IIU | Independent Investigation Unit of Manitoba

FINAL REPORT: IIU concludes investigation into man's death after confrontation with WPS

On July 29, 2018, shortly after midnight, the Winnipeg Police Service (WPS) notified the Independent Investigation Unit of Manitoba (IIU) of an incident that had occurred earlier that evening. The incident concerned the death of a male following a confrontation with WPS members and during which time, a conductive energy weapon (CEW) was deployed several times on him.

The notification stated (in part):

> *At approximately 10:31 p.m. on July 28, members of Winnipeg Fire and Paramedic Service (WFPS) responded to a call in the area of Alexander Avenue and Fountain Street. On arrival, they called for assistance from the WPS as the male was very aggressive and threatening them with objects from the ground. WPS members, including cadets, responded and arrived. The male was gone upon arrival and located a short distance away at Logan Avenue and Princess Street. He threatened officers with a brick and, as a result, a CEW was deployed. He was handcuffed and found to be unresponsive. First aid was delivered... the male was transported. He was pronounced deceased… at Health Science Centre (HSC).*

As a fatality following a confrontation with police is deemed by operation of The Police Services Act (PSA) as a mandatory matter, the IIU was required to investigate. A team of IIU investigators was immediately deployed. 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.

The deceased male was identified as the Affected Person (AP). The WPS officer who deployed the CEW on AP was designated as the subject officer (SO). Seven WPS officers were identified as potential witness officers but after review of agency information, IIU investigators interviewed five WPS officers (WO1-5). IIU investigators also interviewed four WFPS members (PW1-4) and one civilian witness (CW). Two WPS cadets, who interacted directly with AP, declined to meet with or be interviewed by IIU investigators. As well, WPS refused to disclose and release notes and reports prepared by these two cadets to IIU. IIU filed a motion to Court of Queen's Bench seeking, among other relief, an order compelling the release of this information. On August 25, 2020, an order from Court of Queen's Bench issued requiring WPS to release this information to IIU. The notes and reports were received by IIU on September 22, 2020. For this report, the cadets are referenced as CO1 and CO2 respectively. Finally, IIU investigators also met with and interviewed an expert on CEW use and deployment (SME).

Information obtained by IIU investigators included:

- witness officer narratives and notes;
- call history reports;

- downloads of information from all CEWs at the scene;
- WPS policy on use of CEW;
- audio recordings of 911 communications;
- audio recording of WFPS call for assistance;
- audio recordings of police dispatch and officers' communications;
- Forensic Identification Service (FIS) photographs;
- cadets notes and reports;
- prepared statement from SO;
- pathology and autopsy reports respecting AP;
- toxicology report respecting AP; and
- video surveillance footage.

Facts and Circumstances:

Civilian Witness:

CW is a close relation of AP. CW stated that the night AP passed away, he had called and spoke about wanting to come home. CW states that AP was paranoid but did not sound angry. CW states that AP was diagnosed as bi-polar, schizophrenic, attention deficit hyperactivity disorder and attention deficit disorder. AP was required to take several prescribed medications. CW did not believe that AP was taking his medications. CW states that AP could become aggressive at home and police had been called to deal with him on occasion. CW also described AP as a drug abuser and would use anything, with a preference for methamphetamine, cocaine and crack cocaine.

WFPS Personnel:

PW1, a paramedic, states he was dispatched to the scene as "*an assist for medical sedation*". On arrival, PW1 observed multiple police vehicles, police officers and two fire personnel present. PW1 states he attended to AP, completed an assessment and began to treat him. Though PW1 declined to discuss the treatment provided, due to patient confidentiality, he did read out his entries from his Run Sheet to detail his involvement, which stated (in part):

