

FINAL REPORT: IIU concludes investigation into fatal WPS officer-involved shooting on Colony Street

On February 23, 2019, the Winnipeg Police Service (WPS) notified the IIU of an incident that occurred at an apartment building on Colony Street in Winnipeg. The notification (edited for clarity) read in part:

“At 9:43 a.m., a 911 call is received indicating a male armed with a hammer is in hallway banging on doors on the second floor of [apartment block]; female heard screaming in background. Police dispatched and information en route appears to indicate break-in at a suite at [apartment block]. Shortly after arrival, police have a use of force encounter in a suite at [apartment block] and radios shots have been fired (10:00) and an ambulance is requested.

A male (later identified as the affected person (AP)) is transported to HSC in critical condition and is pronounced deceased at 10:30 a.m. by [attending physician].”

According to this notification, AP sustained gunshot wounds and was deceased. IIU assumed responsibility for this matter in accordance with section 65(1) of *The Police Services Act* (PSA) as this was a fatality following an interaction with police. A team of IIU investigators was assigned to this investigation.

Information obtained by IIU investigators included:

- witness officers’ notes and reports;
- download reports from two conductive energy weapons (Tasers);
- copies of WPS-obtained witness statements;
- audio of 911 telephone calls;
- WPS radio communications;
- Forensic Identification Unit report;
- scene photographs;
- autopsy report;
- toxicology report.

The civilian director designated the police officer who discharged his service pistol as the subject officer (SO). IIU investigators interviewed five witness officers (WO1- WO5). They also interviewed seven civilian witnesses (CW1- CW7).

Facts and Circumstances

Civilian Witnesses

CW1 was a relation of AP. CW1 advised that AP had received treatments for mental illness and was not regularly taking his prescription medication. AP was a tenant at the apartment block but had received an eviction notice because he damaged his suite door; he was required to vacate the premises by the end of February 2019. According to CW1, AP was paranoid, believed people were following him and people on the TV were talking to him.

On the day of the shooting, CW2, a tenant at the apartment block, observed AP throwing stuff out of his suite. CW2 also saw AP in possession of a hammer. CW2 later heard people running down the stairs and someone yelling, *“Put it down.”* CW2 heard someone say, *“A shot was fired, call the ambulance,”* although he did not hear any shots. CW2 also heard someone saying, *“He tried to gain access to the suite and he had a hammer”* and *“He locked himself in the bathroom and came running out with the hammer.”*

At approximately 9:30 a.m. that day, CW3, a tenant at the apartment block, heard someone knocking on suite doors. He looked out and saw a male matching the description of AP. This male was holding a hammer and hammering at a door. CW3 immediately telephoned 911 and he heard the police arrive at the apartment block about five minutes later. Police officers came to his floor and some left the floor. According to CW3, he heard the sound of gunshots approximately 30 minutes after the police arrived.

CW4 was in his suite at the apartment block and heard three gunshots. CW4 did not hear any conversations prior to hearing the gunshots. CW4 stated that he knew AP, was aware that AP had mental health issues and had observed AP throwing stuff from his suite into the back lane.

CW5 made the original call and complaint about AP attempting to break into her suite. CW5 stated she did not hear any gunshots nor did she know the male who was trying to break into her suite.

CW6 was alerted to aggressive knocking at his suite door. CW5 went to the door but did not recognize the male standing outside. There was damage to the suite door. According to CW6, CW5 then telephoned 911. At that time, the male outside entered their suite. The male was in possession of a hammer. CW6 grabbed a chair for protection. As the male with the hammer went into a different room, CW6 and CW5 exited their suite and walked to a different floor. Police arrived a short time later and CW6 and CW5 returned to their suite. CW6 states that he was talking with police when they suddenly left. Moments later, he heard two or three gunshots.

CW7 observed AP attempting to enter CW5’s suite. CW7 stated that AP, in possession of a hammer, was banging on the neighbour’s suite door. Earlier that day, CW7 saw AP throwing items outside the back door of the apartment block. CW7 also saw CW5 and CW6 run from AP and out of their suite.

