

# ***FINAL REPORT: IIU concludes investigation into fatal officer-involved shooting in Winnipeg***

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On September 13, 2017, at 1:48 a.m., Winnipeg Police Service (WPS) notified the Independent Investigation Unit (IIU) about an officer-involved shooting that had just occurred in Winnipeg's North End. According to this notification, during the late night of September 12<sup>th</sup>, 2017, police were investigating multiple offences involving a male suspect armed with a firearm--including a commercial robbery, carjacking and domestic assault. Shortly after midnight on September 13th, AIR1 (the WPS helicopter and crew) followed a vehicle driven by the suspect until it was observed to stop. The suspect exited the vehicle in the area of Powers Street and Alfred Avenue. The suspect was observed to be carrying what was described as a firearm. When two members of the WPS attempted to arrest the suspect, he pointed his gun at them resulting in both officers discharging their firearms, striking the suspect (later identified as the affected person (AP)) several times. AP was pronounced deceased by medical staff at Health Sciences Center at 01:20 a.m.

As this matter involved the death of a person that resulted from the actions of a police officer, the IIU assumed responsibility for this mandatory investigation in accordance with section 65(1) of *The Police Services Act* (PSA). As this matter concerned the death of a person, in accordance with section 70(1) of the PSA, the IIU was required to seek the appointment of a civilian monitor. On September 13, 2017, the IIU requested the Manitoba Police Commission appoint a civilian monitor. The initial briefing with the civilian monitor took place on September 15, 2017 followed by regular scheduled briefings thereafter.

The IIU civilian director designated the two WPS officers who shot AP as the subject officers (SO1-SO2). Fourteen WPS officers present at or near the scene of the shooting were designated as witness officers and all but three (WO1 – WO11) were interviewed. WPS forensic identification section, working with IIU investigators, provided forensic scene examination services. Additionally, IIU investigators received information from 18 civilian witnesses (CW1-CW18) throughout the course of the investigation.

The investigation conducted by IIU investigators included:

- attending and examining the scene of the shooting;
- canvassing for witnesses;
- reviewing the forensic examination of the scene;
- examinations of the firearms used by SO1 and SO2;
- examination of a replica firearm found at the scene;
- reviewing and transcribing 911 calls;
- reviewing police radio transmissions;
- reviewing file materials from WPS;

- reviewing various video footage including cell phone video, motel surveillance, apartment surveillance and AIR1;
- attending autopsy and reviewing pathologist report;
- obtaining statements from designated witness officers;
- obtaining statements from civilian witnesses;
- obtaining and reviewing prepared statements of subject officers;
- regular consultations and briefing sessions; and
- preparation of the final investigative report.

IIU investigators seized the service pistols from SO1 and SO2. It should be noted that neither of the seized WPS firearms were submitted for laboratory examination as the subject and witness officer accounts, together with round counts, support the conclusion that these were the only weapons discharged on the date in question.

Under the provisions of the PSA, a subject officer is not required to provide a statement or notes regarding an incident. In this case, SO1, through legal counsel, supplied a self-prepared statement for review and did meet with IIU investigators to answer a few clarification questions. SO2, through legal counsel, supplied a self-prepared statement for review but declined to be interviewed.

For the sake of brevity, and to avoid undue repetition, summaries of only the most significant and revealing statements by subject officers, witness officers and civilian witnesses are included in this report.

### **Circumstances of the Incident**

At 11:18 p.m., on September 12, 2017, WPS operators received a 911 call in which the caller hung up. When WPS operators were unable to get an answer on a call back, a radio broadcast was made to request police officers to attend to an apartment on Pritchard Avenue. This apartment building contains four separate units.

At 11:21 p.m., WPS operators received two more 911 calls from two different units from this Pritchard Avenue apartment building. The first caller, CW1, relayed hearing people fighting upstairs and a female crying. The second caller, CW2, said people were physically fighting in a unit upstairs and somebody was crying. CW2 ran out into the hallway and saw a male with a gun in his hand, described as “a young native, 25 years old, 5’6” tall, slim, with short black hair, wearing a black T-shirt and blue jeans.” At 11:23 p.m., WPS operators broadcast the two reports of neighbours fighting in the hallway, a female crying, and a male, described as “indigenous, 25 years old, 5’6”, slim build, short black hair, black T-Shirt, blue jeans, gun last seen in his hand.” Police officers attended the apartment and met with CW3, a victim of an assault with a weapon and CW4 and CW5, two witnesses to the assault.

At 11:40 p.m., WPS operators received another 911 call, from CW6, who reported being carjacked at gun point at her home on Pritchard Avenue. CW6 described her assailant as “an indigenous male, 18 to 22 years old, skinny build, 5’7” to 5’8” tall, short dark brown or black

hair, wearing a black T-shirt with printed pictures.” The gun was described as “a long old style gun, antique, bronze to gold color.” She also provided the description and license plate of her vehicle. The radio broadcast provided a description of the suspect as armed with a gun and “indigenous, 18 to 22 years, 5’7”, skinny build, short dark brown hair wearing a black shirt with printed pictures on it.” The firearm was described as a “long antique-styled gun, bronze and gold.”

