

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

On March 10, 2020, at 5:07 a.m., Winnipeg Police Service (WPS) notified the IIU of a fatal officer-involved shooting that occurred earlier that morning at a residence on Kowalsky Avenue. The affected person (AP) was later identified as a 27 year old male. .

The salient portion of this notification read, in part:

On March 10th, 2020, at approximately 04:33 hrs the Winnipeg Police were summoned to an address on Kowalsky Avenue for AP, who was observed attacking another male with a weapon.

Prior to police arrival, a second caller indicating that AP, still armed with the weapon, was now on top of the male... Winnipeg Police subsequently attended to the scene and engaged AP resulting in an officer discharging their firearm.

AP was subsequently transported to the Health Sciences Centre (HSC) in critical condition, where he succumbed to his injuries.

[A male and female] were also transported to HSC, in unstable and stable condition respectively.

The Winnipeg Police Service Homicide Unit is currently overseeing the investigation pending the arrival of the Independent Investigation Unit.

As this matter concerned the death of a person, which resulted from the actions of a police officer and from a discharge of a firearm, IIU assumed responsibility for this mandatory investigation, in accordance with section 65(1) of *The Police Services Act* (PSA). A team of IIU investigators was assigned to this investigation.

Furthermore, in accordance with section 70(1) of the PSA, the IIU was required to seek the appointment of a civilian monitor as this matter involved the death of a person. IIU requested the Manitoba Police Commission to appoint a civilian monitor followed by regular monthly briefings thereafter.

Information obtained by IIU investigators included:

- WPS officers' notes and narrative reports
- Identification Unit report and photographs
- physical evidence seizures
- call history
- 911 audio recordings
- WPS radio/dispatch audio recordings
- firearm inspection report
- CEW downloads
- surveillance video from next door residence

- toxicology report respecting AP
- autopsy report respecting AP

The WPS officer, identified as responsible for discharging her firearm, was designated as the subject officer (SO). Additionally, four WPS officers were designated as witness officers (WO1 – 4). IIU investigators also interviewed five civilian witnesses (CW1- CW5). A neighbourhood canvass by IIU investigators disclosed the existence of video surveillance footage from a neighbouring residence that captured the entire incident, including the shooting.

The following facts and circumstances have been determined:

Scene

IIU investigators attended the scene and assumed jurisdiction of the investigation from the WPS homicide unit. A large scene area surrounding the residence on Kowalsky Crescent (the residence) was taped off with yellow police tape and guarded by police and cadet units. A large pool of blood was observed in the middle of the street directly in front of the driveway of the residence. Blood droplets were observed leading from the front door of the residence to the driveway and on to the front street. WPS Forensics Unit processed the scene.

Civilian Witnesses

CW1 is a relation of AP. CW1 stated that he woke up around 4:30 am on March 10th 2020 and saw AP standing beside his bed holding a knife. CW1 stated that the two immediately became involved in a struggle. CW1 stated that he managed to get the knife away from AP's hands and asked what he was doing. AP did not respond and proceeded to walk back down stairs to the main floor of the residence. Moments later, CW1 stated that AP returned to the bedroom, now armed with another weapon, believed to be a pair of scissors, and proceeded to attack CW1 again. CW1 stated that as this struggle continued, AP proceeded to bite his genitals. CW1 stated that he yelled to his partner, CW2 (who was also in bed), to call 911 immediately as the incident was quickly escalating. The only thing AP said in response was, "***No [CW2], don't call 911***". CW1 stated that he managed to get away from AP and tried to run into a bathroom to escape the attack. CW1 stated that he then heard CW2 screaming and came out of the bathroom. CW1 stated that he saw AP, who was now at the top of the stairs, attacking CW2. CW1 stated that he and CW2 fought with AP and managed to get the second weapon away from him. CW1 stated that he tried to throw AP down the stairs to stop the attack, but AP's strength was extraordinary. CW1 and CW2 made their way downstairs, followed by AP. CW1 stated that AP armed himself once again with a weapon. CW1, fearing for his safety, ran out the front door of the residence and onto the driveway. CW1 stated that AP tackled him and he fell to the ground. CW1 stated that AP had been staying with him and CW2 for the week prior to the incident. CW1 stated that AP, normally a loving and caring individual, was more like "***...a demon and not the person he knew...it was like the demon attacking him appeared to be enjoying himself...and wanted to kill him***". CW1 stated that there were no signs or warnings before that AP was capable of this potentially deadly attack. However, CW1 stated that a few months earlier, he had spoken with another relation who expressed concerns about AP's well-being and did not feel safe around him. There was a suggestion that AP "dabbled" with "***magic***