Witness Officers

WO1 and SO were dispatched in response to a call for service. WO2 and WO3 had volunteered to assist them. At 9:49 a.m., the four police officers arrived at the apartment block and went up

to the third floor. WO1 observed that a suite's door panel had been completely smashed. According to WO1, there was a hole in the door large enough for someone to climb through and enter the suite. The police officers then met with the tenants of the suite. They advised police that a male with a hammer had smashed through their door and ran around inside the suite. As WO1 began to make his way down and to the front entrance of the apartment block, he spotted a man, matching the description of the male with a hammer, entering a suite at the far end of the second floor hallway. WO1 and SO made their way to this suite. WO1 observed some wood chips scattered in the hall in front of the suite. WO1 kicked at the suite door with his foot and a male (later identified as AP) answered the door. WO1 asked the male to come out into the hall to speak with them. The male initially refused to exit the suite but then took a few steps forward. SO asked the male if he lived there, to which the male responded that he did. However, the male was a resident of suite 6 and this was suite 15. WO1 did not see the male with any weapons at that time. WO1 told the male to exit, to turn around and face the wall so that he could be handcuffed and detained. The male refused and returned to his suite. WO1 followed and as the male attempted to shut the suite door, WO1 blocked it with his foot from closing. The male then turned and ran back into his suite and into the dining room. WO1 decided to double back down a hallway when he observed that SO was now engaging the male. SO deployed his Taser but it had no effect on the male. The male then ran towards the kitchen and WO1 went to keep him contained. The male then charged towards WO1. WO1 deployed his Taser but it had no effect on the male.

The male then ran at WO1 again and struck him on the top of his head with a downward fist. WO1 was stunned by the blow but was not injured. The male ran into a bathroom and closed the door. As WO1 made his way to the bathroom, the door opened and the male, now armed with a hammer, ran towards WO1. According to WO1, the male was raising the hammer up and preparing to strike him. WO1 stated that he backpedaled through the kitchen and the male followed him with the raised hammer. WO1 stated that if the male had struck him with the hammer, there was a significant likelihood he would have been seriously injured or killed. As WO1 moved towards the living room, he heard three gunshots. The male fell onto his back with the hammer still in his hand. WO1 heard SO immediately radio dispatch "...shots fired" and requested an ambulance to attend.

WO2 was partnered with WO3 that morning and attended a weapons call at the apartment block. They arrived at the scene and met with WO1 and SO. When the police officers entered the apartment block, they met CW5 and CW6 who advised that a male had broken into their suite. All the police officers went to the third floor and observed the door to the suite was smashed. The police officers entered the suite and confirmed no one was in it. WO2 noted there was a significant amount of damage within the suite. WO2 stated that WO1 and SO left the suite to check the remainder of the apartment block while WO2 and WO3 remained in the suite.

Moments later, WO2 heard a radio broadcast of "*second floor, second floor.*" WO2 then ran down the stairs towards the second floor. As WO2 was arriving at a fire door that led to the second floor, he heard the sound of gunshots fired. When WO2 entered the second floor hallway, he observed SO with his service pistol out. WO2 looked into the suite and observed WO1 standing and a male lying on his back. WO2 noted there were two bullet holes in the male's chest. WO2 recalls seeing two Tasers in the suite.

WO3 was working with WO2 that morning. They attended to a weapons call at the apartment block and arrived there just before WO1 and SO. The four police officers entered the apartment block and found a couple waiting for them, who advised that a male had broken into their suite on the third floor of the building and was in possession of a hammer. The police officers attended to the third floor and found the door to the suite smashed in, with visible marks that led WO3 to believe a hammer had caused the damage. WO3 stated that WO1 and SO went to look throughout the remainder of the apartment block for the suspect.

While WO3 and his partner were speaking to CW5 and CW6, he heard a loud voice coming from downstairs. As WO3 was going down the stairs, he heard three gunshots. When he entered the second floor hallway, WO3 observed SO holding his service pistol while broadcasting that there had been shots fired and an ambulance was required.