> *"…responded priority 4 for a male required medical sedation…Upon EMS arrival, patient found lying prone on the street next to the sidewalk…blood on street next to patient's face. WPS explains patient was behaving erratically and aggressively towards them….WPS stated patient had been Tased. Patient has legs restrained together by WPS and was handcuffed behind his back. WPS informed patient had Taser dart in back. EMS noted that patient was not breathing. Taser dart removed. Patient flipped onto his back. No pulse found at patient's carotid. CPR initiated.*

PW2, a paramedic, was reluctant to provide any information about his observations of AP, as it was part of his patient assessment and care. PW2 confirmed he was dispatched for a chemical sedation. On arrival, PW2 observed AP laying on the street next to a police car. PW2 states that AP was handcuffed behind his back and his legs were tied with a seat belt.

PW3, a paramedic, recalls being dispatched at 10:25 p.m., for a well-being check. Upon arrival at the location, AP threw a metal can at his WFPS vehicle. PW3 states that AP was yelling and threatening fire department personnel. PW3 states that a call was made to WPS for

assistance. AP started walking northeast towards Logan Avenue. When WPS arrived, PW3 informed them of AP's last location. At that point, PW3 heard AP throw a brick at a WPS Cadet vehicle. PW3 states that he followed some WPS vehicles to Logan Avenue. PW3 radioed his dispatch for a medical sedation and for another paramedic unit to attend. PW3 saw four or five police officers try to get AP down on the ground. PW3 thought he heard a "Taser" deployed. PW3 states that police gestured for him to attend to where AP was now laying on the ground.

PW4, a paramedic, was partnered with PW3. He recalls being dispatched to a well-being call as a subject wanted to go to detox. PW4 states that on arrival, a male was observed in the middle of the street shouting, then throwing a can of soup at his vehicle. PW4 states that a call was made to WPS for assistance. While waiting for police to arrive, PW4 states that AP, who was upset and yelling, walked away. The police, who were briefed on arrival, drove around looking for AP. Mr. PW4 states that he was advised that AP was located on Logan Avenue. PW4 states he attended this new location and He parked behind some WPS vehicles. PW4 states that he heard yelling followed by the sound of a police taser. PW4 states that he saw AP fall to the ground, who was told to calm down and was handcuffed. PW4 states that the police called to have them check AP's airway. PW4 saw two probes in AP's back and one or two police officers holding AP down on the ground. PW4 states that initially, AP was breathing and had a good pulse on examination. Within a few minutes, AP began to squirm and then went silent. AP was still breathing but his pulse was now very weak.

Witness Officers:

WO1, working as the Cadet Supervisor, states that at 10:48 p.m., he heard a radio transmission that cadets were engaged with a male who had thrown a brick at their Vehicle in the vicinity of King Street and Logan Avenue. WO1 states that he arrived on scene within a minute and observed that a WFPS team was present along with numerous WPS officers and cadets present. WO1 states that the WPS officers were standing near a male, later identified as AP, who was laying on Logan Avenue. AP was handcuffed and had been "Tasered", as WO1 states he saw probes on AP's back as police officers attempted to apply a RIPP™ Hobble[1] to his legs. WO1 observed two Taser cartridges on the ground about five-six feet away from where AP was and observed two Taser probes in AP's mid back. WO1 also observed that SO was holding a Taser. WO1 states that he transported the two Cadets to WPS HQ and told them not to talk about the incident or ask him any questions about it.

WO2 states that he was dispatched to a call where WFPS were asking for assistance with an irate male. According to the WFPS call, the male was throwing objects at their vehicle. WO2 states that he attended the scene and met with members of the WFPS. WO2 began to search the area for the male when he heard a radio broadcast that WO5 and SO had located him near the intersection of Logan Avenue and King Street. On arrival at this location, WO2 states that he observed a Cadet unit present along with WO3, WO4, WO5 and SO. WO2 states that he also saw a male, later identified as AP, face down on the ground and fighting with police officers. WO2 believes that SO deployed his CEW on AP as the officers were attempting to handcuff him. It was immediately obvious to WO2 that AP was under the influence of a drug as he was screaming incoherently and thrashing about - all consistent with someone who had completely lost control. He assisted the other police officers in controlling AP's thrashing

