

## ***FINAL REPORT: IIU concludes investigation into fatal police shooting involving members of Winnipeg Police Service, September 20, 2015***

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On September 20, 2015, at 11:20 p.m., the Independent Investigation Unit (IIU) was formally notified by the Winnipeg Police Service (WPS) of an officer involved shooting that had occurred north of Winnipeg on Provincial Trunk Highway 59 near the intersection with Kirkness Road. Members of the WPS had been attempting to pull over a white panel van driven by a 44-year-old male, the Affected Person (AP). Several 911 calls had been received indicating that AP may be suicidal, was travelling with a gun, and was possibly on his way to kill another individual. When the van was finally stopped at approximately 10:25 p.m., AP exited the van with a gun. Three WPS officers fired at AP, causing his death.

As a result of the death, the IIU assumed responsibility for the investigation into AP's death, in accordance with section 65(1) of *The Police Services Act* (PSA). In this case the Civilian Director of the IIU determined that he was in conflict on the matter. Therefore, Ronald J. MacDonald, QC, Director of the Nova Scotia Serious Incident Response Team, agreed to assist and assume the responsibilities of the Civilian Director in this case.

The three WPS officers who fired at AP were designated as Subject Officers (SO1, SO2, SO3). Nine other officers present or near the scene at the time of the shooting were designated as Witness Officers (WO1 to WO9).

The RCMP, working with IIU investigators, provided forensic scene examination services. In addition, forensic firearms specialists from the Forensic Science and Identification Services Laboratory in Ottawa travelled to Winnipeg to examine AP's van and then conducted other firearms related examinations.

The investigation was completed on November 18, 2016 and received by the Acting Civilian Director on November 24, 2016. The investigation had been substantially completed several months earlier but awaited the findings of the forensic firearms specialists. That report was received in early October, 2016.

The work of the IIU investigators included the following:

- Attended and examined the scene of the shooting;
- Reviewed the findings of AP's autopsy, including photographs;
- Reviewed the video, 3D video, and photographs from the forensic examination of the scene;

- Examined and obtained photographs of the firearms used by the Subject Officers;
- Reviewed and transcribed 911 calls from family members regarding AP;
- Reviewed police radio transmissions;
- Reviewed file materials from WPS and the RCMP;
- Obtained statements from the nine designated witness officers and two other RCMP officers;
- Obtained statements from 12 civilian witnesses;
- Assisted in the forensic examination of the van;
- Reviewed the report and findings from the forensic firearms specialist;
- Canvassed the area for witnesses;
- Mapped out the path of the police pursuit;
- Regularly consulted with the Acting Civilian Director;
- Prepared investigative report.

Under the provisions of the PSA, a Subject Officer is not required to provide a statement or notes regarding an incident. In this case the three Subject Officers agreed to provide their written reports, and were also interviewed by IIU investigators.

**Facts:**

The investigation demonstrated the following:

At 7:47 p.m. on September 20, 2015, AP's sister called 911 and reported that AP had been depressed and could not be found. Family members were worried he might be considering taking his own life.

Approximately two hours later, at 9:53 p.m., AP's daughter contacted police and indicated that AP had thrown a bag with money and letters in it into his brother's yard in Winnipeg. The contents of the letters led the family to believe AP was planning on taking his life. His white work van was described for police. The daughter was hoping police could find him before he could act on his statements. At almost the same time, AP's sister again called police and provided similar information as his daughter.

AP's brother contacted police about a minute later and described the letters and money that AP had thrown into his yard. He reported that the letters said that AP was planning on killing himself.

At 10:17 p.m., AP's brother called police a second time. He had been speaking to AP's girlfriend, who broke up with AP only days earlier. She indicated to the brother that when she last saw AP he told her he had recently bought a gun and a mask and was planning on killing a young male in Selkirk. A relative had made allegations of a criminal nature against that male.

The brother also noted that AP had recently told him that AP knew where this male lived. In addition, another relative had recently died which was very upsetting to AP.

The brother's call was followed by a call from AP's sister, who provided similar information.

At 10:25 p.m., WO2 and WO3 located AP's white van on Concordia Avenue near Rutledge Crescent in Winnipeg. It was followed and eventually turned northbound on Lagimodiere Boulevard. Police Dispatch had informed police that AP may be armed with a gun and about his plan regarding the Selkirk male. A marked police vehicle driven by WO4 with WO5 as passenger, and another marked vehicle driven by WO6 with WO7 as passenger, had both gone to this location and attempted to stop the white van. When the van failed to stop, the general patrol officers followed it north on PTH 59 outside of Winnipeg city limits into South St. Clements. As this is RCMP jurisdiction, their assistance was sought. All WPS police vehicles continued to follow AP with their emergency equipment activated. The pursuit continued northerly on PTH 59, toward Selkirk, at speeds between 85 and 100 km/h.