WPS officers who attended the original 911 call at the apartment reported over police radio that the description of the suspect in the carjacking matched the description of their male suspect. However, they stated CW3 was uncooperative and would not provide the name of the male who had assaulted her.

At 11:56 p.m., WPS operators received a 911 call from CW7, an employee at a motel situated at Notre Dame Avenue, who reported being robbed at gunpoint by a male who stole a quantity of energy drinks and fled. The motel had a video surveillance system that recorded the armed robbery. CW7 described the suspect male as “Metis, early 20’s, 5’10” or 5’11”, medium build, tattoos all over his arms, wearing a black baseball hat, black and white shirt.” CW7 described the gun as “a small rifle, black and solid metal barrel.” At 11:59 p.m., WPS operators requested police attend the armed robbery scene and provided a description of the suspect as “Metis, early 20’s, 5’10”, medium build, wearing a black baseball hat, black and white shirt, with tattoos on his arms.” The gun was described, as “a small rifle with a black barrel.”

At 12:21 a.m., the stolen vehicle was located, unoccupied and parked, on the west side of an apartment building on Blake Street. AIR1 was now involved and was recording police radio transmissions and video from the time the stolen vehicle was located to the time of the officer-involved shooting.

At 12:31 a.m., AIR1 voiced over the police radio that they had a visual on the stolen vehicle and maintained surveillance.

At 12:40 a.m., AIR1 voiced:

*“We got a guy getting into the driver’s seat, southbound on Blake Street.”*

AIR1 broadcast the direction of the stolen vehicle’s travel once it was in motion. Police followed the stolen vehicle at a distance or paralleled the route on a street over from the vehicle. AIR1 described the suspect’s driving as:

*“He’s going high speeds.” “High rate of speed.” “He is speeding up.” “He’s lost control.”*

At 12:49 a.m., AIR1 voiced that the vehicle was travelling southbound on Salter Street, had turned west on Alfred Avenue and then slowed down in front of a residence. AIR1 continued to voice the suspect’s actions after he exited the stolen vehicle:

*“Okay, it looks like he’s north on the north sidewalk, going westbound. He’s on foot. He’s got something in his hands, boys. ...He’s walking, you guys are all passing him. He’s on the north sidewalk of Alfred. Okay, it looks like he’s got an object to his head. So everyone start backing off. He’s definitely got an object toward his head. Okay officers have contact. This individual’s got something towards his head.”*

At 12:51 a.m., AIR1 voiced:

*“Dispatch, they are at Powers and Alfred. He’s still walking on the sidewalk. He’s going westbound.”*

SO1 and WO1, members of WPS Tactical Support Team (TST), were the first to arrive on scene at the intersection of Alfred Avenue and Powers Street. SO1 drew his pistol while WO1 was armed with a C8 rifle as they approached the male suspect, later identified as AP, who was walking westbound on the north sidewalk of Alfred Ave. WO2 also arrived on scene but remained back from AP and allowed the TST officers to make contact with AP.

SO2 and WO3, both members of TST, were next to arrive on scene. SO2 drew his pistol while WO3 was armed with a C8 rifle and both approached AP while walking westbound on the north sidewalk of Alfred Ave. AP was also walking westbound on the north sidewalk, holding what appeared to be a sawed off rifle in his right hand, pointed at his right temple.

As AP continued westbound along the north sidewalk he repeatedly moved the firearm he was carrying from his temple to his forehead, while facing the four TST officers and walking backwards. The TST officers had their firearms and weapon lights pointed at AP. Streetlights and the police vehicle headlights also assisted in illuminating AP.

The following voice commands were given by police, as heard by a number of witnesses and recorded on cell phone video:

*“Drop the gun.” “Drop it.” “Get on the ground.”*

In response, AP was heard to say:

*“You’re going to have to kill me, shoot me.” “Shoot me. Kill me.” “I’ll shoot that f’ng dog!” “I’ll do it. I’ll do it.”*

AP ignored all police commands to drop his gun or surrender and continued to walk westbound on the north sidewalk along Alfred Avenue with the firearm pointed at his own head. AP then moved the barrel end of the firearm away from his forehead and pointed it directly at SO1 and SO2. In response, SO1 and SO2 aimed their pistols and fired 13 rounds at AP. AP fell backwards onto his back in the area of a vacant lot on the northwest corner of Alfred Avenue and Powers Street. SO1, SO2, WO1 and WO3 approached AP. CPR of AP commenced and continued until Winnipeg Fire Rescue and Paramedic Service personnel arrived. AP was transported to Health Sciences Centre by ambulance and at 1:20 a.m. he was pronounced deceased by an attending physician.

