IIU | INDEPENDENT INVESTIGATION UNIT OF MANITOBA

IN THE MATTER OF AN INVESTIGATION INTO AN INCIDENT INVOLVING THE DEPLOYMENT OF A LESS-LETHAL FIREARM

FINAL REPORT OF THE CIVILIAN DIRECTOR

OF THE INDEPENDENT INVESTIGATION UNIT

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Introduction

On February 26, 2024, the Winnipeg Police Service (WPS) notified the Independent Investigation Unit of Manitoba (IIU) of an incident.

The written notification disclosed the following information:

*"On Monday, February 26, 2024, at 12:23 pm Winnipeg Police Service East District Community Support Units attended to ** Worthington Avenue to arrest the A/P on the strength of five outstanding warrants for his arrest.*

Upon arrival Winnipeg Police members announced themselves and attempted to contact the A/P from outside of the residence. The A/P did not present himself to police and while members were situated outside the residence the A/P discharged a firearm or pellet gun from within the residence. None of the Police members were struck however the projectile traveled towards the playground of Victor Mager school causing the school to go into a lockdown.

Community Support Unit members requested assistance at which time the Tactical Support Team (TST) members responded. The A/P remained within the residence, numerous attempts to communicate with the A/P were made to no avail. As police continued attempts to communicate with the A/P Police on scene were advised by a family member that the A/P would not come out of the residence without a fight.

As the standoff progressed Police noted smoke and flames coming from the west side of the residence. Police continued communication attempts using a loud hailer in attempts to have the A/P leave the residence.

Shortly after the fire commenced the A/P exited at the rear of the residence, he refused to obey Police commands resulting in a use of force encounter, where a Tactical Support Unit member discharged multiple less than lethal .40mm bean bag rounds striking the A/P three times in the upper torso. Police members were able to then take the A/P into custody without further incident.

The A/P received bruising to his torso area, he was transported in stable condition to HSC for smoke inhalation."

As this matter concerned a serious injury as defined in the IIU Regulations, the IIU assumed responsibility for this investigation in accordance with Section 66(4) of The Police Services Act (PSA). IIU investigators were assigned to this investigation. The civilian director designated one subject officer.

IIU investigators obtained the following information from WPS, among other items:

- Copy of Search Warrant for ** Worthington Avenue
- Use of Force Report - SO

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- WPS FIS reports
- WPS drone images and videos
- Computer Automated Dispatch (CAD) Call History
- Photos: scene, less-lethal firearm, spent ammunition, injury of AP
- Police radio transmissions

Facts and Circumstances

Scene Examination

** Worthington Avenue was a small residential detached house. The rear of the house had an addition/extension attached to the main structure. That addition had a low-level roof (approximate six feet in height), which AP climbed onto from a rear bedroom window. AP was on that roof when the less-lethal firearm was deployed.

The scene at ** Worthington Avenue had been photographed by WPS Forensic Identification Service on the date of the incident. There is damage to a rear window, which was caused by AP discharging a type of firearm at the window. There is internal fire damage in the back room, which was caused by AP during the incident.

Canvass

On February 29, 2024, IIU investigators attended the location to canvass the area. No witnesses were identified; however, a neighbouring house had a rear facing camera with a partial view of the rear of ** Worthington Avenue. Video footage was obtained.

Affected Person (AP)

On February 28, 2024, IIU investigators obtained a statement from AP. He stated that he was at ** Worthington Avenue, alone, waiting for his girlfriend to return to help him take his medication for his mental illnesses. On the day of the incident, he had not yet taken his medication.

He was in a back bedroom when two male uniformed police officers came to the back door of the house. They advised of their presence and said they wanted to talk. They informed him there were warrants for his arrest. AP gave the officers his name but said he was naked at the time and could not come to the door. He also said he was just staying at the house, he was not the owner and he wanted proof that they had warrants for his arrest. He refused to answer the door. AP said he did not want to speak with police. He was communicating with them through a bedroom window, and AP and the officers could see each other.

He said while in the bedroom, he was in possession of a gas-powered BB/pellet gun. He said he did discharge the gun in the bedroom but said he did not aim it towards police. He said he did not believe it was loaded at the time and he only discharged the gun when he released the air from the gun. He said he never pointed the gun out of a window or door. AP told the police officers he had a gun.