Four members of the WPS Tactical Support Team (TST), who are specially trained to deal with firearm situations, had responded as well in two separate large SUV police vehicles. One was driven by WO1, with SO1 as passenger. The other was driven by SO2, with SO3 as passenger. These vehicles were able to catch up to the pursuit near the PTH 44 overpass.

Two other police vehicles also caught up to the pursuit near the same point. These were each driven by WO8 and WO9, both of whom were K9 officers. They remained behind the pursuit.

After the two TST vehicles caught the pursuit, they pulled ahead of the five other police vehicles and assumed responsibility for stopping the van. They understood that AP was suicidal and had a gun. The decision was made to conduct a high-risk takedown, and to stop the van by positioning a vehicle in front and behind the van, using the police vehicles to force the van to slow AP down and make him stop. After some initial manoeuvring, the van was forced to stop. There was some minor contact between the van and the front vehicle. At the point of the stop, all three vehicles were in a line, almost touching, and positioned in the left lane of the two northerly lanes of the highway. All other police vehicles were stopped behind these three vehicles. The total distance of the pursuit was 21.6 km.

At this point, all four TST officers exited their vehicles. SO1 exited the passenger side of the front TST vehicle, armed with a rifle, and moved to the back of his vehicle. SO2 exited the driver's side of the second TST vehicle, armed with his pistol, and moved to the back of the van. SO3 exited the passenger side of that vehicle, armed with a rifle, and moved quickly to the passenger side of the van.

WO1 exited the driver's side of the front TST vehicle and looked back toward the van. He could see AP getting out of the driver's door of the van. He says they were about ten feet apart. At that point he did not have his sidearm in hand. He saw AP raise his right hand and point a handgun at him. At that point he notes:

“With this realization I became fearful of my life, as I believed the driver of the van was going to inflict life threatening or grievous bodily harm injuries upon me. I truly believed that in those few seconds of time in which I saw the driver pointing the handgun directly at me, that I was going to be shot and killed.”

WO1 then heard other officers yelling commands to drop the gun. A very short time later he heard shots, but was unsure whether they came from police firearms or AP’s firearm. However, before he could draw his pistol he saw AP fall sideways away from the van. He went to AP, handcuffed him and, with the help of another officer moved him off the pavement. He then realized AP had no pulse, and started to conduct CPR until relieved by another officer. Emergency first aid was provided to AP until paramedics arrived a short time later. They determined that AP was deceased.

After SO1 got to the back of the front SUV he could see AP leaving the driver’s seat, holding a handgun near his chest. AP then pointed the gun at WO1. SO1 raised his rifle while loudly yelling “Drop the gun.” He then fired through the windshield of the van to stop what he believed to be a threat to the life of WO1. He estimated he took three to five shots. AP then fell to the ground, at which time SO1 made his way to where AP was lying and observed first aid begin to be provided to AP.

SO3 had moved to the passenger window of AP’s van. He could clearly see AP through that window with the lights from other police vehicles. SO3 saw AP raise a gun while still seated and point it toward WO1. AP then appeared to begin to exit the vehicle with the gun pointed in that direction. SO3 said he feared WO1 was going to be shot and killed. He yelled “Gun!” and fired his rifle three to five times at AP to stop the threat. He saw AP stumble away from the van and fall to the pavement. As he moved to the other side of the van, he saw the other officers begin first aid. He radioed to request an ambulance and was told by dispatch that an ambulance was on route. He then noted the silver handgun, with a scope mounted on top of it, lying on the pavement near the now open driver’s door of the van.

SO2 had moved quickly to the back of the white van. He could see AP facing WO1 with his arm extended between the frame of the van and the open door. He then heard several gun shots, and thought AP was firing on the first vehicle. As he brought his pistol up to fire, AP seemed to move away from the van as if seeking cover. AP then turned his right shoulder toward SO2, and he could see a silver handgun in AP’s right hand. He felt the risk of death to himself and other officers, raised his pistol and fired two shots directly at him, around the area of his right shoulder. AP landed on his back with his feet toward the door of the van. At this point AP’s handgun was lying on his chest. As WO1 rolled him over, the gun fell on the ground. At that point SO2 assisted in providing first aid.