[1] A restraining device used primarily to secure the legs and ankles of an individual.

feet. WO2 states that he chose to employ a RIPP™ Hobble. As he started to use the RIPP™ Hobble, AP's shoes came off, this his legs got free and he began kicking the ground in a violent manner, causing his feet to bleed. The entire time that WO2 was trying to control AP's legs, he was attempting to get up and resist police. WO2 states that other police were successful in handcuffing AP. WO2 states that verbal commands given to AP to relax and calm down were unsuccessful. WO2 states that during this entire time, he did not see any police officer employ punches, kicks strikes or similar tactics on AP, as this scene was viewed as a medical issue. Within minutes after AP was handcuffed and shackled, an ambulance arrived. However, it was apparent that AP was having difficulty in breathing leading to CPR and life saving measures starting.

WO3 was partnered with WO4 when they were dispatched to assist WO2, WO5 and SO at Alexander Avenue and Fountain Street. WO3 was aware that WFPS requested assistance with a large male who had thrown food at their vehicle when they arrived on scene to assist him. The male had originally contacted emergency services requesting help detoxing. WO3 states that when arrived in the area they met with WFPS personnel had concerns for the male's and the public's safety. WO3 states observing police emergency lighting being activated a few blocks ahead of their position. WO3 then observed a large male standing near a Cadet Vehicle. It appeared the male was standing between the passenger side of the Cadet Vehicle and the sidewalk. WO3 observed WO5 and SO facing the male with their CEWs drawn and two Cadets behind them with their ASP Batons deployed in the ready position. As WO3 exited the cruiser car, the male appeared to fall to the ground. WO3 then assisted WO5, who was preparing to handcuff the male, later identified as AP, and who was lying supine on the ground. WO3 grabbed AP's left wrist bringing it behind his back, rolled him towards the sidewalk, and utilizing a shin pin on the left side to gain control to enable handcuffing for officer safety. WO3 noted that AP's clothes and skin were soaked in sweat. WO4 had also joined in to attempt to gain control of AP. WO3 states hearing the sound of a CEW deploying. WO3 states that police officers were able to handcuff AP. AP continued to try to break away, he was yelling and moaning, his breathing was rapid, and WO3 could feel his legs jerking around. WO3 believed AP was in a drug-induced medical crisis. WO3 waved at WFPS to come over and assist. Once a RIPP™ Hobble was applied, AP went unconscious. AP was rolled over into a recovery position and CPR was eventually commenced.

WO4 was partnered with WO3, working general patrol when they were dispatched to Alexander Avenue and Fountain Street, to assist WFPS with an aggressive male patient. SO, WO2, and WO5 were also assigned. On arrival to the scene, they met WFPS and received further information. WO4 states that a radio broadcast was heard with sounds of a physical struggle over an open microphone. On seeing police emergency lights flashing near Logan Avenue and Princess Street, they attended to the area. WO4 noted that a marked Cadet Vehicle and cruiser car were parked in the eastbound curb lane. WO4 observed SO with his CEW drawn, and he appeared to be pointing it at a male, later identified as AP. By the time WO4 exited the cruiser car, AP was already on the ground. WO4 states that he assisted to secure AP in handcuffs. AP was grunting loudly and mumbling incoherently. Once handcuffed, AP continued to thrash his body violently so WO4 moved to the right side, to gain better control of his upper body.

WO4 states that AP exhibited signs of excited delirium[2]. AP displayed unexplained strength and endurance while resisting restraint and appeared to feel no pain. An ambulance was requested and the WFPS on scene advised a Medical Supervisor was on route and would administer a sedative. WO4 states that AP's behaviour suddenly changed - he stopped shouting and his head went limp. AP appeared to be unconscious.

