

FINAL REPORT: IIU concludes investigation into officer-involved shooting in Portage la Prairie

On June 27, 2017, at 6:08 p.m., Royal Canadian Mounted Police (RCMP) notified the Independent Investigation Unit (IIU) of an incident that occurred that day at approximately 5:52 p.m. According to this notification, members of RCMP, Portage la Prairie detachment, intercepted a motor vehicle believed to have been involved in the robbery of an elderly couple in Headingley during which a male suspect had discharged a shotgun, and theft of gas in Oakville. After stopping the vehicle, two female passengers were taken into custody. A male exited the vehicle and escaped on foot. At that time, he was in possession of a firearm, believed to be a shotgun. Nine other firearms were located in the vehicle. RCMP officers searched for the male throughout Portage la Prairie. Schools were placed in lockdown and warnings were issued throughout the community. The male was subsequently located in a farmer's field near Portage la Prairie. A foot chase across the field ensued as the man (later identified as the affected person – AP) refused to comply with commands to stop. Additionally, AP was commanded to show his hands but he refused, keeping one of his hands near his waist. At 5:52 p.m., an RCMP member (later identified as the subject officer – SO) fired two bullets at AP. One of those bullets struck AP in the buttocks. RCMP members provided initial medical aid to AP at the scene and he was transported to hospital in stable condition.

The gunshot wound sustained by AP is a serious injury as defined by IIU regulation 99/2015. Accordingly, IIU assumed responsibility for the investigation in accordance with subsection 65 (1) of *The Police Services Act (PSA)*.

The IIU civilian director designated the RCMP member who shot AP as the subject officer (SO) and seven RCMP members as witness officers (WO1 through WO7). AP cooperated with IIU investigators and participated in an interview. IIU investigators also interviewed two civilian witnesses, though they did not provide any information relevant to this investigation..

IIU investigators received and reviewed:

- file package from RCMP including witness officers' notes, reports, call histories and patrol car video;
- photographs of scene;
- traffic collision analyst report;
- medical record concerning AP;
- SO's training records.

IIU investigators also viewed SO's 9 mm service pistol, magazines and ammunition. The firearm was not submitted for laboratory examination as the round counts performed on it, the magazines

and ammunition support the conclusion that SO's service pistol was discharged twice on the date in question.

As outlined under the PSA, a subject officer cannot be compelled to provide his notes to IIU investigators or to attend an interview with them. In this matter, SO agreed to provide a prepared statement to IIU investigators and did answer several questions posed to him.

The following facts and circumstances were determined (with assistance from witnesses who provided relevant information in this investigation):

RCMP members had been searching for a male suspect who had discharged a shotgun during the robbery of an elderly couple. Police stopped the male in a stolen vehicle in Portage la Prairie and arrested two female passengers. Neither of these females witnessed the shooting of AP by police. A male occupant (later identified as the suspect and designated as AP) fled on foot and discharged a shotgun in the vicinity of police officers. This male then attempted to "car jack" a female driver at gun-point but was unsuccessful and continued to flee on foot. Police had schools in Portage la Prairie locked down and commenced a citywide search for the male.

AP was encountered by RCMP Emergency Response Team (ERT) members and a police service dog team in a farmer's field near Portage la Prairie. A foot chase ensued during which AP failed to comply with repeated demands to show his hands and continued to keep one of his hands near his waist. SO fired two shots at AP; one round struck AP in the buttocks.

On June 28, a shotgun was located in Portage la Prairie, approximately two blocks from where AP had fled from the stolen vehicle the previous day. When recovered, the shotgun safety was in the off position and there was a live shell in the chamber and two live shells in the magazine.

Affected Person

On June 30, IIU investigators attended the Health Sciences Centre (HSC) in Winnipeg and interviewed AP regarding this incident. AP also consented to the release of his medical information relative to this incident.

AP stated he was hitch-hiking from his cousin's house in Portage la Prairie when he saw several police SUVs go by, turn around and return towards his location. He said he does not like cops very much so he started running through a field. AP said that "tactical guys" got out of their vehicles and chased him. He said he did not want to deal with the police because he "hates dealing with the police," and stated the police don't like him and every time they catch him they beat him and hit him. AP repeatedly stated: "I don't like cops, that's the bottom line. I don't like cops and I don't like talking to cops, I don't like dealing with cops."

