was holding anything at this time.

Two to five minutes later, the male exited a second time from the passenger side of the white car. He began pacing back and forth alongside the car “*... like a trapped animal.*” CW36 believed the male was nervous and erratic. The male got back inside the vehicle, but remained there only one or two minutes before getting out a third time. The man stood in one place then CW36 saw his right arm move upwards and the man fell to the ground. At roughly the same time, CW36 saw smoke come from the right, where a number of police officers were positioned. He could not see if the male was holding anything at the time.

#### **CW37:**

CW37 was in her office on the third floor of an office building situated east of Lipsett. Hearing sirens, she looked out an office window that faced west and observed a white car in a field across Kenaston. The white car was facing east with several police cars surrounding it and more converging upon the location.

Police officers exited their vehicles and were seen to gather nearby in a group. CW37 did not believe the officers were taking positions of cover. She observed some officers run to a black police truck and drive around the scene to another location. One or two officers got behind some sort of shield and went to the driver's side of the white car, then returned to a location further away. A short time later, she observed a male individual exit the passenger side of the white car and pace around the door of the car in a nervous manner. His clothing was dark and he was waving his hands in the air, perhaps gesturing, but she was unable to say with certainty due to the distance of the car from her office. CW37 could not see his face, nor could she tell if he was holding a weapon. She estimated he was out of the white vehicle for two minutes before getting back inside the car.

A few minutes later, the male got out again. He was moving nervously next to the passenger door and remained outside the car for a longer period than the first time. The male was pacing around and was making movements with his arms. She felt the individual was trying to communicate, based upon his hand gestures. She could not tell if the person was holding anything.

CW37 estimated the male had been out of the car for at least 10 minutes when she heard three or four gunshots and the subject went down. She did not see any change in behaviour from the male and did not know what precipitated the shots. CW37 was unable to say from where the shots came. There was a delay of a minute or more until police officers approached the downed subject, and she assumed it was because the male may have been armed and dangerous. One officer administered CPR and continued to do so while the male was taken to the ambulance.

Based upon the totality of all police officer and civilian interviews conducted during this investigation, I am satisfied that AP exited the Audi twice from the front passenger door. During the first time out of the vehicle, AP paced alongside his vehicle as he held his firearm under his chin. During the second time, he paced and held the firearm in a similar fashion. He then stopped and lowered the firearm towards police officers sheltered behind vehicles to the east, at which point he was shot multiple times.

#### **911 Recording from AP's cell phone:**

As previously indicated, at 12:41 p.m. during the early stages of the pursuit, AP placed a 911 call from his cell phone. AP remained on the line with the police operator until approximately 1:06 p.m., when he threw his phone out the car window while surrounded by police vehicles in the field at Lipsett. However, the connection was not severed and the phone line remained open, resulting in a continuous recording of the words of the 911 operator, various police officers at the scene and AP until the time of the shooting at 1:13 p.m.

The audio of this cell phone recording was enhanced at a production and professional sound facility in Winnipeg. What is clear is that in the moments leading up to the shooting, AP is recorded, saying (among other comments) to police:

- *Stop. Stop. Stop. Away. Everyone away. Stop it. Stop it. I'm going to kill myself. I'm not going to harm you guys. Stop it.*
- *I'm not going to hurt you.*
- *I'll blow my head off.*
- *Can I go out in Winnipeg history or what?*
- *I'm gonna make you guys do it for me, okay? I'm sorry guys,*
- *I'm sorry guys, okay.*

Over the course of the 32-minute recording, AP was asked by the 911 operator and surrounding police, at least 10 times to stop his vehicle and at least 33 times to drop his weapon and surrender.

#### **Post Shooting:**

Following the shots fired, WO9, SO1, WO4 and SO2 approached AP, who was lying on the ground beside the passenger side of the Audi. WO9 rolled AP over and handcuffed him, at

which point WO4 started performing chest compressions on AP. One minute after the shooting, an Emergency Medical Services unit was instructed to attend to AP's location to commence emergency medical treatment. Emergency medical care for AP continued in the parked ambulance until 1:30 p.m., when it departed for the Health Sciences Centre, arriving at 1:41 p.m. AP was subsequently pronounced deceased at 1:47 p.m.