WO5 was partnered with SO and they were working general patrol, when they were dispatched to assist WFPS at Alexander Street and Fountain Avenue. WO5 states that police assistance was requested after a belligerent male had begun throwing food and chasing paramedics down the street. WO2, WO3 and WO4 were also assigned to this call. WO5 states he was aware that WO2 had arrived and met with WFPS who provided details of their encounter with the male. Following this briefing, WO2 broadcasted a description of the male and last direction of travel to update other units in the area. WO5 states they drove east on Logan Avenue and as they approached the intersection with Princess Street, he observed a male next to a parked Cadet Vehicle. The male appeared to be shaking the Cadet Vehicle and attempting to rip the front passenger door open. WO5 states that he heard a broadcast over the radio that he believed to have come from this Cadet Vehicle. WO5 states that it sounded as if the cadets were in distress and needed help. WO5 states he accelerated his police vehicle and pulled in behind the Cadet Vehicle. WO5 and SO exited their cruiser car, unholstered their respective CEW's and approached the male, later identified as AP. WO5 states they identified themselves as Winnipeg Police and issued clear and simple verbal demands for AP to lay on the ground. AP matched the description broadcasted and he was sweating heavily, yelling loudly and was unintelligible. WO5 states that this behavior and appearance was, in his opinion, consistent with symptoms of excited delirium or heavy drug use. Due to the AP's behaviour, WO5 felt that it was necessary to gain control of AP immediately as he feared this behaviour could lead to self-inflicted harm, potential harm to others, harm to the lesser trained and lesser equipped cadets, and harm to other officers. WO5 stated that based on his personal training and experience, and considering AP's mental state, likely drug use, and physical size, he considered a CEW deployment the most effective and least injurious method to gain control of AP. WO5 states he told SO to deploy his CEW. Once AP fell to the ground, WO5 states he immediately handcuffed the male's right arm. WO3 and WO4 then arrived and with their assistance, they were able to turn AP on to his stomach and handcuff him behind his back. Once AP was handcuffed, he began to buck his hips, kick wildly, and attempted to defeat officer control. WO5 states officers pinned AP down to calm and restrain him. WO5 states he requested ambulance attend and consider sedating the male. WO5 states he heard the sounds of a deploying CEW. SO advised him it was discharged in error and the probes went straight down in to the concrete. He did not see where the probes went but did not see them hit the male nor did he observe any behaviour consistent with the male feeling effects from a second CEW deployment. A RIPP™ Hobble was applied to AP. WO5 states that paramedics grew concerned about AP's wellbeing and commenced chest compressions.

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[2] Excited delirium, as referenced by Manitoba's Chief Medical Examiner's office, is supported by:

1) Acute onset of bizarre and violent behavior, including paranoia, aggression, incoherence, and extreme strength;
2) Severe hyperthermia, with body temperature often over 104 F;
3) Sudden cardiac arrest during or usually several minutes after vigorous physical activity (such as wrestling and restraint by police);
4) History of mental illness with psychotic episodes (e.g. schizophrenia) and/or chronic use of cocaine or methamphetamine;
5) Presence of cocaine or methamphetamine in toxicology testing, often at low levels. This may not be present in schizophrenics

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Cadet Officers Notes and Reports:

As noted above, IIU received the notes and reports prepared by CO1 and CO2 on September 22, 2020. Neither CO1 nor CO2 attended an interview with IIU investigators.

According to the notes and reports, CO1 and CO2 were working together the evening of July 28 in a marked vehicle.

CO1 reports that while travelling southbound on Princess Street, he observed a heavy-set male crossing the street and making his way towards the Cadet Vehicle. CO1 writes that this male said something and threw what appeared to be a brick at the Cadet Vehicle causing CO1 to duck. The object missed the Cadet Vehicle. The Cadet Vehicle continued south to Alexander Avenue and eventually back to the intersection of Logan Avenue and Princess Street. CO1 then observed the same male who was now walking east on Logan Avenue. CO1 writes that this male, later identified as AP, had an orange PVC pipe, with a piece of metal attached to it, in his hand. CO1 writes that AP turned towards the Cadet Vehicle and threw the PVC pipe, in a spear-like fashion at the Cadets.