*mushrooms*¹ CW1 stated that he was aware of a number of occasions when AP had taken a large amount of mushrooms and suspected that he was under that influence on the night of the incident. Whenever AP consumed large quantity of mushrooms, they turned him into “...a monster”. CW1 also believes that AP suffered from undiagnosed schizophrenia.

CW1 stated that he fought as hard as he could, as he feared for his life and felt he was going to die. During this struggle, CW1 stated AP stabbed him in his eye. CW1 stated that AP continued his attack and proceeded to stab him several times in the legs. CW1 was aware that AP was stabbing him but did not know what he was using. CW1 stated that he tried to do whatever he could during the attack, as he did not want to die like that. CW1 was yelling, “*help, help*” hoping that someone would hear his cries and come to his aid. As the fight continued, CW1 was now on his back and AP was on top. Fortunately, CW1 stated that is when the police arrived, and they repeatedly “...*tasered [AP]*”. The next thing CW1 recalled was hearing a gunshot while AP was still on top of him. CW1 stated that he knew that the police tried to stop AP from continuing his attack, though he feels lucky to be alive. CW1 stated that he was transported to hospital by ambulance. CW1 sustained multiple penetrating injuries, stab wounds, lacerations and bite marks about his body, legs, neck and face. He suffered permanent loss of vision to his right eye.

CW2 was the partner of CW1 and both resided at the residence. CW2 stated that on March 10 around 4:00 - 4:15 a.m., she woke up and saw AP standing at their bedside. At first, CW2 thought AP was sleepwalking but it quickly became apparent he was there for purposes that were more nefarious, as he leaned over CW1 and attacked him. CW2 states that both she and CW1 jumped out of their bed. CW2 stated that she recalled seeing AP holding a pair of scissors when he first came into the bedroom and attacked CW1. CW2 stated that she took the scissors away from AP during the struggle. As this situation escalated, CW2 called 911. CW2 stated that the only thing she recalls AP saying at any time during the struggle was telling her not to call 911. AP did not appear to be intoxicated at the time but possibly had used mushrooms.

CW2 stated that when she completed her call, AP attacked her with a knife. CW2 stated that she was able to get the knife away from AP and “*chucked*” it down the stairs to the main floor. CW2 stated that she, CW1 and AP ended up downstairs as well. CW2 stated that she unlocked the front door so police could gain entry upon their arrival. CW2 stated that she next recalls seeing CW1 walk out and then to the front driveway to escape the attack. CW2 stated that AP went after CW1. CW2 stated that she stepped out onto the front steps shortly, but soon retreated inside and locked the door fearing for her own safety. Once back inside the residence, she contacted family members who live nearby to alert them of the unfolding incident and then telephoned 911 again. A short time later, CW2 stated she looked outside and saw that police had arrived at the residence. CW2 stated that the police appeared to “*taser*” AP as he continued to