WO9 and WO13, as the ranking supervisors at the shooting scene, had officers at the incident self-identify their involvement. The five officers who had discharged their weapons, SO1 through SO5, were segregated and taken to the Winnipeg Public Safety Building (PSB) in separate vehicles, where their duty uniforms and weapons were seized and photographed.

Witness officers gathered in a central location at the scene. They were addressed en masse by WO9, who instructed them not to discuss the incident. They were transported together to the PSB where they met with IIU investigators later in the evening.

#### **Forensics, Pathology and Toxicology:**

The forensic examination of the scene, together with the examinations conducted by the forensic firearms specialist, demonstrated the following:

#### **Firearm Examination:**

Results of the forensic firearm examination for the five subject officers are as follows:

Subject Officer	Physical Evidence	# of Rounds Discharged as per Statement
SO1	3 empty casings recovered from location where SO1 was positioned	3 carbine rounds
SO2	4 empty casings located where SO2 was positioned	1 carbine round
SO3	1 empty casing located where SO3 was positioned	1-2 carbine rounds
SO4	5 empty casings located where SO4 was positioned	4-5 pistol rounds
SO5	2 expended shotgun casings located at scene, where SO5 was standing	2 shotgun rounds

The firearm in the possession of AP during the incident was examined. According to the examiner with RCMP Firearms Section in Ottawa, who conducted an examination of the weapon brandished by AP on the date of the shooting:

- AP's weapon is an air gun that shoots 4.5 mm BB's, loaded by a detachable box magazine inserted into the handle;

- It meets the definition of a firearm in Section 2 of the Criminal Code - *a barrelled weapon from which any shot, bullet or other projectile can be discharged and that is capable of causing serious bodily injury or death to a person, and includes any frame or receiver of such a barrelled weapon and anything that can be adapted for use as a firearm;*
- There was no indication that there had been any modifications to the firearm.
- There are no restrictions on purchasing this firearm;
- Among its features are a round metal barrel, an aluminum and steel black frame, and folding metal buttstock;
- Overall length with the stock folded is 356 mm;
- There was no magazine inserted in the handle and it was technically inoperative – which means it had no ammunition to discharge;
- The firearm required a CO2 cartridge to fire;
- It resembles the Uzi model “mini” submachine gun (and is marketed and advertised as such)

Photo of AP's firearm seized at Lipsett



By comparison, an operational Uzi “mini” submachine gun is described as:

- Fully automatic submachine gun manufactured by Israel Weapon Industries;
- It is designated as a prohibited firearm under section 84(1) of the Criminal Code - *an automatic firearm, whether or not it has been altered to discharge only one projectile with one pressure of the trigger;*
- Ammunition is loaded via a detachable box magazine, inserted into the handle, holding between 25 – 32 9mm shells;

- Among its features are a round metal barrel, an aluminum and steel black frame, and folding metal buttstock;
- Overall length with the stock folded is 360 mm

Photo of an operational Uzi submachine gun:



This expert stated that, in her opinion, AP's weapon "*looks just like an Uzi.*" On review of all the information, I am satisfied this is a reasonable and appropriate conclusion as there is a striking resemblance between the two types of firearms.

#### **Pathologist and Toxicology Reports:**

An autopsy was performed on AP November 9, 2015. It was determined AP had been struck by nine gunshots (six carbine rounds, two pistol rounds and one shotgun slug round) and grazed three times by shotgun pellets, with the pathologist concluding that AP's immediate cause of death was from "*Multiple gunshot wounds.*"

During the autopsy, vitreous, urine and blood samples were taken from AP and submitted to RCMP National Forensic Laboratory Services in Edmonton, Alberta for toxicology analysis.