The Cadet Vehicle came to a stop at which point AP attempted to open the passenger side door. CO1 attempted to exit the Cadet Vehicle but AP slammed the door against his right foot and ankle. CO1 writes that he managed to close the door and lock it. AP began to pound the door with his fists and kicked at it with his leg and knees. AP began to shake the car. CO1 writes that he sees CO2 exit the Cadet Vehicle via the driver's door. Uniformed Winnipeg Police Service officers then attended the scene. CO1 writes that he also exited the Cadet Vehicle via the driver's side. Once outside the Cadet Vehicle, CO1 writes that he deployed his ASP baton[3]. CO1 writes that he observed several uniformed police officers around AP. One of these police officers had a deployed a CEW. CO1 writes that he heard the police officers give numerous verbal commands to AP, including "*get on the ground*". AP went to the ground but was not compliant resulting in a second CEW deployment.

Once AP was subdued and handcuffed, CO1 writes that he collapsed his ASP baton, having never used it during this altercation. CO1 writes that he heard someone request that a RIPP™ Hobble be produced to assist in restraining AP. CO1 retrieved a RIPP™ Hobble from the Cadet Vehicle and he was then instructed by a police officer to place it around AP's ankles. CO1 writes that he and CO2 were assigned to seal off the area and protect the scene. CO1 moved the orange PVC pipe from the middle of the road to the curb.

CO2 writes that he and CO1 first encountered a male, later identified as AP, at the intersection of Logan Avenue and Princess Street. CO2 writes that he observed AP throw something at their vehicle. CO2 drove the Cadet Vehicle west on Alexander Avenue and back to Logan Avenue, where he caught sight of AP walking east bound on the south sidewalk of Logan Avenue from Princess Street. CO2 writes that AP was now carrying an orange fire hydrant marker in his hand. On seeing the cadet vehicle, CO2 writes that AP threw this marker at the vehicle. The metal tip of the marker struck the Cadet Vehicle and dented the roof. CO2 writes that AP ran at the cadet vehicle, while shouting a series of obscenities. CO2 wrote that AP began to violently kick and punch at the Cadet Vehicle at one point slamming his body into the front passenger door. AP

[3] A roughly cylindrical, telescoping and expandable club made of metal, plastic, rubber or wood. It is carried as a compliance tool and defensive weapon by law-enforcement officers, correctional staff, security guards and military personnel.

managed to open the passenger door as CO1 attempted to exit. AP slammed the door on CO1's leg. CO2 writes that he exited the Cadet Vehicle and deployed his ASP baton. CO2 writes that he ran to the rear of the Cadet Vehicle taken up a position behind AP. CO2 writes that he ordered AP to get on the ground. According to CO2, AP refused to comply and instead turned towards CO2 and took an aggressive stance with his fists raised. Within seconds, CO2 writes that Winnipeg Police Service officers arrived at the scene. CO2 writes that two WPS officers had their CEW's drawn and ordered AP to the ground. AP continued to act aggressively. At this time, CO2 writes that one of the police officers deployed his CEW; however, it appeared to be ineffective, as AP remained standing with his fists raised. According to CO2, the other police officer deployed his CEW, which caused AP to fall onto the Cadet Vehicle and then on the ground. Several more police officers attended and each attempted to control a limb until AP was handcuffed. CO2 observed CO1 place a RIPP™ Hobble on AP's ankles. A short time later, the cadets were assigned to block off the area.