SO3 and other officers completed a cursory security search of the van to ensure there were no other persons present and no other threats. After the scene was secured a member of the IIU

located another gun in the van, best described as a “sawed off” 12-gauge shotgun, in a cloth gun case. It had one live round in its chamber. Also present were many rounds of ammunition for both the pistol and the shotgun.

The shotgun was a prohibited weapon, and the handgun was a restricted weapon. AP was not lawfully able to possess either gun.

The handgun was a silver semi-automatic .45 calibre pistol, with a muzzle brake, and a scope on top of the gun. It was loaded with eight rounds in the magazine and nothing in the chamber.

The scene was almost immediately secured pending the arrival of the IIU investigators and the RCMP forensic team.

All other witness officers were positioned behind the scene. None had a vantage point to observe AP. However, their statements were consistent in their descriptions of the scene and hearing gunshots.

Each of the firearms used by the SO's were examined. SO1's firearm, a rifle, had 26 rounds in the magazine, with one live round jammed in the chamber. Given the training and practice of the TST was to only put 28 rounds into their magazines, while SO1 may have attempted to fire several shots, it would appear he only fired one round.

SO2's pistol had a capacity of 15 rounds in its magazine. His pistol had one live round in the chamber and a magazine carrying 12 rounds, for a total of 13. This is consistent with his recollection of firing two shots.

SO3's firearm, a rifle, had 24 rounds remaining in the magazine. Thus it appears SO3 fired four shots, consistent with his recollection of from three to five.

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

- The silver handgun was found on the roadway to the left of the van, near the edge of the roadway. This location is consistent with the evidence of the subject officers.
- There is no evidence the silver handgun was fired.
- Two empty shell casings consistent with having been fired and ejected from SO2's pistol were found on the roadway, one near the rear left tire of the van and the other at the back of the van. Those positions are consistent with having been fired from the position noted by SO2.
- The rifles used by SO1 and SO3 were the same make and model. Both eject empty shell casings to the right.
- An empty shell casing consistent with having been fired from either of the rifles was found on the roadway near the front of the passenger side door of the front TST SUV. That location is consistent with the location where SO1 indicated he fired his rifle as casings can be ejected several feet and bounce on a hard surface.

- The windshield of the van had a bullet hole on its driver side. The trajectory of the projectile causing that damage was found to have come from the front passenger side of the van, which is consistent with where SO1 indicated he fired his rifle. In addition, an apparent bullet hole was found in the top edge of the inside of the driver's door. This hole location was found to be consistent with this same bullet trajectory. This damage occurred while the driver's side door was open, as it is on the front edge of the door only exposed when open, and there is no corresponding damage to the door casing which would meet this part of the door when closed.
- Three shell casings were found on the roadway near the front passenger side of the van, and a fourth was found on the roadway near the rear passenger side wheel of the front TST SUV. Two of the first three, and the fourth casing were all identified as having been fired from SO3's rifle. The third of the first group could have been fired from either SO1 or SO3's rifle. It would seem all these casing were fired from SO3's rifle, and are in a position consistent with the position where SO3 said he fired his rifle.
- The passenger side window of the van was missing. Glass fragments were found in the van and on the roadway. This is consistent with SO3's recollection that he fired through the passenger side window.
- The optic attachment of the pistol had damage to its underside and left side. Traces of copper and lead were found around the damage. This was consistent with having been caused by the passage of a fired bullet from the right to the left.

The autopsy of AP made the following relevant findings:

- The cause of death was multiple gunshot wounds to the chest.
- AP was struck with four bullets.
- Two shots struck AP on the ride side of his body near his shoulder. Bullet fragments found on the bullet paths leading from the entry wounds were consistent with bullets 9 to 10 mm in size. Forensic examination showed those fragments may have come from SO2's pistol, and did not come from any of the other guns. SO2 stated he fired after AP turned his right shoulder toward him. These bullet paths are consistent with having been fired from SO2's stated position.
- Two shots came from the right but more to the rear of AP, one hitting him in the lower right side of his back and the other near the back of his left shoulder. One lodged in AP's left shoulder, the other travelled from right to left and then exited AP's body. Bullet fragments were found in the body along these bullets' path and were forensically identified as coming from SO3's rifle. Given SO3 stated that AP was facing forward with his right arm extended pointing his gun at WO1, the path of these two shots is consistent with the stated location of SO3.

## Issues and Conclusions:

This investigation must consider two issues:

1. Was the pursuit and stop of the vehicle driven by AP justified at law and conducted appropriately?
2. Were the actions of police to fire upon and cause the death of AP justified at law?