AP stated that he started getting tired so he stopped running and put his hands up. AP said "...that cop pointed his gun at me and he fired one shot and it missed me." AP said he "went into shock or something" and as he turned around to run again, he was shot. AP remembered nothing else until he came to in the hospital. AP admitted being under the influence of drugs when he

was shot and said he cannot remember if the police officer was saying anything to him during the incident.

AP stated he threw his hat away prior to the shooting as he decided that it was slowing him down. He said he had the hat in his hand, not on his head. AP stated that he had nothing else on his person when he first saw police except his hat, shoes, sweatpants and shirt.

Witness Officers

WO1 was working at his office at Headingly Traffic Services when he first heard information over the radio concerning an armed robbery in the area. He attended to the vicinity of Highway 1A, just to the west of the bypass on the east side of Portage la Prairie, and encountered two unoccupied marked police vehicles parked on the south side of Highway 1A. He overheard on the police radio that officers were in a foot pursuit with AP. He observed a number of persons running in the field toward the railway tracks to the south. There was a lone figure in front and three persons behind. As he drove closer to the field, he heard a single gunshot. The persons on foot were now out of sight. When he arrived at the scene, he saw two ERT officers performing first aid on AP.

WO2, an RCMP dog handler, had received a report that there had been an armed robbery in Headingly. He was further told the suspect had pointed a firearm toward the victim and fired it. Additionally, six firearms had been stolen during the robbery. WO2 assisted in searching for the suspect. He attended the Portage la Prairie area and, while in his vehicle, collided with the suspect vehicle. A male with a shotgun ran from the vehicle. A few moments later WO2 heard the sound of a gunshot. He later heard a call on the radio that the suspect had been seen at the east end of Portage, so he drove to that area and observed an ERT vehicle stopped along the highway near the overpass. He saw ERT officers around the vehicle and a male in the potato field to the south. He believed he saw the male carrying something but did not know what it was. He parked his vehicle, removed his dog, and went across the ditch to the south side of the highway. WO2 observed ERT members--WO3, WO4 and SO--running after the male subject across the field. WO2 heard a gunshot and believed that AP had shot at SO so he stopped running to look for cover. He saw SO in a crouched shooting position. WO2 heard another shot and AP fell to the ground. He did not hear anyone say "Stop, police" or anything similar to that. WO2 did not see AP throw anything while running across the field.

WO3, a member of ERT, was training in Winnipeg when he was advised that three suspects had stolen a vehicle at gun point in Headingly. He was also advised that one of the suspects had discharged a firearm. The stolen vehicle's location was being tracked, showing that it was travelling westbound on the Trans Canada highway in the direction of Portage la Prairie. WO3 and other ERT members were immediately deployed to Portage. While en route, a radio transmission advised that the stolen vehicle had been in a collision with a police vehicle, that two people were in custody, and that a male had discharged a firearm while fleeing on foot. Another radio transmission reported that the male had pointed a gun at a woman's head and tried to steal her vehicle.

Upon arrival in Portage la Prairie, WO3 saw a male, later identified as AP, hitchhiking on the Trans Canada highway. WO3 saw something black in the male's hand. WO3 activated his emergency lights and siren, made a U-turn and radioed the sighting to other police officers in the area. WO3 exited his vehicle and aimed his carbine rifle where AP was last seen, aware AP had reportedly discharged a gun twice and had pointed it at a woman in her car. AP ran south in an open field of mature potato plants. He had a black object in his hand. WO3 yelled "stop, police" and pursued him on foot. WO4 and SO joined in the pursuit.

AP dove to the ground and WO3 lost sight of him behind the potato plants. WO3 was concerned that AP was arming himself. AP popped his head up, rose quickly, and lunged his right hand from his hip towards SO. AP then turned and ran southbound. WO3 was approximately 80 yards from AP at the time and could not see anything in AP's hand. However, WO3 could see AP's right hand was grabbing at the waistband/crotch area of his pants. In WO3's experience, guns are often hidden in the crotch area and front waistband area of pants. WO3 believed AP was arming himself with the intent to shoot and kill SO.