WO4, a patrol sergeant, was at police headquarters (HQ) and heard the dispatch call to the apartment block. According to this broadcast, a male, armed with a hammer, was breaking into a suite. WO4 was aware that two teams of two officers each were responding to the call. A few minutes later, WO4 heard radio broadcasts that shots had been fired and that an ambulance would be required. WO4 left HQ at 10:01 a.m., arrived on scene within five minutes and arranged to have the four police officers escorted separately to HQ. WO4 then went to the second floor and into the suite where the shooting occurred. He saw two deployed Tasers, a hammer, a spent shell casing inside the doorway and two spent shell casings in the hallway.

WO5 is a sergeant with the WPS Tactical Support Unit (TAC). At 10:00 a.m. on February 23, he heard a police radio broadcast that shots were fired at the apartment block. He immediately attended the scene. When he arrived at the suite, he saw SO and WO1, among other police. WO5 removed them from the suite. WO5 did not ascertain their exact involvement and did not know who had discharged a firearm or deployed the Tasers. WO5 did observe three spent shell casings on the floor, two outside the suite and one at the threshold of the hallway door and the suite, wedged in the door jam. WO5 also observed two Tasers on the floor and each had been deployed.

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 declined an in-person interview but did provide IIU investigators with a copy of his notes and report.

SO1 wrote that he and WO1 responded to a call for service at the apartment block. When he and WO1 attended AP's suite, he observed wood chips on the landing of the second floor and on the stairs leading up to the third floor. SO and WO1 attended to the suite where AP was last seen entering, being suite 15, and knocked on the door. AP answered the door. SO noted that AP matched the description of the male that had damaged and entered the suite where CW5 and CW6 lived. AP was asked if he lived in suite 15, to which he replied that he did not and when asked where he lived he said "*number six*". WO1 asked AP to step into the hallway but AP refused. WO1 told AP to exit the suite and face the wall, and that he would be handcuffed and taken into custody. AP then turned and ran into the suite and towards the kitchen area. SO wrote that he was in the hallway looking into the kitchen. According to SO, AP turned and adopted a fighting stance with his fist clenched. SO deployed his Taser while yelling at AP to get on the

ground. The Taser was ineffective as AP was wearing a bulky winter jacket and multiple layers of clothing. AP then fled through the kitchen and towards WO1. SO saw WO1 deploy his Taser. Immediately after that, SO saw AP punch WO1 in the head. AP then ran into the bathroom at the end of the hallway. SO saw a cabinet open while AP was in the bathroom, then AP exit the bathroom with a hammer in his right hand. AP attempted to strike WO1 twice with the hammer. SO wrote that he threw his Taser on the floor and transitioned to his firearm. AP then charged at SO, still holding the hammer in his right hand and raising it above his head, ready to swing. SO discharged his firearm three times in an attempt to stop this threat, as SO feared death or grievous bodily harm to himself. AP was approximately 10 feet away from SO when he was shot.

Taser Use Analysis, Forensic Report, Autopsy and Toxicology Review

- Taser analysis confirmed that the deployed Tasers did not make contact with a conductive surface.
- Forensic Investigation Unit conducted a round count from SO and WO1's firearms. It was determined that all of WO1's rounds were accounted for. SO was missing three rounds.
- A hammer was located in the room where AP was shot.
- On February 25, an autopsy of AP was completed. The preliminary cause of death was multiple gunshot wounds. On May 30, the autopsy report was received at IIU; it concluded that AP died because of multiple gunshot wounds.
- On March 4, autopsy exhibits and bodily fluids were forwarded to the RCMP lab for analysis and for the production of a toxicology report respecting AP. IIU investigators questioned whether AP was under the influence of drugs or alcohol at the time of the incident. The lab advised that the toxicology report would be diarized for production in 155 days. On November 25, IIU investigators received the toxicology report (260 days following the original request). No drugs or alcohol were detected in AP's system. Acetone was detected in AP's blood and urine. According to the Chief Medical Examiner, who reviewed the toxicology report, acetone would not cause psychosis. Its presence was most likely the result of insufficient caloric intake over a prolonged period. As a side issue, a 260-day wait for the production of the toxicology report by a third party laboratory is an inordinate delay and seriously hampered IIU in finalizing its investigation in reasonable time.