SO1 and SO2's clothing and equipment were photographed and seized. SO1's firearm, a .40 caliber Glock, Model 22 pistol, had seven live rounds remaining in a 15-round magazine. SO2's firearm, a .40 caliber Glock, Model 22 pistol, had 10 live rounds remaining in a 15-round magazine.

The firearm that AP was holding was located on the ground, adjacent to his body and was found broken into two pieces. The firearm was broken along the handle just above the metal trigger. The upper portion of the weapon contained the metal barrel attached to the wooden stock with two metal bands and a flint-style hammer. In addition, 13 spent .40 caliber bullet cartridge cases, together with one lead and copper-jacketed bullet, were located at the scene.

Attached and marked as Appendix "A" is a map identifying the location and timelines of the major events and critical incidents relevant to this investigation.

### **Civilian Witnesses**

CW1 heard fighting from the upstairs apartment and, after he called 911, he saw a male with a gun come down the stairs. The male said, "It's a gun. Give me what's in your pocket and give me your car keys." CW1 went into his apartment and locked the door. He described the male as a 25 year old native, with tattoos on his right forearm, 5'6" tall, short buzz cut hair, wearing blue jean shorts and a T-shirt. He described the gun as black and approximately the size of "a forearm."

CW2 confirmed the information contained in his 911 telephone call to WPS.

At approximately 6:00 p.m. on September 12, CW3, her friend CW5 and AP were drinking alcohol and using cocaine. CW3 said she also used methamphetamine but AP did not. At approximately 10:30 p.m., CW3, with CW5, went to CW8's residence, to pick up some clothes. About 15 minutes later, AP arrived at CW8's residence. He walked in and asked CW3 and CW5 to leave with him. As they walked, AP said: "*I should just let it off in the air*" and then showed CW3 a gun which he pointed towards the sky. CW3 said she had not previously seen AP act this way and that he was not himself. AP went to a house on the corner of Parr and Aberdeen and approached two males who were standing outside. As AP was still armed with the gun, he chased them inside the house. AP, CW3 and CW5 ran to CW5's residence. CW3 and AP argued about drugs. The argument escalated to the point where AP started beating CW3 by kicking and hitting her in the head, causing her to bleed. When asked about the gun, CW3 said it was approximately one foot long, was black with brown wood pieces and shaped "like a .22." She said she had heard the gun was a fake but it looked real to her.

CW4 was sleeping at her sister's, CW5, apartment, when she was awoken by the argument between CW3 and AP. They were arguing about CW3 using methamphetamine (meth). CW4 recalled that AP said:

*"Shut the f\*\*\* up. I'll f\*\*\*\*ng kill you. I don't care if you're my f\*\*\*\*ng family. I don't care. I'll f\*\*\*\*ng kill you."*

CW3 was on the floor in the bedroom and AP was standing over her. He “pistol-whipped” CW3 with the butt of what CW4 believed to be a fake gun. The butt end of the pistol broke off. CW4 stated AP grabbed another gun, a real shotgun, then left the apartment. AP also took CW5’s iPhone with him. She heard AP go downstairs and say:

*“Give me the f\*\*\*n’ keys to your car.”*

According to CW4, earlier that day while AP was drinking alcohol, he stated:

*“I’m not afraid of dying. I’m not going down for this. The cops will kill me or I’ll kill myself.”*

CW4 said AP had a “bad pill popping addiction” and used cocaine, Percocet and Oxycodone.

CW5 stated that earlier on September 12, she and CW3 were at her apartment and using meth, which upset AP. Later on, while the three of them were drinking liquor, an argument ensued regarding CW3’s meth use. CW4 was also present but was sober. AP punched CW3 with his fists and then hit her head “a few” times with a gun.

CW6 had called police with the carjacking report. She said that as she exited her vehicle, she asked the male for her belongings. The male said, “Yes, grab everything, I just need a car.” As she was taking her belongings from her vehicle, the male said, “Don’t do anything stupid or I’ll shoot you.” The male, armed with the gun, left in her vehicle. CW6 stated she was not assaulted or injured but the male had threatened her, saying: “Don’t call the police or I’ll kill you. I know where you live.”

CW7, the victim of the commercial armed robbery at the motel, provided a statement with similar information to his initial call to WPS operators.

CW8 stated that, at approximately 11:00 p.m., she was upstairs at her home when she heard knocking at her door. It was AP and he did not appear to be in a right state of mind. He was not sober and she did not want to let him in. Despite all attempts to deny him entry, AP kept banging on the door. CW8 said she told AP if he did not leave she would telephone the police to which AP replied:

*“Go ahead (CW8). Call the cops. I’m going to shoot myself in front of your door when the cops come here.”*

CW8 said she wished she had opened the door and let AP in or telephoned the police. CW8 said AP was not himself and was on some sort of drug. She didn’t see or hear a gun.

CW9 was residing at a unit in an apartment building on Blake Street when AP arrived and visited him prior to the officer-involved shooting.