AP phoned his cousin, WO1, a serving Winnipeg police officer, and advised him what was happening. His cousin advised him to put the gun down and to give himself up as police wanted

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to help him. AP did not believe what he was being told and wanted his cousin to get the police to stop bullying him.

A few hours went by, and some form of robot breached the door and entered the house. He could hear it moving around the inside of the house. He remained in the back bedroom. He was aware the police had the house surrounded. The police were advising him to come out of the house. He described the officers as wearing SWAT-type uniforms.

During this time, he dropped the lit cherry of his cigarette into the garbage can in the bedroom. A fire started, and after around 10 to 15 minutes, he could not take the smoke anymore, so he crawled out of the bedroom window and went onto the roof towards the rear of the house. The police were telling him to get down on his knees. He said he had his hands up with nowhere to go. A police officer, who was in the rear yard, shot him three times with a rubber ball. He did not actually see the police officer who shot him though. He then jumped down off the roof into the rear yard. He was detained and handcuffed. He was placed into an ambulance and taken to Health Sciences Centre (HSC) Winnipeg. He thought he may have been in the hospital for a day but was not sure how long exactly.

AP said he was struck on the left side of his torso around the rib area, on the right side of his chest above the nipple and in the centre of his chest. During the interview, he showed a circular bruise on the left side of his body and a bruise on right upper chest.

Witness Officers

WO1

On March 12, 2024, IIU investigators obtained a statement from WO1. On the date of the incident, he was off-duty and received a call from his cousin, AP. AP seemed in a panic. AP stated that the police wanted to take him. AP advised his location was surrounded by police and he wanted WO1 to call the officers off from his location. During the conversation, AP advised he wanted his medication. AP said he had a gun and would not go down without a fight and said he would shoot. WO1 had no idea where this was happening, and AP did not say what type of gun he had. He advised AP to comply with police.

The call ended, and WO1 called WPS and relayed the information that AP had told him.

WO2

On April 5, 2024, IIU investigators obtained a statement from WO2. WO2 advised he was working in full police uniform on the date of the incident. At 11:24 a.m., he attended ** Worthington Avenue with WO3, to arrest AP who had outstanding warrants.

After repeatedly knocking, they were able to speak to AP through a rear window. They explained the reason for attending and asked AP to come to the door of the house, which he declined to do. Eventually a decision was made for WO3 to write an entry warrant while in the police vehicle. WO2 remained near the rear of the house in case AP decided to flee. WO2 was near the rear window when AP voiced that he had a gun and made a gun gesture with his hand. WO2 then heard a popping sound and noticed the bedroom window was suddenly cracked. He believed some type of firearm had been used by AP to shoot at the window. WO2 did not see a firearm. However, due to AP's comments, the popping sound and the damage to the window, WO2 thought some type of firearm had been used. WO2 backed away and informed WO3 of what had

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just occurred. A decision was made to call the Tactical Support Team (TST) out to the scene, to deal with what was now an armed and barricade situation.

TST arrived and WO2 took up a position in the neighbouring rear yard. During the situation, officers were using a loud hailer and an armoured police vehicle to deliver loud verbal communications to AP. Further, a police drone was used, and a fire was observed inside the house. WO2 also saw smoke coming from the same rear window.

AP climbed out of the rear window and onto a low-level rear roof. He was wearing a hoodie with a front pocket. It appeared like something was in his pocket. TST officers, along with WO2 and WO5, went towards the rear of the house. Verbal commands were given for AP to show his hands, not to make sudden movements and to get down off the roof. AP appeared like he was trying to escape. An officer deployed the less-lethal firearm at AP three times. After the third deployment, AP then complied, laid down and got down from the roof. WO2 and WO5 took AP into custody and led him immediately to a waiting ambulance to be inspected. Due to potential smoke inhalation, he was taken to hospital.

WO3

On April 5, 2024, IIU investigator s obtained a statement from WO3. WO3 advised he and WO2 attended ** Worthington to arrest AP on outstanding warrants. They went to the rear of the house and eventually AP came to a window, where they informed him of the reasons for their attendance. AP refused to come out of the house. A decision was made to obtain an entry warrant. WO3 was in the police car while WO2 maintained a visual of the rear of the house in case AP decided to flee the residence.

WO2 informed WO3 that AP said he had a gun and discharged some type of firearm. The risk was now heightened; therefore, TST was contacted to take over the situation. Numerous methods were used to try to communicate with AP.

