

# ***FINAL REPORT: IIU concludes investigation into deployment of “less lethal” firearm by Brandon Police Service***

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On June 12, 2020, the Brandon Police Service (BPS) notified the Independent Investigation Unit of Manitoba (IIU) of an incident where a police officer discharged a less lethal firearm, striking and injuring a suspect.

According to this notification, which read in part:

*“On 2020-06-11 at 2026 hours, Police attended to a disturbance complaint in which a female reported that (the affected person (AP)) was high on meth and trashing their residence. Upon arrival, officers located AP on the front porch with a large dog tied onto a leash. This dog was known by the attending officers to be aggressive in the past. It was noted that both the caller and AP were on respective recognizance orders, with conditions not to contact or communicate with each other. When officers advised him that he would be placed under arrest AP fled into the house and said, “F\*\*\*, you get a warrant”. AP returned to the front porch where the dog had been tied up to this point, grabbed the dog by the leash, and allowed the dog to rush towards Police before pulling the dog back by the leash. AP threatened to send the dog if Police came any closer. AP was once again advised that he was under arrest but responded that he wanted to stay at the house with his 16-year-old son. By that time a back-up officer, (later designated as the subject officer (SO)), had arrived with a less lethal beanbag shotgun. The attending officers then directed AP to put the dog inside the house and cooperate. AP did put the dog inside of the house and remained on the porch behaving erratically and making quick jerking motions constant with being high on meth. AP began to open and close the front door though Police ordered him not to. Knowing that the aggressive dog was inside of the house (which AP had already threatened to use against the officers) as well as a youth whose safety was a concern: SO advised AP that he would be shot with a beanbag if he tried to go back into the house. AP did turn to enter the house and the beanbag was delivered from approximately 20 feet away and struck him in the back of his right leg near the hamstring. This appeared to have no effect on him and AP walked into the residence only to return outside seconds later. At this point, a taser was deployed and had the desired effect and AP was taken into custody.*

*Brandon Fire Department staff attended to the scene, removed the taser probes, and did an initial assessment of the beanbag impact site. AP was taken to Brandon Regional Health Center (BRHC) and was seen by a doctor who cleared him medically.*

*The beanbag round was recovered from the scene and along with the less lethal shotgun was placed into BPS property”*

The IIU civilian director has previously determined that a less lethal shotgun is a firearm for purposes under the *Police Services Act* (PSA). Any injury resulting from its use would constitute a serious injury pursuant to IIU regulation 99/2015. AP suffered bruising and swelling to his right leg when he was struck with the less lethal projectile. Accordingly, IIU is mandated, under the PSA, to investigate the conduct of the BPS officers. IIU investigators were assigned to this investigation.

Information obtained by IIU investigators included:

- officers' notes and reports
- BPS dispatch audio
- Occurrence summary
- Supplementary reports
- Conductive Energy Weapon (CEW) logs
- medical reports for AP
- surveillance video (with audio) from neighbouring residence
- surveillance video (without audio) from neighbouring commercial premise
- BPS policy on use of less lethal shotgun
- BPS training material on use of less lethal shotgun

As noted above, the civilian director designated the BPS officer who discharged the less lethal shotgun as SO. Additionally, the civilian director designated two other BPS officers as witness officers (WO1-2). IIU investigators met with and interviewed AP. IIU investigators met with and interviewed four civilian witnesses (CW1-4). Two additional civilian witnesses could not be located by nor responded to messages to contact IIU investigators. This included the 16-year-old male who was in the house when the incident occurred.

**Affected Person (AP):**

AP states that he and his girlfriend, CW1, were arguing at the house resulting in her calling the police for assistance. AP confirmed that he and CW1 were both on Section 810 C.C. orders with conditions not to have any contact with each other<sup>1</sup>.

When BPS officers arrived on scene, AP states that he was on the porch of the house, with his dog, an American bulldog, which was on a chain and positioned between him and the officers. AP states that his dog is not vicious but is protective of him. AP states that the dog was barking at the police.

AP was unable to recall if the police arrested him but he did remember they said they had to take him in because of apparent breach of the s.810 no-contact order with CW1. AP states that he told the officers he was going to go inside the home and tell his son what was happening. AP states that an officer told him that he could not go inside the house otherwise he would be shot. AP states that he turned to go into the house and was shot with a beanbag round in the back of his leg and was subsequently struck with a CEW deployment. AP states that he got up, went into the house to speak with his son, returned outside and surrendered to police.