CW9 said that sometime around midnight, AP showed up at his apartment and stayed for 15 minutes before leaving. He knew AP used meth recently and that night was the worst condition he had ever seen him. AP had a box of alcohol energy drinks with him. He was rambling about some armed robberies. AP showed CW9 a gun that was broken into two pieces. AP told him that it might be one of the last times CW9 would see him.

CW10 was at his residence on Alfred Avenue, in his second floor bedroom, when he awoke to sounds of shouting on the street. He saw a male wearing a black hoodie, walking westbound on the north sidewalk, followed by three uniformed officers on foot. One of the officers had a dog. CW10 heard police yell:

*“He’s got a rifle, drop the gun, drop the gun.”*

He quickly grabbed his cell phone and video-recorded the rest of the incident from his residence. A review of the cell phone video recording will be referenced later in this report.

CW11 was walking southbound along Salter Street between Aberdeen Avenue and Alfred Avenue when a southbound vehicle drove past her, then turned westbound onto Alfred Avenue. A black SUV and two marked police cars followed on Alfred Avenue. CW11 saw police had blocked off the road at Powers Street. CW11 heard police yell:

*“Get on the ground.”*

CW11 heard eight gunshots.

CW12 was at a residence on Alfred Avenue when he heard two gunshots. CW12 walked to the front door and saw people outside but could not tell who they were. CW12 saw “muzzle flashes” along with the sound of more gunshots. CW12 then saw police officers performing CPR on the person laying on the ground.

CW13 was at a residence on Alfred Avenue when she saw a number of police vehicles with emergency lights on. CW13 also saw two police officers in regular uniform and two other officers in tactical uniforms. One of the regular uniformed officers had a pistol drawn while one tactical officer had a larger gun drawn and pointing toward the empty lot at the northwest corner of the intersection with Powers Street. CW13 heard police officers say:

*“Drop the gun.”*

at least two or three times. As she walked to get a better view, CW13 heard approximately five gunshots.

CW14 was at a residence on Alfred Avenue when she saw a male come out from a back lane and then jump a fence. CW14 heard two police officers telling the male:

*“Put the gun down.”*

CW14 then heard one shot as the police officers continued to yell at the male to put the gun down. CW14 heard the male yelling and swearing. CW14 saw the male put his hands together with his arms outstretched in front of him. CW14 saw what appeared to be a gun pointed at the police officers. CW14 then heard approximately five gunshots. The male's arm went down to his side and, as he tried to turn and run, the male collapsed.

CW15 and CW16 were together in a second-floor bedroom in a residence on Alfred Avenue.

CW15 heard a voice yell:

*“Drop the rifle.”*

CW15 ran to the window and saw three police officers under the streetlights. According to CW15, the police officers shouted something like:

*“Drop the gun. Drop the weapon.”*

CW15 saw the police officers with their hands out in front of them. CW15 heard seven shots fired in quick succession.

CW16 ran to the window when he heard a lot of shouting. CW16 saw at least four police officers and heard them shouting. CW16 heard eight to 10 gunshots.

CW17 was in the back yard of a residence on Alfred Avenue. CW17 saw police vehicles on Alfred Avenue. He heard someone saying, between five to six times:

*“Drop the gun.”*

CW17 saw a male wearing dark clothing and backing up, holding onto a gun with both hands and pointing it at police officers. There were at least four to six uniformed police officers with their guns drawn, pointing at the male. CW17 said that the police officers were walking, slowly, towards the male, who was approximately 20 feet away. According to CW17, it “*did not look like the male was going to drop the gun.*” He saw a flash of light and heard rapid gunshots.

CW18 was at a residence on Alfred Avenue. When got up to go to the washroom, CW18 heard people yelling outside then she went back to bed. CW18 heard six gunshots which sounded like a machine gun, then looked outside and saw police officers outside.

### **Witness Officers**

Following his arrival at the vicinity of Powers Street and Alfred Avenue, WO1 observed AP, with his thumb in the trigger, point a sawed-off rifle or shotgun to his own head. According to WO1, this weapon was longer than a pistol but shorter than a rifle or a shotgun and in fact similar to a “pirate’s” gun. WO1 heard police officers say to AP at least three times: “*Drop the gun.*”

WO1 heard AP say: “*Come on shoot me*” or “*Go ahead shoot me*” and “*I’ll shoot the dog if it comes near me.*”

According to WO1, AP was not compliant with police commands. Just before the shooting, WO1 saw AP start to lower his gun and level it towards police. WO1 disengaged the safety on the C8 rifle he was carrying and was ready to shoot. However, WO1 said a pole or tree blocked his vision. WO1 heard four to six gunshots from his right.