As noted, IIU investigators requested disclosure of the above information at the early stages of this investigation. When the WPS refused to disclose this information as requested, IIU filed a motion in Court of Queen's Bench seeking a court order to compel this disclosure. On August 25, 2020, a decision requiring WPS to disclose this information to IIU was pronounced. On September 22, 2020, IIU received the referenced notes and reports, from which the above summaries are derived.

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 to provide his notes and reports to IIU investigators. SO did not agree to participate in an interview with IIU investigators. However, IIU investigators did received an unsigned and undated document purporting to be a prepared statement of SO, by email from his legal counsel.

According to this prepared statement, SO and his partner were dispatched to a medical call to assist WFPS personnel at Alexander Avenue and Fountain Street. He learned from the dispatched information that a male had requested to go to "*detox*", but upon WFPS's arrival, the male, described as very large, irate, and aggressive, began throwing things at their vehicle, and chased them down the street. SO was also aware that other WPS units were dispatched to this call. Following a briefing update with WFPS, SO felt that the male's behavior posed a danger of bodily harm to anyone he might come across. He and his partner drove around the area searching for the male and when they turned eastbound on Logan Avenue, he observed a marked Winnipeg Police cadet SUV approximately a block ahead of them on Logan Avenue just East of Princess Street and driving east. The Cadet Vehicle quickly turned from the median lane into the curb lane and abruptly stopped. SO saw a very large male, who he estimated at approximately 6'0 tall and over 300 lbs, charge at the Cadet Vehicle, and was punching at the front passenger side. SO's initial thought was that the cadets are not equipped or experienced to deal with such a large, violent, and out-of-control male and who posed a risk to the public. He saw that a cadet who had been driving exit his vehicle and begin to circle around the front towards the male. SO's feeling of alarm escalated and he was fearful that the cadet who had exited the vehicle was now at immediate risk of grievous bodily harm from the male. SO exited the cruiser, removed his "Taser" from its holster so that it would be ready if he needed it and ran towards the male. He concluded that his baton and OC (pepper) spray would be ineffective in taking the male into

custody and that using a probe deployment from the Taser to achieve muscular incapacitation would be his most effective option, if force became necessary. As he approached, SO yelled "*Winnipeg Police get on the ground*" and the male looked over his shoulder at him for a split second. SO saw that the male had blood on his face and mouth and his eyes were wide and bulging. The male turned back to the Cadet Vehicle and continued violently punching at the front passenger window where the second cadet was still seated. The male's behavior and physical indicators, along with the description he had already received from WFPS members, led him to believe that the male was suffering from excited delirium (ED). He knew that combined with the male's very large size made him a significant threat to the cadets, his partner and him. He circled behind the male and was only about six feet from him, while he continued to give loud verbal direction, "*Winnipeg Police get on the ground now*." The male did not respond to direction in any way and continued his violent and out-of-control attack focused on punching through the cadet passenger window and attacking the cadet. He was fearful for the cadet who had exited the vehicle and was standing just to the front of it, as well as the cadet trapped in the passenger seat of the SUV. He knew that his partner had made the same assessment because he heard him yell, "*Taze him*." SO discharged the probes from the Taser towards the male and saw that both probes entered his back. He yelled, "*Get on the ground now*" but the male did not appear to be affected and was still focused on the cadet trapped in the Cadet Vehicle. He also saw that the probe placement did not appear wide enough to achieve the muscular incapacitation he had intended and he had not yet been able to break his focus from the cadet in the SUV. He pressed the trigger on the Taser a second time and hoped that with pain compliance from a shock from the Taser would break the male's focus away from his attack directed at the cadet and gain his compliance to get on the ground. When he pressed the trigger the second time, he saw that the male appeared to have paused briefly and SO yelled, "*Get on the ground*" and with the Taser still in his right hand he grabbed the male by both of his shoulders and directed him to the left, towards the ground. SO was unable to break his fall and the male fell hard on his left shoulder and then onto his stomach. His partner along with other police members that had arrived attended to the male and began attempting to apply handcuffs. He was still holding the Taser and he saw that the male was now violently fighting attempts to place in handcuffs. The male was able to lift SO's partner off the ground while attempting to stand up and his partner weighs over 300 pounds. He pressed and released the trigger on the Taser and continued to yell, "*Stop resisting*" but it had no effect on the male who continued to ignore verbal commands and continued his violent and out-of-control fighting. He continued to press and release the trigger on the Taser and it appeared that the Taser was not having the expected effect and the male continued to fight and the other officers were not able to get him under control and apply handcuffs. After a minute or two, he saw that the other officers had gained some control of the male's upper body. However, he was still kicking violently and they had not been able to apply handcuffs. SO was still unsure what effect if any the Taser was having and he moved in and used his hands and body weight on the male's legs to stop him from kicking the officers. The male easily moved his body weight around but another officer was able to apply a RIPP™ Hobble around his ankles. The male kicked the RIPP™ Hobble off and SO continued to attempt to control his legs with his body weight while a set of ankle shackles were requested. SO then assisted to reapply the RIPP™ Hobble further up around the male's knees. At this point, other officers were able to apply the handcuffs. The male was alert and talking but no longer able to kick at or attack officers. Once the male was controlled, SO focused on his health, he could see that the male was not having any trouble breathing and he needed to remain restrained for