WO3 did not witness the discharge of the less-lethal firearm. However, he escorted AP to hospital in an ambulance where AP continued with his erratic behaviour. WO3 informed AP of his arrest for various outstanding warrants and offences related to the stand-off incident that just occurred.

WO3 indicated that from the moment officers first attended to the residence up to the arrest of AP, police were present for over three hours.

WO4

On March 20, 2024, IIU investigators obtained a statement from WO4. WO4 was the TST supervisor. At 12:34 p.m., information came in from community support officers who advised they were attempting to execute warrants on AP at ** Worthington Avenue. AP had refused to exit the house and they were preparing to obtain a *Feeney* (entry) warrant. Officers further reported that a shot of some type had been discharged towards them by AP while inside the residence. It was unconfirmed what type of firearm was used. Research conducted on AP suggested he had a prior history with police and the warrants involved firearms offences. This incident was now a potential criminal armed and barricade situation.

At 1:10 p.m., his team arrived at ** Worthington Avenue. Officers surrounded the residence. TST was equipped with a WPS armoured vehicle positioned to the front of the house. Officers

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gave verbal commands, announced their presence and the purpose for their attendance. AP was asked to attend the front door which was ignored. WO4 used a loud hailer to instruct AP to come to the front door and AP responded with, "I'm not coming out" and "I'm not going back." At 1:46 p.m., WO4 was able to communicate with AP via cell phone. AP was not making sense and was refusing to exit the house. AP hung up with WO4.

Negotiations continued for AP to exit the house, and for the matter to be resolved without any incident. A decision was made to breach the front door using the armoured vehicle so that its audio system could be extended into the house for further audio announcements and instructions. A drone was also used inside the house to see what was happening. All further attempts at communication were ignored. Smoke was observed coming from the house. WO4 called AP again to resolve the situation which again was ignored. The drone showed that a fire was happening inside the house.

During the incident, WO4 was made aware that AP had been in contact with a relative who was a WPS officer, who relayed that AP said he had a firearm.

At 2:46 p.m., uniformed community support officers were positioned in adjacent back yards. AP was observed to exit a window. WO4, SO and a third officer went to the rear of the house. SO was equipped with a less-lethal firearm. WO4 issued verbal commands to AP to give up. AP had climbed out of a window and onto a low-level roof (approximately six feet in height), which was on a structure attached to the rear of the house. Verbal commands continued. AP looked like he was attempting to escape. AP was wearing a hoodie which appeared to have something bulky in the front pocket. Although he had nothing in his hands, it was unknown if AP had concealed weapons in his clothing. AP was continuing to not comply with commands to give up. At one point, AP appeared as if he was considering going back into the window, where there was a fire happening. SO deployed the less- lethal firearm at AP. The first two deployments did not change his behaviour; however, on the third occasion, AP gave up by jumping off the low-level roof. AP was safely handcuffed and taken into custody. AP was immediately led to a waiting ambulance to receive medical treatment.

WO5

On March 19, 2024, IIU investigators obtained a statement from WO5. He and his partner responded to a call as WO3 and WO2 had requested additional police assistance. He was advised that AP had discharged a firearm from within the house.

WO5 took up position behind a fence in a neighbouring yard, with a view of the rear of ** Worthington Avenue. Verbal negotiations were ongoing to try and get AP to come out of the house. TST was using a loud hailer, an armoured vehicle with a speaker attached to it and a drone inside the house. The stand-off went on for some time. WO5 heard AP say at one point, "I'm not going back."

WO5 observed smoke coming from the rear of the house. He saw a window open and saw AP climb out of the window onto a low-level roof at the rear of the house. He was wearing a red-coloured hoodie with a large pocket at the front. Lots of smoke was coming from the open window and clearly, there was a fire inside. Officers told AP to show his hands; he did not. He appeared like he was about to climb onto the next upper-level roof of the house. SO deployed a less-lethal shotgun. After the first and second deployments, there was little change to AP's

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behaviour. After the third deployment, AP became compliant and jumped off the roof to the ground. He was detained and handcuffed by WO5 and brought to an ambulance to be checked.

Subject Officer

SO declined an interview but voluntarily provided his notes. His notes reflected a Use of Force report already supplied to the IIU.