¹ Magic mushrooms (“mushrooms” or “shrooms”), are a polyphyletic, informal group of fungi that contain psilocybin, which turns into psilocin upon ingestion. The effects of psilocybin mushrooms come from psilocybin and psilocin, which is responsible for the psychedelic effects. Psilocybin and psilocin create short-term increases in tolerance of users, thus making it difficult to misuse them because the more often they are taken within a short period of time, the weaker the resultant effects are. Psilocybin mushrooms have not been known to cause physical or psychological dependence (addiction). The psychedelic effects tend to appear around 20 minutes after ingestion and can last up to 6 hours. Physical effects including nausea, vomiting, euphoria, muscle weakness or relaxation, drowsiness, and lack of coordination may occur. As with many psychedelic substances, the effects of psychedelic mushrooms are subjective and can vary considerably among individual users. The mind-altering effects of psilocybin typically last from three to eight hours depending on dosage, preparation method, and personal metabolism. The first 3–4 hours after ingestion are typically referred to as the ‘peak’—in which the user experiences more vivid visuals and distortions in reality. The effects can seem to last much longer to the user because of psilocybin's ability to alter time perception.

attack CW1. CW2 stated that soon afterwards, she heard the sounds of a gunshot. CW2 did not look outside again once she observed the police arrive at the residence. CW2 stated that she was unable to hear any conversations from the outside. CW2 suspected that AP must have had a knife or a weapon during the outside attack on CW2. CW2 sustained numerous cuts to her left hand, two large gashes behind her right ear, and a large laceration across her forehead. CW2 also believed that AP suffered from an undiagnosed mental health issues.

CW3 is a relation of CW2. CW3 stated that on March 10, at approximately 4:30 a.m., he received a telephone call from CW2. CW3 stated that CW2 was frantic and not making sense. CW3 stated that CW2 wanted him to come to the residence immediately. CW3 stated that she had mentioned that the situation was serious and that a knife was involved. CW3 stated that he drove to the residence, arriving in about one and a half minutes. As CW3 approached the residence, he saw two people in the street. CW3 stated that it was very dark out and he did not know who these people were at that time. However, based on the hair and the style of pants of one of them, he assumed it was AP. CW3 stated that he stopped his car approximately two to three car lengths from the two people. CW3 stated that he saw one person on top of the other and was making stabbing motions. CW3 honked his horn hoping he would scare the attacker away but that had no effect. CW3 stated that he could see blood on these people, so he started to back up his car. CW3 stated that he called CW2, but got a busy signal. CW3 stated that he called the police and then saw at least two police cars pull up to the residence. CW3 stated that three or four uniformed police officers exited their cruiser cars. CW3 stated that the officers started to yell at the attacker, “*get off of him*”, multiple times, and although he could not hear if the man responded, his behaviour did not change. CW3 stated that he was successful in telephoning CW2 and she confirmed the two people fighting were CW1 and AP. CW3 stated that he moved his car away from the residence and was watching from a distance. CW3 stated that the police were trying to get AP off CW1. In fact, CW3 recalls seeing one police officer kick AP on his side, without success. CW3 stated he then saw police “*taser*” AP, but the taser had no effect. CW3 stated that he heard the sound of a single gunshot. CW3 stated that he did not know who shot a gun or if anyone was struck by the shot but does recall seeing AP fall off CW1. The incident ended after the gunshot. CW3 stated that he observed CW2, on the ground, and it appeared that a knife had cut her. CW3 stated that CW2 was transported by ambulance to hospital.

CW4 resided near the residence. CW4 stated that at approximately 4:20 a.m., he heard sounds coming from the front of his home. CW4 stated he then heard a male voice say, “*I cannot believe I did that.*” CW4 looked outside and saw two people in the middle of the street, with a male on top of another person. CW4 stated that he could not determine whether the person on the bottom was a male or female. CW4 stated that the person on the bottom did not appear to be moving. CW4 stated that he asked his wife to call 911. Within minutes, police started to arrive. CW4 stated that he saw a vehicle pull up to the two people fighting in the street and was honking a horn, trying to get them to stop. That vehicle backed away when police arrived.