AP states that he had ingested methamphetamine approximately eighteen hours prior to the incident.

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<sup>1</sup> Known colloquially as a "peace bond"

### **Medical Reports:**

AP provided IIU investigators with a consent for the release of medical information. The report indicated that AP sustained bruising and swelling to the site where he was struck with the beanbag round. In the report, AP was noted as stating that he did not comply with BPS that led to the beanbag gun discharge and CEW deployment.

### **Civilian Witnesses (CW):**

CW1 states that she called police because AP was not supposed to be at her house and he would not leave. CW1 states that she believed AP was on methamphetamine at the time. CW1 states that two BPS officers initially responded to the call and when they arrived, AP was on the step of the house with his dog. CW1 described the dog as a large pit bull-type. CW1 states that the dog is protective of her and AP and was barking at police that day. CW1 states that her memory of the incident was not good. CW1 states that police officers told AP he was being arrested. AP stated that he did not want to go with them and at one point yelled at the police officers, they would need a warrant before running inside the house. CW1 states that she observed a police officer approach the house with an orange gun. CW1 states that she closed her eyes and did not see AP shot. CW1 states that after AP was shot (one time) he was subjected to two CEW deployments before taken into custody.

CW2 was identified as being in the house at the time of this incident. During his interview, CW2 denied being present during the incident between AP and BPS officers. CW2 believed he was in jail at the time of the incident and someone else used his name.

CW3 was a resident of the house at the time of the incident. CW3 states she did not see or hear anything related to the arrest of AP as she was in the bathroom of the house at the time of his contact with police.

CW4 was a resident of the house. CW4 states that he was not home at the time AP was shot with the beanbag and he only arrived back at the residence after the ambulance had attended.

### **Witness Officers (WO)**

WO1 states that he and WO2 were dispatched to a call of a disturbance at the house involving AP and CW1. They arrived on scene at 8:28 p.m. and found AP sitting on the step of the house with his dog, described as a large animal, on a leash. WO1 states that the dog was barking at the police officers and appeared aggressive. WO1 states that AP was agitated when police officers arrived on scene. WO1 states that he tried to have AP secure the dog inside the house without success. WO1 states that WO2 spoke with CW1 following which the decision was made to arrest both as each was subject to a no-contact order with each other and each was in violation of their respective orders. WO1 states that he approached AP and instructed him to move away from the dog. WO1 states that he attempted to take hold of AP and arrest him. AP was able to evade WO1 and ran to where his dog was located. WO1 states that he did not pursue AP as the dog appeared aggressive and he did not want to be bit. AP was repeatedly informed he was under arrest but he would not surrender to police. AP went inside the house, coming back outside several times, followed by the dog. WO1 states that additional police officers were radioed to attend for assistance. SO subsequently attended the house in possession of a less-lethal shotgun. WO1 states that SO gave AP multiple warnings and demands to surrender without success. SO

did fire a beanbag round at AP followed by a deployment of a CEW by WO2. AP was subsequently taken into custody.

WO2 states that he and WO1 were dispatched to a disturbance call involving AP and CW1, arriving at the house at 8:28 p.m. WO2 states he knew that both parties were each bound by a Section 810 order that required each to have no contact with the other. WO2 states that he initially arrested CW1 and then attempted to assist WO1 in arresting AP. AP, in response, moved away from police and closer to his dog, which was behaving in an aggressive manner. According to WO2, AP allowed the dog to charge at police officers but pulled it back by a leash before it got too close. WO2 states he advised AP that he was under arrest on at least six occasions. AP would not surrender to police and instead, entered and exited the house, with the dog, several times. WO2 states that backup police officers were radioed to attend the house. WO2 states that SO attended, in possession of a less lethal firearm. WO2 states that AP went to re-enter the house again, at which point SO fired a beanbag round at him. WO2 could not recall if SO issued any warning before firing the beanbag round. WO2 states that the beanbag round was ineffective in stopping AP as he continued to enter the house after being shot. When AP came back outside a short time later, without the dog, WO2 states that he deployed his CEW that led to AP being taken into custody without further incident.

