

# ***FINAL REPORT: IIU concludes investigation into warning shots fired by RCMP officer***

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On June 13, 2019, the Royal Canadian Mounted Police (RCMP) notified the Independent Investigation Unit of Manitoba (IIU) of an incident where a police officer discharged his service pistol twice in the air as warning shots.

According to this notification, which read in part:

*“On June 1st, 2019, at approximately 4:00 p.m., two RCMP members responded to a family disturbance on a farm in Roblin, Manitoba.*

*It was reported that a male (later identified as the affected person (AP)) was intoxicated or high on drugs and was out of control in his parents’ house. AP was a known methamphetamine user.*

*The RCMP members arrived on scene and saw AP walking from the house with a beer in his hand. He drank from it and threw it to the ground. AP took his shirt off and ran from police. One of the RCMP members (later identified as the subject officer (SO)) yelled to stop and AP continued running into a bush area. The other RCMP member (later identified as a witness officer (WO1)), followed by three of AP’s family members, gave chase on foot. SO went back to his police vehicle and was able to circle around the bush area and saw AP coming out of the bush towards a tractor (with an attached cultivator) parked in the middle of a field. SO got out of his police vehicle and told AP he was under arrest, but AP kept running towards the tractor. AP was able to get into the tractor as SO reached him. SO stepped onto the tractor.*

*SO told AP to stop but he turned towards him, smiled, started the tractor up, and put it in gear. SO knew the tractor was hooked up to the cultivator and feared he would be run over if the tractor moved forward. AP put the throttle down and the tractor moved forward. SO jumped off the tractor and ran out of the way, as the cultivator just missed him.*

*SO made it back to his police vehicle and followed AP to another area of the field where he was trying to unlock a gate to leave. SO got out of his police vehicle and told AP to stop. AP got back into the tractor, put it in gear, and drove straight towards SO - driving over a fence and wire in the process.*

*SO drew out his RCMP service pistol and fired two shots into the air to try and get AP to stop and prevent getting hit by the posts and barbed wired. AP continued on his way and eventually made it to an ATV and fled the area.”*

Although this notification concerns a discretionary matter under The Police Services Act (PSA), based on the nature of the allegation, the civilian director determined it was in the public interest for the IIU to investigate this complaint. IIU investigators were assigned to this investigation.

Information obtained by IIU investigators included:

- officers' notes and reports
- general report
- audio of 911 telephone calls
- audio of RCMP radio communications
- SO firearms qualification records
- RCMP firearms discharge policy

As noted above, the civilian director designated the RCMP officer who discharged his service pistol as the SO. Additionally, the civilian director designated two other RCMP officers as witness officers (WO1-2). IIU investigators could not locate AP (who, during the relevant times of the investigation, remained at large) and were unable to interview him<sup>1</sup>. IIU investigators did interview one civilian witness (CW) and received a report from a subject matter expert (SME) on the matter of warning shots.

### **Civilian Witness (CW):**

CW had called 911 as AP had caused a disturbance by flipping a kitchen table during lunch. According to CW, AP had been drinking and was searching for more. When the RCMP arrived, AP immediately ran north toward the bush area. CW and WO1 ran after AP, while SO drove the police vehicle north. CW states that AP got into a tractor that was parked in the field. WO1 was shouting at AP to stop. AP drove the tractor into the fields and ignored the police officers' commands. SO and WO1 drove their police vehicle into the fields and pursued the tractor. CW states that he followed on foot when he heard two popping sounds, which he came to realize, were gunshots. CW estimates there was a five-second pause between the pops. CW recalls that SO shouted out "[AP] stop, [AP] stop," just before hearing the popping sounds.

CW states that the tractor can produce about 140-horsepower and can travel at a speed of up to 14 mph. The tractor had a tilling unit attached to its rear at the time. CW believed that AP had driven the tractor through the barbed wire wooden fence. The following day CW inspected the tractor and found that barbed wire from the fence had wrapped around the wheels of the tractor. CW states that there is no one living in the fields where the incident occurred. The nearest residence was approximately one mile away.

### **Witness Officers**

At the time of the incident, WO1 had approximately one month and three weeks of policing service. Her field trainer was SO. WO1 and SO had dealt with AP the previous day. WO1 states that she and SO were dispatched to a complaint call from CW regarding a disturbance caused by AP. WO1 states that information was provided by CW that AP was high and probably on meth. Upon their arrival, WO1 saw AP stepping from the house and holding a beer can in his hand. AP

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<sup>1</sup> On January 16, 2020, IIU forwarded its investigative file to Manitoba Prosecutions Service and requested that a crown opinion be prepared on the matter. On April 14, 2020, the assigned crown attorney advised IIU investigators that AP was in custody following his arrest in early February 2020 after a number of warrants for his arrest were executed on him. AP was detained at the Dauphin Provincial Jail, Dauphin, Manitoba. IIU investigators immediately contacted AP to request an interview with him on this matter. AP advised IIU investigators that he did not wish to be interviewed, did not wish to provide any statement and did not wish to comment on the matter. The crown attorney was advised accordingly.