CW4 stated that eight to 10 police officers surrounded the two people fighting. The police officers tried to pull the male on top off the person on the bottom, but he would not cooperate. CW4 stated that police used “*tasers*” on the male on top without affect. CW4 stated that the police officers moved back and he heard someone shout out a warning. CW4 stated that he believed a female officer yelled words to the effect, “*...if he did not get off or stop then we would have to shoot*”. CW4 stated that he heard the sound of a single gunshot. CW4 stated he believed

the police shot the man on top. CW4 does not know who had fired the shot. CW4 stated that the police officers were in a semi-circle and a few feet away from the people that were fighting. CW4 stated that after the shot was fired, the police moved in and pulled the male off the person on the bottom. The police then attended to the person that was on the bottom.

CW5 resided near the residence. CW5 stated that at approximately 4:30 a.m., she was awoken by the sound she described as “...*an animal being killed*”. CW5 stated that she looked out a window and saw a male viciously attacking another person, who was on the ground. CW5 stated that police arrived on scene a short time later. CW5 did not hear a sound of a gunshot, but did see the male attacker collapse.

Witness Officers

WO1 was assigned to general patrol out of the West District Station, when at 4:46 a.m., a call for service to attend the residence was broadcast. WO1, and a number of other WPS officers, arrived at the residence. WO1 stated that he observed two males on the ground; the male on the bottom, later identified as CW1, was severely injured and covered in blood, while the male on top, later identified as AP, was in a mounted position on top of the injured male. The injured male on the bottom appeared to be older and was moaning in pain, asking for help. WO1 stated that he yelled several commands to AP to get off CW1. WO1 stated that AP ignored all commands. WO1 stated that one of the police officers on scene deployed their CEW at AP, but it was ineffective. A second CEW was deployed at AP and it was ineffective. WO1 states that he saw that AP was holding a bloody knife in his right hand. WO1 stated that he yelled, “*Knife*” to alert the other police officers. WO1 stated that he saw SO discharge her service firearm and struck AP in the lower back area. WO1 stated that WO2 and WO3 grabbed AP by his arms and pulled him away. WO3 also grabbed the knife and threw it a few feet away, landing in a snow bank. WO1 stated that he and SO attended to CW1. CW1 appeared to be in shock and unable to communicate about what had happened. WO1 stated that once CW1 and AP were secured, he attended the residence and located CW2, who was covered in blood. CW2 had advised that she had been stabbed in the head and facial area. WO1 stated that ambulances transported all the injured parties to hospital.

WO2 was partnered with WO1 and on general patrol when dispatch had broadcast a call for service at the residence. Information was provided advising that two separate 911 calls were made from the residence. The caller advised that a male was armed with a knife and was attacking another male. The caller advised that she was also attacked and was stabbed. During the calls, the caller stated that she believed the armed male might be under the influence of drugs. WO2 stated that he arrived at the residence at 4:46 a.m. and observed two males on the ground. WO2 stated that an older male, later identified as CW1, was lying on his back. The other, younger male, later identified as AP, was on top of CW1 and had his back towards the officers. WO2 stated that both males appeared to be covered in blood. WO2 stated that he heard an officer yell, “*Watch out for the knife*”. WO2 stated that he saw AP armed with a black handled kitchen knife, with a four to six inch blade. AP was holding the knife against CW1’s throat. CW1 appeared to have been stabbed multiple times to his face and legs and he was helpless as he laid on the ground. CW1 was asking for help and saying, “*He’s going to kill me.*” WO2 stated that he yelled, “*Winnipeg Police, drop the knife*”. WO2 stated that other police officers were yelling similar commands at AP. AP did not appear to acknowledge or respond to these commands. WO2 stated that he observed two CEW deployments that struck AP in his