### **Subject Officer**

Pursuant to the provisions of the PSA, a subject officer cannot be compelled to provide his or her notes regarding an incident, nor participate in any interview with IIU investigators. In this case, SO provided his notes and reports to IIU investigators. SO did not agree to participate in an interview with IIU investigators.

According to SO's notes and reports, at 8:40 p.m. WO1 had radioed that additional police units were needed to attend the house to assist with a male who was told multiple times that he was under arrest but was using a large dog as protection. The male had also threatened to release the dog on police officers presently on scene. At 8:41 p.m., SO writes that he arrived at the house and saw AP standing on the steps of the house. SO writes that AP was holding onto a large dog, by a leash. AP was heard threatening to release it if police came closer.

SO writes that he had a less lethal beanbag shotgun in his possession and positioned himself approximately 15-20 feet in front of AP and the dog. SO writes that both WO1 and WO2 instructed AP to put the dog into the house and follow their directions. AP was refusing to comply. SO writes that he was advised that there were children in the house by WO2. SO writes that he racked a beanbag round into the shotgun chamber. SO writes that he did this while in front of AP, who, in response, put the dog in the house but continued to refuse to follow police directions.

SO writes that AP is a known methamphetamine user and in his opinion appeared under its influence at this time. AP continued to open and close the front door to the house. SO writes that he could not see if any weapons were in the house and did not know where the dog was located. SO writes that he warned AP that if he did not comply with police directions, he would shoot him with the beanbag shotgun. AP refused to follow directions and moved to re-enter the house. SO writes that he fired one beanbag round at AP, striking him on the back of the right leg. AP continued to walk into the house and, appearing unaffected by the beanbag round, yelling, "*don't shoot me*". As soon as AP entered the house, he immediately came back out. SO writes that

WO2 deployed his CEW, striking AP which caused him to fall backwards into the house. SO and WO1 were then able to handcuff AP and take him into custody.

**Video Surveillance:**

IIU investigators conducted a canvass in the neighbourhood surrounding the house but were unable to locate any additional eyewitnesses to the incident. However, the canvass did identify video footage captured by a doorbell camera of a neighbouring residence and an exterior security camera on a nearby commercial premise.

The doorbell video footage did not show the interaction with and arrest of AP, but it did capture the voices of the parties involved in the incident. Prior to the discharge of the beanbag round by SO, a male officer can be heard saying, "*You're under arrest, you're really under arrest*" and "*you're breaching, you're breaching a no contact order.*" Incomprehensible yelling from another male, believed to be AP, are also heard throughout. Police officers are heard issuing repeated commands:

*"Get out here and get on the ground."*

*"Walk out here",*

*"Get out here"*

*"we now know there's a kid inside...if you run in there, we're going to boot this door to make sure the kid's OK, shoot your dog ...."*

*"Do not go inside"*

*"If you don't start listening I'm going to shoot you with (inaudible)" and*

*"Off the step, do it now. Off the step."*

Regarding the video surveillance footage from the exterior video camera on a nearby commercial building, there is no sound with the video. However, it does show AP running from police who attempted to take hold of him, and shows him repeatedly going in and out of the house prior to being shot with the beanbag shotgun and the CEW deployment by officers. A dog is visible for a portion of the video. When the dog is seen outside the home, police officers are observed to make conscious efforts to stand away from it.

**CEW Deployment:**

Internal data from the CEW carried by WO2 was downloaded at the request of IIU investigators. According to the downloaded data, the CEW had been discharged once, on the date of the incident, at 8:43 p.m., for a duration of five seconds.

**BPS less lethal firearm policy and training material:**

IIU investigators reviewed the BPS less lethal firearm policy, in particular to determine the circumstances where the use of a firearm and deadly force shall not be used. The relevant policy portion states:

**Circumstances Restricting the Use of Firearms/Deadly Force**

*Notwithstanding the provisions of Section 25 of the Criminal Code, members shall not resort to the use of firearms/deadly force under the following circumstances:*

- 1) To apprehend a person who is only committing, or who has only committed, or who is only about to commit, a property offence or an offence punishable on Summary Conviction*
- 2) To apprehend a person who is committing or who has committed, or who is about to commit, any offence if the freedom of that person does not constitute a reasonable and serious threat to life*
- 3) To apprehend a person who is committing, or who has committed, or who is about to commit, any offence if the use of firearms constitutes a greater threat to life than does or will the freedom of that person*
- 4) To fire a warning shot*
- 5) At a fleeing vehicle, except in self-defence*

BPS also supplied training materials categorize beanbag rounds as intermediate weapons, similar to a CEW or baton. According to BPS training, the use of a less lethal shotgun, as an intervention option, could be considered in situations where it is necessary “to protect the public or officers from harm ...” and “gives officers a safe distance to engage an aggressive or uncooperative suspect ....” Furthermore, the BPS training materials state that the primary target areas for impact munitions are the thighs, buttocks or forearms of an individual.