Conclusion

Issues and Conclusion

This investigation must consider whether the actions of the subject officer to fire upon and cause the death of AP were justified at law. In this incident, police responded to a call for service concerning a male armed with a hammer who was breaking into suites at the apartment block. On arrival, police officers, speaking with the complainants, received a description of the male. The suspect male was spotted entering another suite. Police officers made contact with AP and attempted to detain him as part of their investigation. AP resisted arrest and ran into the suite.

Police officers gave chase in an attempt to apprehend AP. AP armed himself with a hammer, with which he swung it at a police officer and threatened to strike another. AP refused to comply with all directions to drop his weapon and posed a risk to police safety. SO discharged his service pistol three times, hitting AP, which ultimately led to AP's death.

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 decision of the subject officer to discharge his firearm at AP was reasonable and necessary for the self preservation of that police officer or the preservation of any one under his protection from death or grievous bodily harm in the given circumstances. Reasonableness of a police 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 in by police and the expectation that they react quickly to all emergencies. These 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).

In that decision, the Supreme Court noted, at para. 35:

“Police actions should not be judged against a standard of perfection. It must be react quickly to emergencies. Their actions should be judged in light of these exigent circumstances.”

Also, see *R. v. Power* 476 Sask. R. 91 (CA), where at para. 35, the court notes:

“On the basis of the foregoing, a determination of whether force is reasonable in all the circumstances involves consideration of three factors. First, a court must focus on an accused's subjective perception of the degree of violence of the assault or the threatened assault against him or her. Second, a court must assess whether the accused's belief is reasonable on the basis of the situation as he or she perceives it. Third, the accused's response of force must be no more than necessary in the circumstances. This needs to be assessed using an objective test only, i.e. was the force reasonable given the nature and quality of the threat, the force used in response to it, and the characteristics of the parties involved in terms of size, strength, gender, age and other immutable characteristics.”

On this morning, it was alleged that AP was breaking into suites while armed with a hammer. When police noticed a man matching the description of the suspect and attempted to detain him, he resisted arrest and ran from them. Attempts to subdue AP through use of less lethal means were not successful. AP used violence on a police officer and armed himself with a hammer. AP refused to comply with every direction and command by police to drop his

weapon. AP raised the hammer with the intention to use it and charged at police. There existed a real likelihood that AP could have delivered a potentially lethal injury with the hammer. The hammer was located on the ground where AP fell after being shot.

Therefore, was it reasonable, in these circumstances, for the subject officer to fire at AP to prevent the injury or death of himself or any other police officer in the vicinity?

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 evidence made sense, was consistent with statements given by numerous officers and with statements by 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 in that:

1. AP was in possession of a hammer;
2. The hammer was brandished by AP;
3. The hammer was used by AP in an attempt to strike a police officer;
4. AP threatened to strike a second officer with the raised hammer;
5. The hammer was located in close proximity to where AP fell after he was shot;
6. SO was the only police officer to discharge a firearm.

This objective evidence materially corroborates the evidence of all the witnesses. The subject officer did not participate in an interview with IIU investigators but provided his notes and report. I am satisfied that the evidence gathered from all sources provides sufficient support for the conclusion that the decision by SO to shoot AP was necessary in order to prevent the injury or death to him and other police officers in the vicinity.

In this investigation, the IIU mandate was to determine whether consequences should flow from the actions of the subject officer, in light of all the circumstances and information known to him at that time. Following a detailed review of this investigation, it is my view that the use of lethal force by the subject officer was reasonable, necessary, justified and unavoidable.

The chief medical examiner for Manitoba has called for an inquest with respect to AP’s death pursuant to The Fatality Inquiries Act. Other issues from this incident will be considered in those proceedings.

The IIU investigation is complete and this file is closed.

Final report prepared by:

Zane Tessler, civilian director
Independent Investigation Unit
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