WO2 was the WPS Street Supervisor in the North End on the evening of the incident. WO2 was aware of the domestic assault, the carjacking and armed robbery allegations, together with the descriptions of the suspect, the firearm and the stolen vehicle. WO2 believed all these allegations were related to the same male and the same firearm. WO2 attended to the Blake Street area to search for the suspect. WO2 followed the route taken by the suspect and arrived at the vicinity of Powers Street and Alfred Avenue. WO2 saw AP holding a firearm in his right hand, pointed to his own temple. WO2 heard police officers tell AP to: “*Stop, get down on the ground.*”

In response, AP screamed back at police officers: “*F\*\*\* you. Let’s do this*” or something to that effect. WO2 heard a loud succession of gunshots within seconds, but could not estimate the number of shots.

Following her arrival at the vicinity of Powers Street and Alfred Avenue, WO3 saw AP point a “flintlock/antique pistol style of gun” to his forehead, then moved the barrel of the gun a number of times from his chin to his temple and to his forehead. WO3 yelled at AP to: “*Drop the weapon*” “*Drop the gun.*” AP did not look at her nor did he respond to her. AP was yelling at police to: “*Shoot me.*” or “*Just shoot me.*”

A WPS canine unit was behind her as she heard the dog barking. AP said: “*I’ll shoot that dog. I’ll shoot the dog.*”

WO3 saw AP, who was pointing his firearm at his own forehead, begin to level it and point it towards SO1 and SO2. She believed AP was going to shoot and kill the officers. She made the decision to fire her C8 rifle and released the safety but did not fire it as her view of AP was obstructed by a tree. She then heard five to seven gunshots.

WO4 and WO5 arrived on scene at the intersection of Powers Street and Alfred Avenue and were in their vehicle when they saw the male suspect walking on foot on the north sidewalk. WO4 and WO5 heard four to six gunshots, fired within seconds.

WO6 and WO7 arrived on scene at the intersection of Powers Street and Alfred Avenue. Both police officers believed a male was in possession of a firearm and they armed themselves accordingly--WO6 armed with a pistol and WO7 armed with a carbine rifle. Both saw AP in possession of an object they believed was a gun and being held to his own head. WO6 and WO7 heard commands similar to: “*Put the gun down*” and “*Drop the gun*” being yelled to AP. WO6 and WO7 both heard gunshots over the span of about one second. WO6 heard the sounds of five

to six shots while WO7 believed he heard four to five shots. WO6 and WO7 saw AP's firearm on the ground, next to him, immediately after the shooting.

WO8 is a WPS Canine Unit Police Service Dog Handler. When he arrived in the vicinity of Powers Street and Alfred Avenue with his police service dog, he saw AP in possession of a sawed off rifle in his right hand and pointed at his own head. WO8 heard various police officers give verbal commands, such as "*drop the gun*" to AP. WO8 heard gunshots and then saw AP drop to ground. He could not estimate the number of shots he heard.

WO9 is a WPS Canine Unit, Police Service Dog Handler. When he arrived in the vicinity of Powers Street and Alfred Avenue with his police service dog, he saw AP holding a firearm in his right hand and pointed to the right side of his own head. WO9 heard several police officers on scene repeatedly tell the male to: "*Drop the gun.*" WO9 heard the sound of gunshots then saw AP fall to ground. He could not estimate the number of shots he heard.

W10 and W11 arrived in the vicinity of Powers Street and Alfred Avenue. W10 heard police officers yell: "*Drop the gun. You don't want to do this.*"

W10 saw AP holding what appeared to him to be a long barreled firearm to his head. W10 heard the sound of at least three gunshots. W10 voiced: "*Shots fired, Shots fired*" over his radio.

W11 saw AP holding what appeared to him to be a .22 caliber rifle, with the stock and barrel sawn off, in his right hand with the barrel pointed to his right temple. W11 heard various police officers tell AP to: "*Drop the gun.*"

W11's view was obscured by a tree when AP stopped walking, though he did see him take a step south and then lower his right elbow. At this moment, W11 noted that the firearm turned so it was pointing towards the area where he had last seen police officers. W11 then heard the sound of gunshots but was unable to estimate the number of shots.

### **Subject Officers**

SO1 provided IIU investigators with a copy of a five-page prepared statement. Although he did attend to the IIU for an interview, he answered limited questions about information that was not covered in his prepared statement.

According to SO1, that evening he was partnered with WO1. SO1 was aware of the reports of domestic violence, carjacking and the armed robbery, all involving reports of a gun. SO1 was aware of the various descriptions of the suspect, the gun and the stolen vehicle. SO1 believed that the males described were the same person.