On the basis of the information gathered in this investigation, (including the presence of the large and aggressive dog coupled with threats of release at police and the repeated entry/exit of the house by AP (with unknown whether weapons are readily available within the house)), I am satisfied that the conduct of SO in the use of the less-lethal shotgun was within the BPS policy guidelines and training in effect at the time of this incident.

**Conclusion:**

Sections 25(1), 26 and 265(1) (a) of the Criminal Code of Canada state:

*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.*

*265 (1) (a): A person commits an assault when... (a) without the consent of another person...he applies force intentionally to that other person, directly or indirectly*

A police officer is also entitled to arrest anyone to prevent a breach of the public peace. A police officer is authorized to use force in the lawful execution of his duties, and as much as is necessary for that intended purpose. Moreover, a police officer is authorized to use force to defend or protect himself from the use or threat of force by another person, provided it is reasonable in all of the circumstances. If the force used is in excess of what is necessary or reasonable in the circumstances, such force is not justified and the acts may constitute an assault under the Criminal Code of Canada.

Where it is determined that reasonable grounds exist to believe a criminal offence has been committed, the IIU civilian director may charge the subject officer accordingly. The determination of whether reasonable grounds exist is based on a careful assessment of all the available evidence. The totality of the circumstances must be considered in assessing these grounds. The purpose of emphasizing the totality of the circumstances is to avoid concentrating on individual pieces of evidence. Accordingly, consideration of the evidence cannot be piecemeal.

Moreover, determination of whether the necessary reasonable grounds exist must not be based solely on speculation. The absence of evidence on essential elements of the offence means there is an absence of necessary reasonable grounds. Therefore, in those circumstances, there is no legal support for the laying of a criminal charge. That is how the law is to be applied.

This investigation was undertaken by IIU because AP had sustained an injury from the use by police of a firearm (in this matter a less lethal shotgun that discharges beanbag rounds) during his arrest. The existence of an injury does not presuppose that a criminal offence has occurred. The

mandate of IIU does not include authorizing criminal charges in the absence of the necessary evidence to support that decision.

On review of this investigation, I am satisfied that:

- SO was lawfully placed and was acting in his capacity as a police officer in the lawful execution of his duties during his interactions with AP;
- AP was in contravention of a lawful and in force s. 810 no contact order;
- AP was in possession of a dog, which presented as a significant risk to the police to cause could serious physical harm and damage to them;
- AP was placed under arrest for violation of his s. 810 order;
- AP continuously and repeatedly refused to comply with police directions and demands and did not surrender himself to police;
- It was unknown as to the extent of AP's access to weapons when he entered the house;
- The presence of the dog and possibility of its release by AP at police gave rise to a reasonable apprehension of physical risk to the police and the need to eliminate that risk;
- Less lethal force options (CEW and beanbags) were employed and were successful in detaining AP;
- The less lethal force and CEW uses were constrained to once for each and not required again once AP was down on the ground;
- It was a tactical choice between the order of use of the less lethal shotgun and CEW

In this investigation, part of the IIU mandate is to determine whether consequences should flow from the SO's actions in consideration of all the circumstances and information known at the time. On careful review of the available evidence and material facts obtained in this investigation, I am not satisfied there are reasonable grounds to believe that SO exceeded the ambit of justifiable force during his contact with AP. It is my view that the force used by SO was necessary and in compliance with existing police policy, training and section 25 of the Criminal Code of Canada.

Accordingly, I am not satisfied that reasonable grounds exist to charge SO with any offence and no charges will be authorized against SO.

IIU has completed its investigation and this matter is now closed.

**Final report prepared by:**

Zane Tessler, civilian director  
Independent Investigation Unit  
September 10, 2020

*Ref 2020-0030*