According to WO3, SO was at that point stationary, pointing his pistol at AP and yelling "show me your hands." AP pointed his right hand at SO, as though he was holding a pistol. WO3 had made a conscious decision to shoot, believing that AP had a firearm in his waistband and that he was going to kill SO. According to WO3, SO then fired one round from his pistol. AP continued to run southbound, then turned at the waist, with his right hand pointed at SO. SO fired a second shot and AP fell to the ground, out of view of WO3. Despite having made the decision to shoot, WO3 did not discharge his firearm at AP.

WO3 attended AP's location and started first aid on him. He located an entrance wound to the male's buttocks and an exit wound on AP's upper left leg, close to the femoral artery. To the best of WO3's knowledge, no weapons were discovered on AP's person.

WO4, an ERT member, was training in Winnipeg and was made aware of a pursuit of a robbery suspect in Portage la Prairie, where shots had been fired and a male was alleged to have pointed a firearm at people. The local schools were in lock down. WO4 and other ERT members attended Portage la Prairie. WO4 was advised that five firearms were located in the suspect's vehicle. WO4 attended the vicinity of Highway 1A at the overpass regarding a possible suspect sighting. He saw a male, believed to be the suspect, hitchhiking on the road. The male then walked into the bush. WO4 noted that the male was holding something in his left hand. ERT members went to the area and gave commands to the male including: "stop," "come out," and "show your hands." AP ran into a potato field. AP looked over his right shoulder and toward WO4 and it appeared that he was pointing a gun.

WO4 stated, "I thought I was going to be shot" and he took the safety off his rifle and placed his finger on the trigger to fire. As WO4 was preparing to shoot AP, he realized that AP "flipped the bird" at him and was not aiming a weapon. WO4 said that AP had something in his left hand and when AP went down to the ground, he was reaching around his waist. WO4 heard a gunshot and as he looked up saw SO in a shooting stance. AP still had his hands at his waist. WO4 heard a second shot and saw AP fall down. Although he stated he had made the decision to shoot AP, WO4 did not discharge his firearm.

Subject Officer

SO met with IIU investigators. He presented a prepared statement and then answered several questions. SO has been a member of the RCMP for 10 years and started ERT training in 2009. On the day of this incident, he was participating in ERT training in Winnipeg.

SO stated that AP started running towards a potato field and that he did not observe anything in AP's hands at that time. He yelled at AP, "Stop, police" and "You're under arrest." AP continued to run. SO, with WO3 and WO4, pursued AP into the field. While running through the field, AP would regularly glance over his shoulder towards the police officers' positions. SO yelled at AP, "Stop. Show me your hands. Show me your hands." AP did not follow commands and did not show his hands.

As SO closed the distance to approximately 30 metres, AP's behaviour changed. AP turned backward and faced SO. He threw his hat away and then dove out of sight into the potato plants. SO drew his pistol from the holster and yelled commands to AP to show his hands. AP peeked his head above the plants and raised his hand or arm toward SO. SO believed AP was raising a firearm in his direction. AP then returned to his feet. SO did not see anything in his hands and the foot chase resumed. After another 30-40 metres, AP again dove behind a row of potato plants and remained out of sight for several seconds then jumped to his feet and continued to flee. SO continued to pursue AP.

AP was running and looking at SO over his left shoulder, with his left hand visible but his right hand reaching toward the front of his waistband. SO stopped running and raised his pistol, believing that AP was reaching for a handgun and with knowledge that AP had earlier discharged a firearm several times. According to SO, he made a decision that he "had to shoot him (AP), to stop the imminent threat that I perceived on my life." SO fired one shot and believed he missed, as AP did not react. He then fired a second shot and AP screamed, took one or two more steps, then fell to the ground. SO approached AP at gunpoint and, when he saw that AP's hands were empty, holstered his pistol, handcuffed and searched him. SO did not locate any weapon on AP's person.

SO acknowledged shooting twice at AP. There is no evidence to suggest that any other police officer discharged a firearm. SO's pistol contained 13 live rounds (12 in the magazine and one in the chamber) which is consistent with it being loaded with 15 rounds and two rounds being expended.