That analysis was completed on April 27, 2016 and reported the following:

*"The blood was found to contain 75 milligrams of ethyl alcohol in 100 millilitres of blood (75 mg%). The blood was also found to contain the drugs cocaine, diazepam and THC as well as metabolite of these drugs."*

*"The urine was found to contain 146 milligrams of ethyl alcohol in 100 millilitres of urine (146 mg%). The urine was also found to contain the drugs cocaine and diazepam as well as metabolites of these drugs and metabolites of THC."*

*"The vitreous was found to contain 97 milligrams of ethyl alcohol in 100 millilitres of vitreous (97 mg%)."*

*“The blood concentrations of cocaine, cocaethylene, methylecgonine and benzoylecgonine [the last three substances are metabolites of cocaine] determined in this case suggest a pattern of repeated, high dose use (i.e. binge use) of cocaine.”*

*“Binge use [of cocaine] may result in a state of toxicity manifested as paranoia, aggression, hallucinations and delusions.”*

*“THC may be detected in the blood of chronic cannabis users (i.e. those who use cannabis daily for an extended period of time) for several days following abstinence.”*

*“When cocaine, alcohol, diazepam, and cannabis are used together, an increased state of intoxication is expected relative to their use alone.”*

### **Issues, Law and Assessment:**

This investigation must consider two issues:

Was the pursuit and stop of the vehicle driven by AP justified at law and conducted appropriately?

Were the actions of police to fire upon and cause the death of AP justified at law?

### **Was the pursuit and stop of the vehicle driven by AP justified at law and conducted appropriately?**

Police pursuits of actual or suspected violators of the law are authorized pursuant to provincial traffic laws. Section 106 of *The Highway Traffic Act* details the privilege to peace officers in pursuit of an offender, including the authority to disregard traffic rules, the requirements for compliance, and the limitations to this authority. The overriding requirement is that the driver must proceed with due regard for the safety of other persons using the road, having regard to all the circumstances of the case.

Whenever a pursuit is necessary, a police officer must constantly analyze the circumstances of the driving, and weigh any risks to other persons against the need to apprehend those who are committing offences. The safest option would be for the police to never chase offenders. However, if they did that, offenders would know that all they had to do is speed off and they would be able to escape the law. On the other hand, if an officer is on a busy street with a great deal of traffic attempting to apprehend someone for a minor infraction, a pursuit may not be appropriate. It is a very fine balance between the need to enforce laws and apprehend offenders on the one hand, with public safety and police safety on the other hand. Further, the significant personal, psychological and economic impact that may arise from a pursuit gone wrong must also be considered.

This analysis must consider what is reasonable for a police officer acting reasonably in the same circumstances, balancing the need to apprehend offenders with the duty to drive with

due regard to the safety of other persons. In this case, AP's actions while operating his Audi in a dangerous and unsafe manner (high speeds, wrong lanes of travel, passing on shoulders, multiple collisions) posed a significant risk to the lives and safety of the public. There was reliable and credible evidence to conclude that AP possessed, brandished, and pointed what appeared an Uzi submachine gun at police, motorists and other members of the public. This firearm bore a striking resemblance to an Uzi mini submachine gun and, in the circumstances, it was reasonable for everyone who saw it to conclude that it was real and operational. In my view, the fear of facing an operational Uzi submachine gun and the consequent reactions by various witnesses was genuine.

Moreover, a 911 call made by CW2 at approximately 12:29 p.m., alerting WPS that AP was in a car, that he may have a gun, that he was depressed and possibly suicidal, supported the notion that AP posed a significant public risk. Finally, the 911 call made by AP at 12:41 p.m. provided further evidence of his precarious mental state and the danger he posed.

These grounds and behaviours described, called for WPS to take all necessary steps to stop the Audi. WPS officers were justified to pursue this vehicle. No person in authority issued an order to terminate the pursuit. All WPS officers were continually assessing their situation. AP did not stop the Audi in response to the police presence and emergency lights and sirens but rather was intent on doing everything possible to avoid apprehension and detention. In these circumstances, police officers must be permitted an opportunity to determine whether the vehicle will stop in response to their emergency equipment. If the vehicle will not voluntarily stop, the next stage is to take all reasonable and safe steps to apprehend the operator. Police officers are sworn to apprehend persons who violate the law.