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

The provisions of *The Mental Health Act of Manitoba* give police the following authority under section 12:

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

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

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

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

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

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

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

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

In this case, the 911 calls from family members indicated that AP was intending to take his own life. They also had information that he was intending to kill another person who lived in Selkirk. Indeed, he was travelling toward Selkirk. These facts gave police clear authority to attempt to take AP into custody under the provisions of *The Mental Health Act*.

In addition, given the information that AP was intending to kill another individual, the police had a clear duty under the *Criminal Code* and common law to take steps to stop AP as soon as possible to prevent that possible crime.

Therefore, the police were amply justified in their attempts to conduct a traffic stop of AP.

The form of stop itself was a high-risk takedown, utilizing two large SUVs to effectively block in and slow down the pursued vehicle, forcing it to stop. Generally, given the risk of injury such a maneuver entails, this type of stop should be avoided. However, given the risks to life in this case it was appropriate. In addition, the speeds were not excessive, and the officers conducting the stop had specific training in this procedure. It was carried out safely, and with little or no damage to any vehicle. In these circumstances the police acted properly in the method chosen to bring AP's vehicle to a stop.

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

The facts of this matter required the police to be ready for all possibilities when stopping AP's vehicle. This included that he would be armed and may be a risk to the safety of others. In that regard, it made sense for the officers to be armed as they exited their vehicles. It was also appropriate that officers trained specifically for high-risk situations, the TST, were used in this case.

The provisions of the *Criminal Code* provide as follows when an officer is acting lawfully to enforce the law, under section 25(3):

“(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.”

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 actions of the Subject Officers in this case to fire at AP were reasonable.

The Subject Officers and WO1 all gave statements that AP got out of the van with a gun pointed at WO1. Given that AP was intent on taking his life, had a gun, and was non-compliant with

attempts by police to stop him, the officers were in a volatile situation. When they saw AP point a gun at WO1 in that state, it would be very reasonable to believe that AP could fire at WO1 and kill him. When faced with such a situation, it would be unreasonable for them to wait before acting. Any delay could have led to the death of WO1.

Therefore, if the statements of WO1 and the Subject Officers are accepted, it was reasonable for them to fire at AP to prevent the death of WO1 or any of them.

Thus, the main issue relates to whether the evidence from these officers is credible. When determining issues of credibility, one must look to the evidence itself, and consider whether it is internally consistent, whether it is consistent with evidence given by others, whether it “makes sense” on common sense principles, and, importantly, whether it is consistent with the objective evidence.

In this case, each of the Subject Officers gave statements that made sense, were internally consistent, and were consistent with statements given by each other and by other witnesses, in particular WO1.

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

1. Shell casings matching or consistent with the location of shots fired by police were found at the scene.
2. The number of shell casings matches the number of shots known to have been fired based on the examination of the firearms.
3. The damage to the windshield of the van is consistent with the statement of SO1 and where he said he fired his shot.
4. The bullet hole in the front edge of the driver’s door of the van could only have occurred when the door was open. This is consistent with the evidence of the Subject Officers to the effect that AP opened the door and then pointed the gun before they shot.
5. The shattering of the van’s passenger side window is consistent with the statement of SO2 and where he stated he fired his shots.
6. The firearm reported by the Subject Officers to be held by AP was found in close proximity to where he fell on the roadway.
7. The locations of the four bullet wounds and paths of the bullets discovered in the autopsy are entirely consistent with the expected paths of those bullets based on the statements of SO2 and SO3.
8. The damage to the underside of the sight on AP’s firearm is consistent with the passage of a bullet from right to left. This is consistent with a shot fired by SO2 while AP was said to have held the gun in front of himself pointed at WO1.

This objective evidence significantly corroborates the evidence of the Subject Officers and supports the credibility of their statements.

In addition, all the evidence makes it clear that AP was intent on taking his life. His action of pointing his pistol at a police officer is consistent with a person who wishes to instigate a police shooting to accomplish that purpose. This is an unfortunate yet recurring circumstance seen across Canada in situations similar to this.

There is no question that this case is a tragedy, and that AP's family has been left with a great loss. While these officers no doubt had no desire to take AP's life, unfortunately the several actions of AP in this case left them with little choice.

In these circumstances, the actions of the Subject Officers were completely justified and indeed unavoidable.

Thus, no charges are recommended against any police officer.

**Final Report prepared by:**

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January 10, 2017