back. WO2 stated that he delivered multiple kicks to AP's back and head area in attempts to knock him off CW1. The CEW deployments and multiple kicks proved to be unsuccessful, having no effect on AP, who remained fixated on stabbing CW1. WO2 stated that he deployed his own CEW, striking AP in his back and buttocks area. This CEW deployment had little or no effect on AP. WO2 stated that in his view, the only remaining option and last resort to save CW1's life was to deploy lethal force. WO2 stated that within moments, he heard the sound of a single gunshot and saw SO, to his right, holding her service firearm in her hands. WO2 stated that he saw that AP had a bullet hole in his lower back. WO2 stated that he "*shin pinned*" AP while WO3 removed the knife and discarded it a few feet away in a snow bank. AP was secured and handcuffed. WO2 stated that officers attended inside the residence and located CW2. Three ambulances conveyed the injured parties to hospital.

WO3 was partnered with SO and assigned to general patrol duties when they were dispatched to the residence in response to a high priority well-being call. Information was provided indicating that a 911 call was received in which the caller advised that a male was terrorizing everyone at the residence. The caller related that the male was armed with a knife. There was a lot of yelling and commotion that could be heard in the background and the call ended abruptly. The caller made a second 911 call to WPS and provided further details about the incident. The caller stated that the male stabbed her. The caller advised that another male ran outside the residence to escape the attack but was followed and attacked by the armed male. WO3 stated that they arrived at the residence at 4:45 a.m. WO3 stated that he observed two males on the ground and in the middle of the roadway, directly in front of the residence. One person was sitting on top of the other and both appeared to be covered in blood. WO3 stated that he yelled, "*Winnipeg Police, get off of him.*" WO3 stated that the male on top, later identified as AP, did not attempt to get off the other male, later identified as CW1. WO3 stated that he approached AP, grabbed him by the shoulders and attempted to pull him off. AP's resistance was significant and WO3 could not move him. WO3 stated that one of the officers yelled, "*He's got a knife*". WO3 then saw AP holding a knife in his right hand and appeared to be stabbing CW1 in his face/neck area. WO3 stated that SO had drawn her CEW and was ready for deployment. WO3 stated that SO and another officer deployed their CEWs at AP. It was clear to WO3 that neither CEW had an effect on AP. WO3 stated that it was his belief that if AP was not immediately stopped and removed, he would kill CW1. WO3 stated that he then heard SO say she had her firearm drawn and within seconds, he heard the sound of a gunshot. WO3 stated that he moved quickly to gain control of AP, forcefully removed the knife and threw it to the side, away from everyone. WO3 stated that he recalled that there might be an injured female inside the residence and he ran inside to check on her wellbeing. The female, later identified as CW2, was located and observed to be bleeding in her hair and facial area. CW2 indicated that she had been stabbed.

WO4 was the Street Supervisor, working in general patrol, when he responded to high priority call at the residence. According to information received, WPS received two separate 911 calls from a caller at the residence. The caller indicated that a male, armed with a knife, was attacking her and another male. The caller advised that she had been stabbed in the head. The caller advised that the other male ran outside to escape the attack but the armed male ran after him and again attacked him outside. The caller advised that the armed male is possibly under the influence of drugs and is known to use mushrooms. WO4 stated that the WPS dispatcher advised of an additional caller to 911 from a neighbouring residence, who indicated they could see two people fighting in the middle of the roadway. On arrival, WO4 noted other WPS units were

already on scene and then observed two people on the ground in the middle of the roadway. WO4 stated that he heard SO giving loud verbal commands, *“Let go and you won’t be hurt.”* Moments later, WO4 stated that he heard the arcing sound of a CEW deployment followed by the sound of a single gunshot.

Subject Officer

Pursuant to the provisions of the PSA, a subject officer cannot be compelled to provide his or her notes regarding an incident under investigation, nor participate in any interview with IIU investigators. In this case, SO declined to attend for an interview; however she provided a copy of her notes and a written statement regarding her involvement in this incident. The following are summaries of those notes and statements.