Therefore, the police were justified in their attempts to stop AP.

The form of stop itself was a high-risk takedown, including the use of the spike stick, effective blocking in and slowing down the pursued Audi and forcing it into the field to bring it to a stop. Given the risks to life and public safety, evident in this situation, the available options were limited and were performed as safely as possible under these difficult circumstances. In my opinion, the police acted appropriately in the methods chosen to bring AP's Audi to a stop.

#### **Were the actions of police to fire upon and cause the death of AP justified at law?**

Police were required to be prepared and ready for all possibilities when they stopped AP's Audi. This included the real possibility that he was armed with a firearm. Therefore, he would pose a significant risk to public and police safety. It made sense for the officers to arm themselves as they exited their vehicles. It was also appropriate that officers trained specifically for high-risk situations, TST, were used in this case.

**Applicable Law:**

Sections 25 (1), (3), (4) and Section 26 are 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.

(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.

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; and
- (c) the act committed is reasonable in the circumstances.

Effectively, the question is whether the decisions of the subject officers in this case to fire at AP were reasonable and justified in the circumstances.

Reasonableness of an officer's use of force must be assessed in regards to the circumstances, as they existed at the time the force was used, particularly when it is considered in light of the dangerous and demanding work engaged and the expectation to react quickly to emergencies. Actions must be assessed in light of these exigencies. Where the force used is intended or likely to cause death or grievous bodily harm, there must be a reasonable belief by the subject officer that this force is necessary for the self-preservation of him or herself 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).

The standoff in the field following the traffic stop lasted 23 minutes. All subject officers, witness officers and civilians gave statements that AP exited the Audi (with the majority stating that it occurred on two occasions) with a gun pointed at or under his own chin. Reviewing his 911 call, AP was intent on ending his own life. He was non-compliant with all attempts and pleas by police and the 911 operator to surrender and relinquish his weapon. The police officers were in a potentially volatile situation. When AP pointed his firearm in that state, it was reasonable to believe that AP had the means to fire at police and kill them. When faced with such a scenario, it would be unreasonable for police to wait before acting. Any delay could have led to the death of WPS officers.

Therefore, if the statements of all the witnesses and the subject officers are accepted, it was reasonable, in these circumstances, for the subject officers to fire at AP to prevent the death of any of them.

Therefore, the next stage is whether the evidence from the police officers and witnesses is credible. When determining issues of credibility, one must look to the evidence itself, and consider whether it is internally consistent, consider whether it is consistent with evidence given by others, consider whether it "makes sense" on common sense principles, and consider whether it is consistent with the available objective evidence. In this case, and in the circumstances that existed, all of the evidence made sense and was consistent with statements given by each other and by other witnesses. Minor variations in the recollections of witnesses are not unusual or unexpected. When considered as a whole, I am satisfied that this finding of consistency is appropriate.

More importantly, the witness evidence is very consistent with the available objective evidence:

- Shell casings matching or consistent with the location of shots fired by police were located at the scene;
- The number of shell casings closely matches the number of shots known to have been fired based on the examination of the firearms;
- AP brandished a firearm that looks like an Uzi mini submachine gun;
- AP's cell phone was live during his call to 911 and all conversations and communications involving him, WPS officers and the 911 operator were recorded up to the time of the shooting. The conversations and comments recorded are consistent with the evidence of the various witnesses. The recording is significant and real evidence of what transpired immediately before the shooting.

This objective evidence materially corroborates the evidence of all the witnesses.

It is clear that AP was intent on taking his own life. His action of pointing his firearm at officers is consistent with a person who wishes to instigate a police shooting to accomplish that purpose. This is an unfortunate yet all too familiar situation seen across Canada and the United States.