When SO was asked why he shot AP, he stated that based on his knowledge of the incidents regarding AP (discharging a firearm on two occasions, the robbery, attempted carjacking, and the behaviour in the potato field), he believed AP was arming himself and that he was going to start firing at police. SO stated he had to shoot AP to stop that threat.

Medical Reports

AP's medical records were subsequently received and showed that AP was initially conveyed to Portage General Hospital, where he was assessed and stabilized. Chart notes stated that AP was alert and combative. The injury was documented as a "likely entry wound in the buttock and exit wound in the Lt Groin." Notes were also made that: "(AP) states has been doing meth for days." AP was transferred to HSC by helicopter the same day, where chart notes stated

diagnosis to be “gun shot wound from behind (left) buttock through to (right) groin.” AP did not require surgery and was subsequently discharged from HSC on July 2.

Issues, Assessment and Conclusions

Were the actions of SO to fire upon and wound AP justified at law?

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

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

- (a) as a private person,*
- (b) as a peace officer or public officer,*
- (c) in aid of a peace officer or public officer, 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 of Canada 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.*

(2) In determining whether the act committed is reasonable in the circumstances, the court shall consider the relevant circumstances of the person, the other parties and the act, including, but not limited to, the following factors:

- (a) the nature of the force or threat;*
- (b) the extent to which the use of force was imminent and whether there were other means available to respond to the potential use of force;*
- (c) the person's role in the incident;*
- (d) whether any party to the incident used or threatened to use a weapon;*
- (e) the size, age, gender and physical capabilities of the parties to the incident;*
- (f) the nature, duration and history of any relationship between the parties to the incident, including any prior use or threat of force and the nature of that force or threat;*
- (f.1) any history of interaction or communication between the parties to the incident;*
- (g) the nature and proportionality of the person's response to the use or threat of force; and*
- (h) whether the act committed was in response to a use or threat of force that the person knew was lawful.*

Effectively, the question is whether the decision of SO to fire at AP was 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 considered in light of the dangerous and demanding work and the expectation to react quickly to emergencies.

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 his or her self-preservation or the preservation of any one under their protection from death or grievous bodily harm. The allowable degree of force to be used remains constrained by the principles of 'proportionality, necessity and reasonableness' (see *R. v. Nasogaluak*, [2010] 1 S.C.R. 206).

The fact AP was wounded, and did not suffer grievous or life-threatening injuries, is not determinative of whether the use of force was reasonable and justified in these circumstances. The critical facts to be considered in this analysis are:

- SO was acting in the lawful execution of his duty when he attended and dealt with AP;
- information existed that AP was a suspect in an armed robbery and attempted armed robbery, each involving the use of a firearm;

- six firearms were stolen in the first armed robbery and five were recovered from AP's vehicle;
- there were reports that AP may have discharged two shots after fleeing from the vehicle;
- AP ran from police and refused all demands to show his hands;
- AP kept one hand near his belt or groin area through the pursuit;
- AP appeared to reach for his waistband as he turned and looked at SO just prior to being shot;
- there were a number of officers in the vicinity of AP in the field, escalating the threat to officer safety and of imminent death or grievous bodily harm posed by him;

The police officers, including SO, were in a potentially volatile situation. In these circumstances and based on the facts known, it was reasonable to believe that AP had the means and intentions to shoot the police officers. SO was faced with a dangerous and dynamic situation that was unfolding quickly. It would be unreasonable for police to wait before acting. Any delay could have led to the death of the ERT officers. Therefore, if the statements of all the witnesses and the subject officer are accepted, it was reasonable, in these circumstances, for SO to fire at AP to prevent the death of any of the officers.

In this case, and in the circumstances that existed, all of the evidence makes sense and is consistent with statements given by each witness. 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.

In this investigation, the IIU mandate was to determine whether consequences should flow from the actions of SO, in consideration of all the circumstances and information known to him at the time of the shooting. Therefore, on careful review of the available evidence and material facts obtained in this investigation and the applicable law, I am not satisfied that there are reasonable grounds to believe that SO exceeded the ambit of justifiable force in the circumstances.

Accordingly, no charges will issue against SO. IIU has completed its investigation and this matter is now closed.

Final report prepared by:
Zane Tessler, civilian director
Independent Investigation Unit
February 28, 2018

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