When they arrived in the vicinity of Powers Street and Alfred Avenue, SO1 observed AP walking on the sidewalk holding a "sawed off rifle" in his right hand, pointed directly at his right temple. SO1 believed that AP was contemplating suicide or self-harm and had the means to do so. SO1 yelled:

*“Drop the gun”*

to which AP responded:

*“You’re going to have to kill me, shoot me!” and “I’ll shoot that f\*\*\*ing dog!”*

SO1 told AP to drop the gun several more times to which AP responded with statements such as, “Shoot me!” and “Kill me!” AP then moved the gun from his temple and pointed it directly at his own forehead. Then AP began to point the gun directly at SO1. Fearing for his life and the lives of the other officers, SO1 discharged his pistol at AP’s torso area and shot him approximately three to four times. SO1 believed he was approximately 15 feet from AP when he discharged his firearm. SO1 also believed that if he had not reacted by shooting AP, then AP would have shot and killed him or another officer.

During his limited interview, SO1 confirmed that he loaded his .40 caliber, Glock Model 22 pistol with 15 live rounds in total. There was one round in the chamber of the pistol and 14 rounds in the magazine. Further, SO1 recognized the male suspect from previous dealings with him as well as from a police bulletin, which included a photograph of AP along with a caution that he was known to be armed with a firearm.

SO2 provided IIU investigators with a copy of a four page prepared statement and confirmed that he did not complete any handwritten notes or any other documentation in regards to this incident. SO2 declined to participate in an interview with IIU investigators.

According to his prepared statement, SO2 attended the domestic violence scene with his partner WO3. SO2 confirmed that a firearm was involved in this incident. He and his partner were subsequently dispatched to the carjacking scene, approximately two to three blocks away. According to SO2, given the close proximity of these calls, the timelines and the similar suspect description, together with the allegation that a firearm was involved in each, he concluded that these matters were related. SO2 and WO3 then attended the armed robbery at the motel. SO2 now believed the suspect male in all three incidents was likely the same person. SO2 and WO3 then made their way to the vicinity of Powers Street and Alfred Avenue. According to SO2, he believed the male walking on Alfred Avenue was likely carrying a firearm and, as a result, WO3 loaded her C8 rifle. SO2 was armed with his .40 caliber, Glock Model 22 pistol. He saw AP walking just east of Powers Street clearly holding what appeared to be a sawn-off rifle in his right hand, with the end of the barrel pressed to the right side temple area of his own head. As AP continued westbound, and when SO2 was approximately 30 to 40 feet away, he believed AP was threatening self-harm. SO2 heard loud, clear, repeated commands by police officers to AP, including *“Drop the gun”* and *“Get on the ground.”* SO2 recalled AP say something like, *“I’ll do it. I’ll do it.”*

At this point, police officers formed a line with SO2 and now SO1, approximately 20 to 25 feet away from AP. SO2 had his pistol pointed at AP’s waistband. AP began walking backwards, facing the police officers with his weapon pointed at his own forehead. Suddenly, AP began to rotate his right hand and the firearm, away from his head, and began to point it towards SO2’s direction. AP was not making any attempt to surrender. SO2 believed AP was going to shoot at

them and that if he, SO2, did not act immediately, either his team members or himself were likely to be shot and killed by AP. According to SO2, SO1 fired his pistol a split second before SO2 discharged his firearm. SO2 believed he shot four to six rounds. He saw AP step backwards a couple of steps then fall to his back. AP's weapon fell to the sidewalk.

### **Review of Video Recordings**

#### **Motel Surveillance:**

At 11:50 p.m., a male with very short dark hair is seen to enter the vendor through the front door, then leave at 11:51 p.m. The male is wearing camouflage shorts, black and white running shoes, white socks and a black or green colored T-shirt. As the male enters the door, the t-shirt appears black in color, changes to a green color as he walk towards the camera and then reverts back to black as he exits. The following items are printed in white on the front side of the T-shirt: the capital letters "H" on the right shoulder, "R" on the left shoulder, the number "13" on the bottom left corner, and on the back side across his back the word "HEADRUSH." Tattoos are visible on both the male's arms, neck and eye region. A long thin brown cylindrical stick with brass colored metal across the mid length is held under the box of drinks the male takes prior to exiting the vendor.

#### **Blake Street Apartment:**

CW6's vehicle enters into view at 12:02 a.m. and parks on the west side of the building. A male is observed knocking on a window on the north side of the building. A curtain is moving and lights are seen from inside the apartment. The male walks back to the vehicle and returns with what appears to be a cardboard box in his right arm. The male is seen meeting with three other males and then enters through the east entrance. The male is wearing a black shirt with a white letter "H" visible on the top of the right shoulder and a letter "R" on the left shoulder. There is extensive lettering on the back of the shirt. The male then exits the building from the west entrance and enters the driver's side of the vehicle. The male is the sole occupant in the vehicle. The vehicle drives away at 12:42 a.m. and out of camera view.

#### **AIR1:**

AIR1 surveillance video recorded the movement of CW6's vehicle from the time it was located at Blake Street and as it drove until it stopped on Alfred Avenue. In addition, AIR1 surveillance also video-recorded AP's movements on foot in the vicinity of Powers Street and Alfred Avenue, together with WPS police officers' movements. There were some limitations to the aerial view of the video due to the nighttime as well as obstructions such as buildings, trees and structures and from the motion of AIR1. However, a male figure is clearly seen walking on a sidewalk, holding what appears to be an object with a barrel in his right hand and pointed directly at his forehead as he moves at a brisk pace. He also gestures with his left arm towards police from time to time. AIR1 broadcasts that the male is: "...holding an object to his head" and "everybody back off."