This matter is a tragedy: a young life was lost, a family is left to grieve, and involved officers will inevitably relive the event. AP's actions left the police with few options and fewer choices. No police officer ever wishes to take the life of anyone.

In this investigation, the IIU mandate was to determine whether consequences should flow from the actions of the subject officers, in consideration of all the circumstances and information known to them at the time. The chief medical examiner for Manitoba has called for an inquest with respect to this death pursuant to section 19(3)(b) of *The Fatality Inquiries Act*. Other issues from this incident will be considered in those proceedings.

Therefore, following a thorough review of these facts and circumstances and giving due consideration to the law and the provisions of subsections 25(3), 25(4) and 34(1) of the *Criminal Code*, in my view the actions of the subject officers were justified and unavoidable. There will be no charges recommended against any subject officer and the IIU file is now closed.

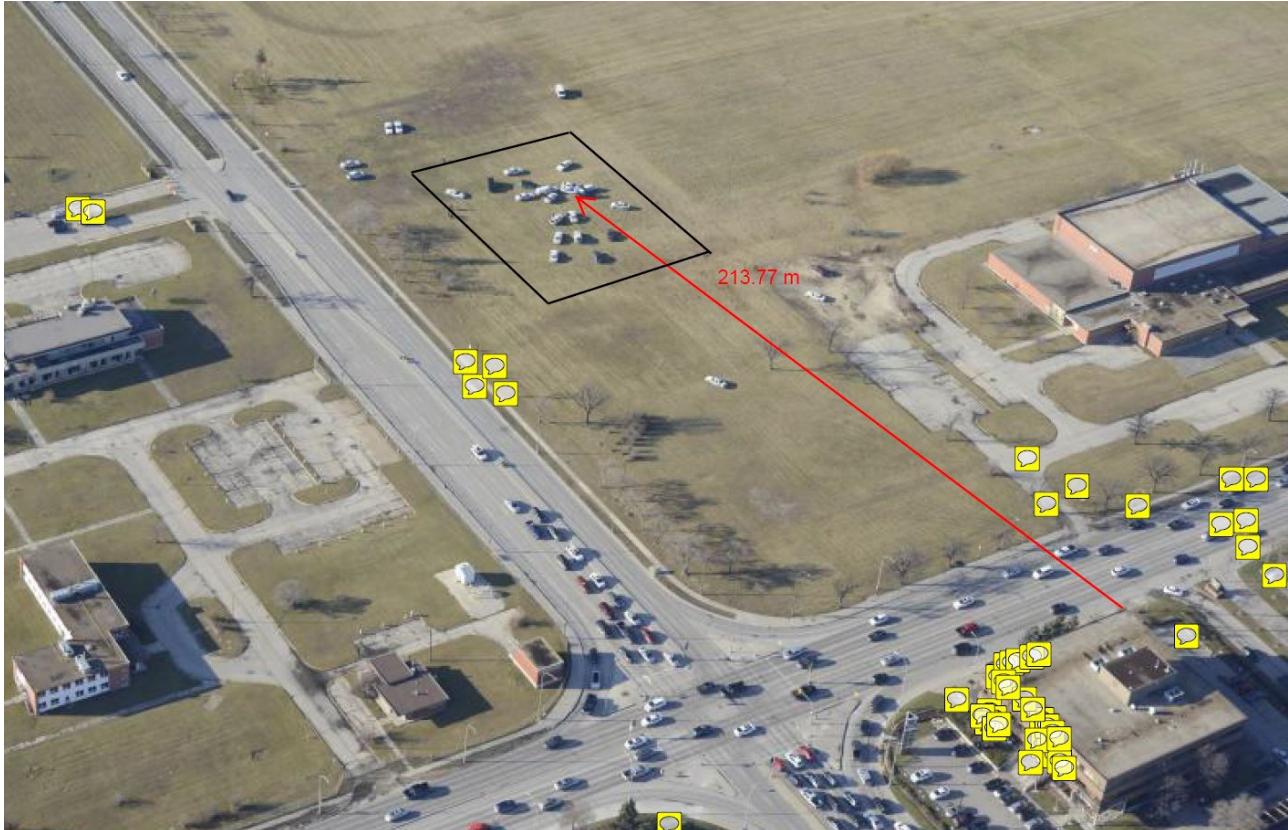
**Final report prepared by:**

Zane Tessler, civilian director  
Independent Investigation Unit  
February 03, 2017