SO wrote that her and her partner, WO3, responded to a priority call at the residence. The caller reported that a male was armed with a knife and was terrorizing her and another male. While on-route, SO wrote that further information was broadcasted that the two males were now fighting outside the residence. SO wrote that as they pulled up to the residence, she immediately observed two people laying in the middle of the roadway. They were both covered in blood. An older male, later identified as CW1, was laying on his back with his legs towards the police cruiser car. CW1 appeared to be nude and he was covered in fresh blood. A younger and smaller male, later identified as AP, was sitting on top of CW1. SO wrote that she and other officers exited their police cruisers and approached the two males on the roadway. SO wrote that she drew her CEW and pointed in the direction of AP, while yelling, *“Winnipeg Police, get off of him.”* SO wrote that CW1 appeared to be severely injured and covered in blood. CW1 was visibly weak and incapable of defending himself as he pleaded for help. WO1, WO2 and WO3 each tried to remove AP without success. SO wrote that WO1 yelled that AP was armed with a knife and that he was actively using it to attack CW1. SO wrote that she deployed her CEW twice, but it was ineffective as AP continued to attack CW1. SO wrote that other officers were yelling commands ordering AP to get off and stop the attack. AP ignored these commands and continued his attack on CW1. SO wrote that she believed that CW1 was clinging for life and all previous use of force options deployed by the officers had been ineffective and unsuccessful. Fearing for the life of CW1, SO wrote that she drew her service firearm from its holster and pointed it at AP. SO wrote that she yelled, *“Just stop and you won’t be hurt.”* This warning had no effect on AP or his behaviour. SO wrote that she had no choice but to discharge her firearm. AP was approximately five feet from her. SO wrote that she fired her service firearm once and the bullet struck AP. SO wrote that police officers quickly moved in and separated the two males. AP was secured and handcuffed without further force applied. SO wrote that WO1 radioed dispatch to advise that shots were fired and requested ambulances to attend to treat the injured people. SO wrote that she remained with CW1 until paramedics arrived and attended to his injuries.

Surveillance Video, Analysis and Time Line

Video surveillance footage was obtained from a neighbouring home to the residence. IIU investigators reviewed the footage and were able to prepare a timeline of events as they unfolded:

- 04:36:15 hours – CW1 walks out of the residence, followed by CW2
- 04:36:16 hours – AP exits the residence and runs after CW1