The male walks by a group of three officers, each of whom is armed and aiming their firearms at him. The male continues to walk at a brisk pace with the object still pointed at his own forehead. AIR1 broadcasts that the male is walking on the sidewalk, still westbound. Trees obscure these last movements of the male but when AIR1 emerges past the heavy leaves and branches, the male is now on the ground, a group of WPS police officers begins to converge on him and a voice saying “*shots fired, shots fired*” is heard. A broadcast for an ambulance to the location is then made.

**CW10’s cell phone video:**

A male is walking westbound on Alfred Avenue, along the north sidewalk from east of and then crossing Powers Street. The male is followed by a number of police officers. The male is illuminated by streetlights, police vehicle headlights and officer weapon lights. Voices are heard stating “*drop the gun*” four times by two different people. The phrases “*Do it now*” and “*Let’s go*” is said by the same voice (different from the previous voices). “*Drop the gun*” is heard two more times followed by “*Let’s go*” (stated by the same voice as previous). The phrases “*Drop the gun*”, “*Drop it*” and “*Put it down*” are heard followed by the clear sound of 12 gunshots and two muffled sounds (which may be an echo or ricochet or possibly a thirteenth shot). IIU investigators enlisted the services of professional sound engineers who were able to slow down the audio track and reduce background noise to enhance the voices and gunshots recorded by the cell phone video.

**Examination of firearms**

A total of 13 spent .40 caliber bullet cartridge cases were located at the scene of the shooting. Both magazines found in each subject officer’s firearm had a maximum capacity of 15 rounds. According to SO1, he loaded his pistol with a magazine containing 15 live rounds, then actioned one round into the chamber of the pistol. After the incident, SO1’s pistol was loaded with seven live rounds. Therefore eight rounds were missing from his pistol. After the incident, SO2’s pistol was loaded with 10 live rounds. As indicated, 13 spent bullet cartridge cases were located at the scene. When the eight missing rounds from SO1’s pistol are accounted for, this leaves five spent bullet cartridge cases left over. The remaining five spent bullet cartridge cases are consistent with a fully loaded 15 round magazine in SO2’s firearm less the 10 live rounds found still loaded inside the pistol. The only police firearms that were discharged at the scene were SO1 and SO2’s pistols.

A total of seven lead and copper jacketed bullets were retrieved from the autopsy and the scene.

AP’s weapon was not a functioning firearm and appeared to be a replica ancient or antique handgun. It was located on the ground, adjacent to AP’s body, and was found broken into two pieces. It was broken along the handle just above the metal trigger. The upper portion of the weapon contained the metal barrel attached to the wooden stock with two metal bands and a flint-style hammer. The stock was labelled “Parris Savannah TN 1689 Made in USA.” It was a reasonable facsimile of a sawed-off shotgun or rifle.





### **Medical Reports**

On September 14, 2017, an autopsy of AP was performed. It determined that the cause of death was due to multiple gunshot wounds.

AP was described as a 23-year-old indigenous male, with dark brown to black short spiky hair, tattoos on both arms, neck, face and above his eyes. He was wearing a black T-shirt with white typed capital letters: On the front, "H" on the right shoulder, "R" on the left shoulder and the number "13" on the bottom left corner. On the back side, across his back: "HEADRUSH" "HONOR FEW" "FEAR NONE" "ONLY GOD CAN" "JUDGE ME" "BUILT FOR" "THE CHOSEN" "FEW." He also wore green cargo shorts, white socks and black and white Jordan running shoes.

According to the autopsy report, it was determined that AP suffered:

1. nine gunshot wounds to the trunk and lower extremities:
  - a. three gunshot wounds of the chest with perforations of major organs;
  - b. one perforating gunshot wound through the left shoulder joint;
  - c. one perforating gunshot wound through the pelvis and right femoral vasculature;
  - d. one perforating and two penetrating gunshot wounds of the proximal right lower extremity associated with fractures of the right femur and right side of pelvis;
  - e. one perforating gunshot wound through the left leg associated with fractures of the left tibia and fibula;
  - f. indeterminate range for all nine entrance wounds (no soot, stippling, or muzzle imprint) with variable trajectories.
2. abrasions of the right frontal scalp and dorsal right fifth finger that may represent graze wounds

On June 27, 2019, the IIU received a Forensic Science and Identification Service Laboratory Report containing the toxicology examination results respecting the analysis of AP's blood and body fluids, which included:

- a blood alcohol concentration of 126 mg% **Ethyl alcohol**, vitreous sample of 136 mg% and the urine sample contained 151 mg% (Ethyl alcohol is a central nervous system depressant – in excess of 100 mg% vision, comprehension, judgment, perception, fine motor skills, memory and information processing are deteriorated and become more pronounced as the percentage climbs);
- **Cocaine** 58 ng/mL and its metabolites Benzoylecgonine 1054 ng/mL, Methylecgonine 202 ng/mL, Cocaethylene 42 ng/mL (Cocaine and metabolites are potent central nervous system stimulants) - the amounts referenced represent residual levels from binge use;
- **Oxycodone** 26 ng/mL (Oxycodone is a prescription, narcotic analgesic used recreationally for its euphoric effects) - the amount referenced is considered a therapeutic level;
- **Alprazolam** 19 ng/mL (Alprazolam is a prescription drug used to treat anxiety and tension and is a central nervous system depressant) - the amount referenced is considered a therapeutic level;
- **7-Aminoclonazepam** detected (Aminoclonazepam is a metabolite of clonozepam, a prescription drug used to treat seizure disorders);
- **Venlafaxine** less than 50 ng/mL (Venlafaxine is a prescription drug used to treat depression and anxiety) - the amount referenced is considered a sub-therapeutic level.

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

This investigation must consider whether the actions of the two subject officers to fire upon and cause the death of AP are justified at law.

In this incident, police were required to be prepared for all risks when they met up with and pursued AP in the vicinity of Powers Street and Alfred Avenue. This included the real possibility that he was armed with a firearm, as there was cogent information to believe that AP was involved in three separate and violent related incidents, all involving the possession and use of a firearm. Therefore, AP posed a significant risk to public and police safety. It made sense for all police officers to arm themselves as they exited their vehicles. It made sense for all police officers to arm themselves as they followed AP on foot. It was also made sense that officers trained specifically for high-risk situations, such as TST, were utilized in this matter.

### **Applicable Law**

Sections 25 (1), (3), (4) and Section 26 of the *Criminal Code of Canada* are applicable 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 to discharge their firearms at AP were reasonable in the given 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 by police and the expectation that they react quickly to all emergencies. These police officers' actions must be assessed in light of these exigencies. Where lethal force is used (intended or likely to cause death or grievous bodily harm), there must be a reasonable belief by the subject officers that the use of lethal force was necessary for their own 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).

On this evening, it was alleged that AP was directly involved in three separate and violent incidents (domestic assault, carjacking and armed robbery). In each of the incidents, it had been reported that AP was in possession of a firearm. AP was known to police, and known to possess firearms, when he was pursued as he drove the stolen car to the vicinity of Powers Street and Alfred Avenue. AP left the stolen vehicle on foot and walked along Alfred Avenue, in possession of an object believed to be a firearm and with it pointed at his head. AP refused to comply with each and every direction and command by police to drop the weapon and surrender. AP responded with threats of his own and demands that police shoot him. AP lowered the purported firearm from his head and pointed it at police officers. A broken replica firearm was found on the ground where AP fell after being shot.

Therefore, if the statements of all the witnesses and the subject officers are accepted and when other corroborating information such as the various videos are considered, was it reasonable, in these circumstances, for the subject officers to fire at AP to prevent the injury or death of any of them?

The next step is to determine whether the evidence from the various 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 this evidence made sense, was consistent with statements given by each other and with statements by other witnesses. Minor variations in the recollections of various witnesses are not unusual or unexpected. When considered as a whole, I am satisfied that this finding of consistency is appropriate in these circumstances.

More importantly, the eyewitness evidence and statements are consistent with the available objective evidence:

1. shell cases matching or consistent with the location of shots fired by police, were located at the scene;
2. the number of shell cases matches the number of shots known fired based on the

- examination of the firearms;
3. the replica weapon, possessed and brandished by AP, was located in close proximity to where he fell on the field;
  4. the replica weapon, possessed and brandished by AP, was a reasonable facsimile of a gun or sawed off rifle;
  5. video surveillance footage, cellphone footage and AIR1 footage all show AP in possession of an apparent firearm and, at various times, pointing it at his own head;
  6. audio captures confirm the repeated directions and commands to drop the weapon and surrender made by police officers to AP.

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

Although neither subject officer participated in full interviews with IIU investigators and instead provided prepared statements, I am satisfied that the extensive evidence gathered from the referenced sources provides sufficient support for the conclusion that the decision by SO1 and SO2 to shoot AP was necessary in order to prevent the injury or death of any or all of them.

The evidence also makes clear that AP was intent on taking his life or having the police accomplish this for him. His action of pointing his weapon 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 all too familiar circumstance seen across Canada and the United States in situations similar to this.

In this investigation, the IIU mandate was to determine whether consequences should flow from the actions of the subject officers, in light of all the circumstances and information known to them at that time.

Following a detailed review of this comprehensive investigation, it is my view that the use of lethal force by the subject officers was 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  
July 19, 2018

*Ref #2017-049*

**APPENDIX 'A'**