Other evidence

Facebook account of AP

AP was live-streaming himself using Facebook at the time the police first attended the residence. The last post on the Facebook account is dated February 26, 2024 at 10:08 a.m. A video, approximately two hours and 44 minutes in length, was recorded within a room. At around 1 hour and 25 minutes into the recording, background knocking is heard. AP leaves the room and is heard asking who is knocking. He returns to the room, and says, *"*Fuck the cops are here, the show is over," then he locks the room door and proceeds to shave while looking at the camera. A voice is heard in the background saying "open the door*"* followed by more knocking. AP continues to shave while the knocking continues. At the 1 hour and 28-minute mark, a loud knocking sound at a room window is heard. A male voice asks AP to come to a door. A conversation occurs and a male voice is heard saying he was the police. AP gave his name as "Luca" when asked. He advised he was not wearing clothes.

(AP was in his underwear at the time.)

The conversation continues with the officer asking him to come to the door and AP asking the officer to get a warrant, saying he did not reside at the house. AP continues to shave while talking to himself into the camera. At the 1 hour and 32-minute mark, knocking at the window is observed. An officer is asking him to come to the door. AP continues to refuse to go to the door while looking into the camera. AP made comments about going out in a shoot out. AP continued to talk into the camera while an officer could be heard asking him to come to the door. He and the officers continue in conversation and AP removes his underwear and continues to shave. AP was heard saying he had no clothes to put on, and he did not want to go to the door as he was naked. AP then appears to be talking to police through a window. Police ask if he is "AP" to which he denied. AP continues to refuse to go to the door. The officer advises AP they would get a warrant.

At the 2 hour and 20-minute mark, AP is observed holding a handgun in his right hand, points it upwards next to his head and appeared to discharge it. He then continues to talk into the camera and continues shaving. AP then says, "I have a gun." At 2 hours and 33 minutes, AP repeats he has a gun and then says, "we are gonna go shooting" and made further comments about shooting. An officer was heard telling AP he should not be saying things like that to the police. AP said, "I would like to be shot to death" and "I gotta gun." AP is observed holding a handgun in his right hand. The video ends with AP exiting the room and before the use-of-force incident.

Photographs

WPS provided the IIU with photographs of AP's injuries; he had a large circular bruise around the left rib area and a circular bruise to the right side of his chest. Photos of the less-lethal firearm

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were also provided. WPS provided video footage taken from the drone deployed inside the residence, in which a fire is observed behind a closed door. Scene images were also provided, depicting a back room with fire damage (the same room that AP had occupied), and images of the rear of the house including the cracked window that AP shot at.

WPS Use of Force Report

A use of force report in the name of SO was received by IIU investigators. In summary, SO stated that:

- He was aware that AP had made comments to police that he was in possession of a gun.
- WO2 heard some form of firearm discharge from within the residence.
- Efforts had been made to communicate with AP to end the situation without incident.
- AP was non-compliant to verbal directions.
- SO was aware that AP had been in contact with a relative who was a serving police officer and stated he was in possession of a firearm.
- A fire had been started within the house.
- AP exited the house and climbed onto roof at the rear of the house.
- Further verbal direction was issued to AP to lay down and show his hands which AP responded with, "fuck you, you pieces of shit."
- SO was approximately 15 to 20 feet from AP.
- AP was wearing a hoodie which had a bulge in the front pocket area.
- AP kept his hands close to his body and appeared as if he was planning to escape and evade arrest.
- With AP's behaviour and the possibility that he may still be armed with the firearm, SO discharged two rounds from the less-lethal firearm at AP, aiming for his midsection and large muscle areas. The deployments did not appear to change AP's behaviour and a third round was deployed, which had the desired effect.
- The 40-millimetre launcher (less-lethal firearm) is an intermediate tool and it is used to gain compliance when persons are acting aggressively, armed with weapons or to de-escalate and change a subject's behaviour when being non-compliant.
- AP eventually got off the roof into the hands of police, where he was detained and taken for an immediate medical assessment.

Video – ** Worthington Avenue

Surveillance video footage was obtained from a neighbour. The footage demonstrates that at 2:31 p.m., smoke was observed coming from the rear of ** Worthington Ave. Uniformed police officers are observed. At 2:46 p.m., police officers began approaching the rear of the residence. Two TST officers are facing the rear of the house. One TST officer is holding a less-lethal firearm, pointed upwards in the direction of the roof area. All officers are focused on the rear of the house and looking upwards. At 2:46 p.m., a TST officer deploys a less-lethal firearm. The distance is consistent with SO description in his Use of Force report. At 2:48 p.m. a TST officer is using his hands, gesturing as if to coax someone down. AP was still not visible at that point.