- 04:36:20 hours - AP grabs CW1
- 04:36:30 hours – CW2 runs back into the residence (presumably to call 911)
- 04:36:38 hours - AP punches CW1 and both fall onto the ground
- 04:36:51 hours - AP continues to attack CW1 and is seen making stabbing motion
- 04:37:01 hours - AP removes a black hoodie, while CW1 lays motionless on the ground
- 04:37:27 hours – CW1 is struggling while on the ground as AP tries to get on top of him
- 04:37:54 hours - AP gets on top of CW1 and continues attacking
- 04:38:20 hours – CW1 tries to get off the ground as he fends of AP
- 04:38:16 hours - AP is seen holding an object (possibly a knife) in his right hand
- 04:39:23 hours - AP appears to stab CW1 in leg area
- 04:39:23 hours – CW1 sits up and tries to hold AP's arms
- 04:40:03 hours - AP continues to attack CW1 and continues the stabbing motions
- 04:40:29 hours – CW1 rolls over and appears to end up on top of AP momentarily
- 04:41:13 hours – CW1 ends up on bottom again as AP continues to attack him
- 04:41:45 hours – AP is sitting in mounted position while attacking CW1 with a knife
- 04:42:00 hours – CW1 appears to be try to grab the knife
- 04:43:20 hours – CW1 tries to push AP off without success
- 04:44:40 hours – AP remains on top and CW1 continues to fend
- 04:46:08 hours - Two police cruiser cars drive up towards AP and CW1
- 04:46:17 hours – Police officers running towards AP and CW1
- 04:46:22 hours - An officer grabs AP by the hair; attempt to pull him off is unsuccessful
- 04:46:29 hours - An officer kicks AP in an attempt to knock him off
- 04:46:29 hours - A female officer is standing to the left and is pointing a weapon
- 04:46:32 hours - AP remains on top of CW1 in a seated, mounted position
- 04:46:32 hours - Officers surround AP and CW1
- 04:46:50 hours - Officers appear to discharge CEW, AP remains in mounted position
- 04:46:55 hours - An officer delivers another kick to AP in attempt to knock him off
- 04:46:55 hours – A second officer delivers a kick to AP
- 04:47:08 hours - All officers are seen attempting kicks to AP without success
- 04:47:13 hours - A female officer appears to have fired her firearm at AP
- 04:47:30 hours - Officers move in and separate AP and CW1
- 04:47:51 hours - Officers are surrounding AP and CW1 and attempt to secure them
- 04:48:00 hours – There are seven police officers in attendance at this time
- 04:48:55 hours - Two officers pull AP away by his arms
- 04:49:30 hours - Officers attend to CW1; a first aid kit is on the ground nearby
- 04:49:45 hours - An officer puts a blanket over CW1
- 04:50:10 hours - A civilian appears on the driveway and walks to the residence
- 04:51:55 hours - Two officers are seen attending to AP
- 04:53:25 hours – WFPS/Paramedics arrive with a stretcher and attend to CW1
- 04:54:30 hours - Paramedics speak with officers and attend to AP
- 04:54:42 hours - Fireman arrives on scene, followed by several other WFPS personnel
- 04:55:40 hours - AP is loaded onto the stretcher and taken away
- 04:59:59 hours – CW1 attended to by WFPS personnel, waiting for ambulance to arrive

Post-mortem, Toxicology Report and Autopsy Report

The post mortem of AP was conducted on March 11. The pathologist advised that the preliminary cause of death was a gunshot injury to torso.

On September 30, the toxicology report on AP was received from the RCMP, National Laboratory. The results of the analysis are as follows:

- No drugs, alcohol or similar volatile substances were detected
- The laboratory does not have a specific method for the confirmation of psilocin or psilocin compounds in AP's system

On April 26, 2021, IIU investigators received an Autopsy Report for AP from the Office of the Chief Medical Examiner. The report itself is seven pages in total and dated March 1, 2021.

Autopsy Findings:

The cause of death was recorded as from a gunshot wound to the lower back torso. The following findings were made:

1. 1. Gunshot injury of the torso: penetrating, indeterminate range
 - a. Entrance: on the left posterolateral torso
 - b. Associated findings: bilateral hemothorax and probable pneumothorax with collapsed lungs
 - c. Wound path: left posterior chest wall, left lower lung, thoracic spine, right lower lung lobe, right posterolateral chest wall
 - d. A partially intact copper-coloured jacketed grey metallic projectile is recovered
2. Evidence of at least two separate electro-conductive weapon discharges (four separate probes) on the posterior torso.
3. Superficial abrasions and contusions

CEW Download Reports:

CEW data was downloaded from each of the attending witness and subject officers. The following findings were made:

WO1 CEW: Not armed, not discharged, no trigger pull or ARC switch pressed.

WO2 CEW: Armed at 4:48:17 a.m., trigger pulled at 4:48:19 a.m., cartridge bay #1 did not deploy. A second trigger pull occurred at 4:48:20 a.m., which deployed cartridge bay #2 for 5 seconds. At 4:48:26 a.m., the ARC switch was pressed and held for 34 seconds.

WO3 CEW: No events recorded on the date in question.