downed the beer, took off his shirt and ran north into the bush on the farm. WO1 and CW gave chase on foot through the bush. SO drove the police vehicle in the same direction. WO1 then saw AP on a tractor and driving in the fields. There was a cultivator attached to the rear of the tractor. WO1 rejoined SO and they followed the tractor through the open farm fields. WO1 saw that AP stopped the tractor by a gate by two barbed wire fence lines, which were about three feet in height. AP attempted to open the gate but as police approached, he got back onto the tractor. WO1 states that the police vehicle pulled up to where the tractor had stopped. WO1 was standing behind the tractor and SO stood in front of it. AP then started up the tractor while SO was saying, 'stop [AP], get out'. AP began driving the tractor at SO. WO1 states that SO pulled out his gun, raised it above his head and fired two shots in the air. The gun was not pointed at the tractor. AP continued to drive forward. SO jumped out of the way of the oncoming tractor. AP drove over and through the fence and into the fields. WO1 states that she did not follow AP. WO1 states that apart from SO, AP and she, there were no other persons near the firearm discharge.

WO2 was not present at the scene of the incident but did have a conversation the following day with SO. SO advised that he was dispatched to the farm because AP was smashing things. AP was chased when he mounted a tractor, with a cultivator attached, and was driving at SO. SO told WO2 that he had fired two warning shots in an attempt to distract AP.

### **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 also agreed to participate in an interview with IIU investigators.

SO advised that he had a number of dealings with AP prior to the events of this incident. On June 1, the RCMP had received a complaint from CW stating that AP was causing a disturbance and was attempting to leave the yard in a vehicle. At 4:25 p.m., SO and WO1 arrived at the residence. AP was observed in the yard and then he ran off into the bush to the north. AP was pursued on foot by WO1 and CW. SO states that he drove his police vehicle north on an adjacent road and observed AP running. SO states that he exited his police vehicle and pursued AP on foot. AP got onto a tractor parked nearby and started it. SO was telling AP to stop. SO states that AP smiled at the officer and drove westerly across a field. There was a cultivator attached to the back of the tractor, and SO, fearing he may be run over by it, got out of the way. SO states that he returned to his police vehicle where WO1 was waiting for him and the two followed AP. AP had pulled up to a gate in a fence that surrounded the field and attempted to open it. SO stopped the police vehicle and approached AP on foot, telling him to stop. AP, unable to open the gate, drove the tractor into it and broke it open, causing the gate, fence posts and barbed wire, to be caught up in the cultivator attachment. The tractor then started to drive towards SO. SO states that as police presence and calls of arrest failed to stop AP, he considered all of his options. SO states that intervention tools, such as OC (pepper) spray and a baton were not options, as he could not get close enough safely to use them. SO states that he decided to use his service pistol and fire two warning shots to distract AP and have him stop the tractor. The two warning shots did not work, and AP continued to drive off on the tractor, eventually stopping and then fleeing on an ATV. SO estimated that the residence was approximately half a mile to a mile away to the east of where the incident occurred. SO saw CW approaching towards their position and WO1 was standing by the police car as far as he could recall. There was no one

else near his position. SO saw the tractor and the wires coming towards him so he thought that he had to stop it somehow. He thought that if he fired two warning shots, AP would hear them. SO confirmed that he did not point his service pistol at anyone. SO states that he believed he was going to be run over by the tractor. SO states that he had no other options suitable to stop the tractor coming towards him. SO states that he did not want to shoot AP and his intention was to get AP to stop.

**SME report and RCMP firearm policy:**

IIU investigators engaged a SME regarding the use and propriety of warning shots. The SME explained that warning shots were previously incorporated in the RCMP firearms discharge policy but were no longer covered<sup>2</sup>. According to SME, there was no specific law that covered warning shots. The discharge of a service firearm is covered under the policy and is based on the continuous risk assessment of the responding member, who will be applying the principles of the RCMP Incident Management Intervention Model (IMIM). The RCMP does not provide instruction or training on the use of warning shots. Traditionally, warning shots have not been recommended, nor endorsed, for operational use. A member who fears death or grievous bodily harm to themselves or others, should only then, consider the discharge of a service firearm.

**Conclusion:**

Following the completion of this investigation, the civilian director forwarded the IIU investigative file to Manitoba Prosecution Service (MPS) and requested a review and opinion on whether any Criminal Code charges should be authorized against the subject officer.

Following the review of the IIU investigative file, MPS advised IIU that this matter did not meet the prosecution-charging standard, in that based on the exigent circumstances, there was not a marked departure from the standard of care that would have been employed by a reasonable person in the same situation. Accordingly, MPS will not recommend any charges against SO.

The IIU investigation is now complete and this file is closed.

**Final report prepared by:**

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<sup>2</sup> RCMP subsequently confirmed that references to "warning shots" was removed from RCMP national policy in 1993.