Ref-2015-016

## Appendix 1

Aerial view of Grant & Kenaston:



- marks approximate location of witnesses to shooting
- Black box represents the area of the stand-off
- Arrow represents distance from office building east of Lipsett

## Appendix 2

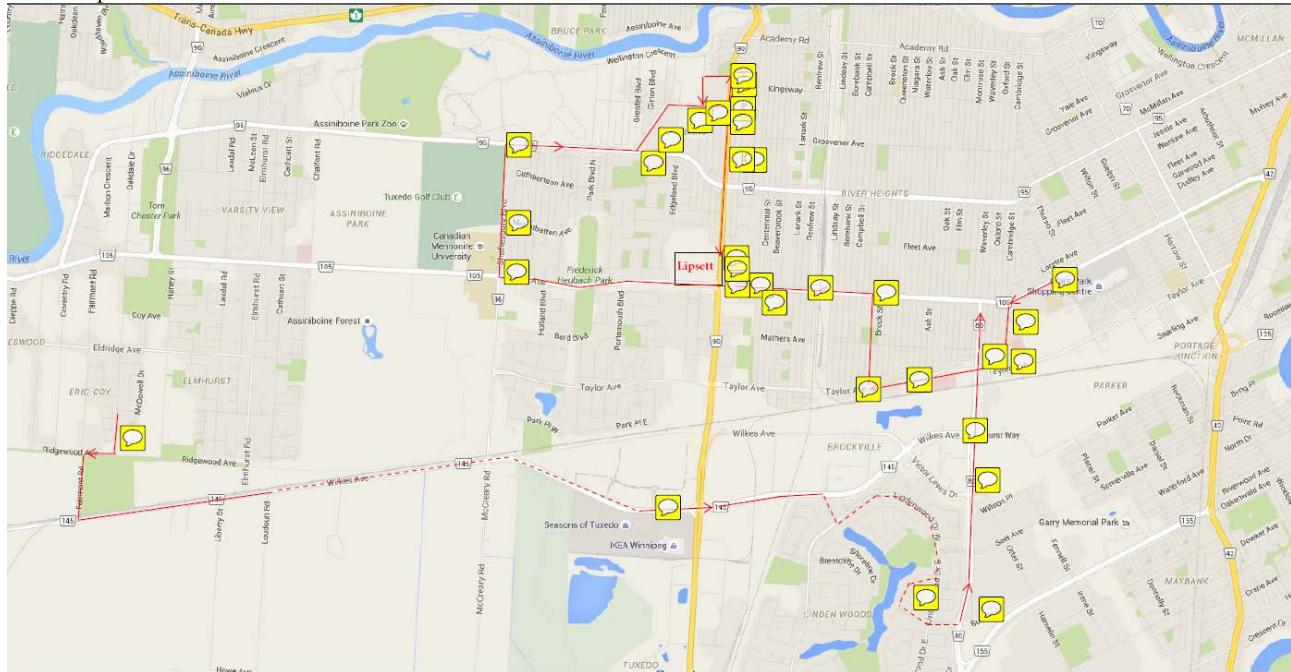
Close up of stand-off at Lipsett Hall Field:



- represent witness officer locations
- represent subject officer locations
- represents location of AP

### Appendix 3

Pursuit Map:



- Arrows represent the direction of travel of the Audi from initial contact to the stop and stand-off at Lipsett
- marks location of witnesses or sightings of the Audi along the pursuit route
- Dotted lines represent presumed route of travel due to loss of sight of Audi