SO CEW: Armed at 4:47:57 a.m. and the trigger was pulled at 4:48:01 a.m., which deployed cartridge bay #1 for a 5 second cycle. At 4:48:02 a.m., a second trigger pull occurred which cycled cartridge bay #2 for 3 seconds. At 4:48:16 a.m., the CEW was made safe and then armed again at 4:48:17 a.m. A third trigger pull occurred at 4:48:19 a.m., which cycled cartridge bay #1 for less than 1 second. The CEW was made safe at 4:48:20 a.m., before armed again at

4:48:59 a.m. The last trigger pull occurred at 4:49:00 a.m., which cycled cartridge bay #1 for 3 seconds.

Subject Officer's Firearm

On March 18, 2020, the inspection of SO's service issued firearm (Glock 40 calibre handgun) was completed and found to be in good working order. There was no accidental discharge.

Issues and Conclusion

This investigation must consider whether the actions of the subject officer to fire upon and cause the death of AP is justified at law. In this incident, police were required to prepare for all risks when they attended the high priority well-being call at the residence. All police were aware that violence had taken place at the residence and specifically, it was reported that AP was in possession of a knife and was terrorizing occupants. A caller to 911 reported to have been stabbed by AP. Further, AP was chasing and attacking another male outside of the residence. Significant background information was broadcast over the WPS radio. When police arrived on scene, they found AP and CW1 engaged in a fight in the middle of the street. AP was attacking a seriously injured CW1, who was pleading for anyone to save his life. All forms of use of force techniques were used on AP, but they were unsuccessful in removing him from on top of CW1. AP was armed with a knife. AP was repeatedly stabbing CW1 with the knife. AP posed a significant and continuing risk to CW1 and police safety.

Applicable Law:

Sections 25 (1), (3), (4) and Section 26 of the Criminal Code of Canada are 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

(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

(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.*

Effectively, the question is whether the decision of the subject officer to discharge her firearm at AP was reasonable and necessary in the given circumstances. The reasonableness of an officer's use of lethal force (force that is intended or likely to cause death or grievous bodily harm) must be assessed in regards to the circumstances, as they existed at the time the force was used and in light of the exigencies that were present. In particular, these actions are also to be considered in light of the dangerous and demanding work engaged in by police and the expectation that they react quickly to all emergencies.

Where lethal force is used, there must be a reasonable belief, held by the subject officer, that the use of lethal force was necessary for his or her 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 remembered that the police engage in dangerous and demanding work and often have to 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.”

Was it reasonable, in these circumstances, for the subject officer to fire at AP to prevent the injury or death of CW1, in particular?

On this morning, police responded to a high priority call for service of an armed male. When police arrived on scene, they came upon an active scene where AP was repeatedly attacking a defenceless CW1. Police officers attempted to remove AP and stop the attack through various use of force tactics, including pulling his shoulders and hair, kicking him, and deploying multiple CEW cartridges. Every attempt to use force on AP was unsuccessful, as he continued his attacks on CW1 unabated. Police officers concluded that unless lethal force was employed, AP would kill CW1. In essence, all non-lethal options that may have been available to police were eliminated by the actions of AP. Eyewitness accounts were corroborated, if not enhanced, by the surveillance video footage, which captured virtually the entire incident, including SO's use of lethal force. The entirety of the evidence establishes that SO held a reasonable and honest belief that a real likelihood that AP could have delivered a potentially lethal injury to AP unless that threat was eliminated through the officer's use of lethal force.

The video surveillance evidence was significant. It represented a clear and detailed recording of the entire incident and materially corroborated the evidence of all the witnesses. Although the subject officer did not participate in an interview with IIU investigators, providing prepared statements and notes instead, I am satisfied that the extensive evidence gathered provides sufficient support for the conclusion that the decision by SO to shoot AP was based on reasonable grounds and necessary in order to prevent the death of CW1.

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 investigation as set out above, it is my view that the use of lethal force by the subject officer was justified as it was based on reasonable grounds and necessary to save CW1's life. In conclusion, there are no grounds to justify any charges against the subject officer.

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

Final report prepared by:
Zane Tessler, civilian director
Independent Investigation Unit
May 18, 2021

Ref #2020-0015