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At 2:48 p.m., AP was visible wearing a hat, red-coloured hoodie and dark pants. He was standing on a low-level roof facing the officers. AP is observed jumping down off the roof to the ground and being detained by officers before being led away from the rear of the house and out of view.

CAD - School

The Computer Automated Dispatch (CAD) indicates that at 2:01 p.m. there were children playing in a playground behind the residence. The police audio indicates that TST requested for the schoolyard to be cleared. At 2:02 p.m., the schoolyard was being cleared and the children were leaving. At 2:03 p.m., the schoolyard was confirmed to be cleared.

Warrant to Search and Enter Dwelling

A search warrant and warrant to enter the residence at ** Worthington was issued by a Judicial Justice of the Peace on February 26, 2024, with an expiry date of February 27, 2024. The warrant was noted to be executed on February 27 at 12:30 a.m.

Medical Records

AP medical records were obtained with his consent. Records documented he suffered large hematomas to the anterior right chest and lateral chest.

Applicable Law

Section 25 of the Criminal Code of Canada is applicable to this analysis:

> *25 (1) Everyone who is required or authorized by law to do anything in the administration or enforcement of the law*
>
> > *(a) as a private person*
> >
> > *(b) as a peace officer or public officer*
> >
> > *(c) in aid of a peace officer or public officer, or*
> >
> > *(d) by virtue of his office,*
> >
> > *is, if he acts on reasonable grounds, justified in doing what he is required or authorized to do and in using as much force as is necessary for that purpose.*
>
> *(3) Subject to subsections (4) and (5), a person is not justified for the purposes of subsection (1) in using force that is intended or is likely to cause death or grievous bodily harm unless the person believes on reasonable grounds that it is necessary for the self preservation of the person or the preservation of any one under that person's protection from death or grievous bodily harm.*
>
> *(4) A peace officer, and every person lawfully assisting the peace officer, is justified in using force that is intended or is likely to cause death or grievous bodily harm to a person to be arrested, if*
>
> > *(a) the peace officer is proceeding lawfully to arrest, with or without warrant, the person to be arrested*

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(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

(e) the flight cannot be prevented by reasonable means in a less violent manner

26. Everyone 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.

Conclusion

In this investigation, the IIU's mandate is to consider whether SO's use of force was reasonable in the circumstances. Following due consideration of all the circumstances of this matter and a careful, thorough review of all evidence and material facts obtained in this investigation, I am satisfied that the use of force by SO was reasonable.

The police were in lawful execution of their duties. The police attended AP's residence to execute arrest warrants. AP did not wish to come to the door. The officers did not enter the residence and decided to apply for an entry warrant. While WO3 was doing so, AP discharged a firearm inside the residence and a window cracked. AP's account of the events corroborates these facts; AP indicated that he discharged a gun and told the police officers he had a gun. Given this event, the Tactical Support Team was called to assist, as the risk of harm was now escalated. Of note, there was a school behind the residence, and the window that AP shot at was located behind the residence. Exigent circumstances now existed for police to enter the residence. Verbal commands were given to AP throughout the incident; however, all directions were ignored. The WPS armoured vehicle was used to enter the residence and a drone entered the residence to see what was occurring inside. A loud hailer was used to instruct AP to exit the residence. AP refused all commands. Smoke was seen coming from the residence, and the drone confirmed that a fire had been started inside the residence. This added to the exigent circumstances, and officers had to act quickly to arrest AP. Negotiations continued, and AP ignored all commands. Finally, AP decided to exit the residence from the bedroom window and looked as though he wanted to escape. SO discharged a less-lethal firearm twice, and then a third time at which time the AP complied and police were able to arrest him.

During the incident, the AP had contacted his cousin, WO1, an off-duty police officer. AP told WO1 he wanted his medication, he had a gun, he would not go down without a fight, and he would shoot. WO1 told AP to comply with police.

Further, AP had been live streaming the events on Facebook from inside the bedroom and is seen discharging a handgun and making comments such as "I would like to be shot to death" and "I gotta gun."

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The AP suffered a hematoma as a result of the discharge of the less-lethal firearm. Given the totality of the circumstances, the outcome of this incident could have ended in a much more serious manner. In considering all the circumstances, I am satisfied that the officer's use of a less-lethal firearm was reasonable in the circumstances. Therefore, no charges are recommended against the SO, and the IIU investigation is now completed and closed.

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