everyone's safety. SO realized that due to the size of the male, that adding a second set of handcuffs would allow his hands to be further apart and take some tension off his chest and make it easier for him to breathe and for medical personnel to assess him. He and another officer secured a second set of handcuffs to the male's wrists. He motioned to the WFPS personnel who were standing about 30 feet away to come and assess the male.

SO went to remove the spent CEW cartridge and secure his Taser when he saw the second cartridge had deployed into the ground. When he had directed the male to the ground, the Taser was still in his right hand and he had inadvertently pressed the switch and toggled the Taser to the second cartridge… he had deployed the second cartridge into the ground and no charge was going to the first probe deployment.

CEW Download Reports:

The CEW download reports revealed only the CEW assigned to SO was deployed at the scene. This CEW was triggered three times for durations of five seconds each from 10:49:21 p.m. to 10:50:01 p.m. A fourth deployment was recorded at 10:50:06 p.m. for a duration of two seconds (this deployment has been characterized as an accidental discharge). Five seconds is the standard duration for a discharge of a CEW. IIU investigators met with SME to be provided with clarity as to what the CEW downloaded data revealed. SME advised that the data downloaded from SO's CEW revealed it was deployed four times. The first two deployments hit a conductive surface and was working properly, while for the third deployment there was no charge, so the probes did not connect to a conductive surface, and with respect to the fourth deployment, there was no charge. SME states that for neuromuscular incapacitation to occur, the probes need to be a minimum of a 12 inch spread and the distance between the CEW and target should be between nine and twelve feet.

WPS CEW Use Policy:

WPS Policy identifies that the preferred targets for CEW deployments are low center mass, torso, back and legs. Nothing in this investigation has shown that SO's use of his CEW was not in keeping with WPS policy.

Surveillance Video:

Surveillance video was obtained from a nearby restaurant showing the events from the moment AP throws the pipe at the Cadets, hitting their vehicle, until the ambulance leaves with AP inside. Unfortunately, the Cadet Vehicle blocks the views of the interaction between police and AP.

Toxicology Report:

Samples of AP's blood, urine and vitreous fluids were sent to the RCMP Forensic Lab in Edmonton for analysis. Six months late, a toxicology report was received noting the following:

The blood was found to contain 13 milligrams of ethyl alcohol in 100 millilitres of blood (13 mg %). The blood also contained evidence of the presence of methamphetamine, amphetamine, mirtazapine, diazepam, and metabolites of cocaine and quetiapine.

The urine was found to contain less than 10 milligrams of ethyl alcohol in 100 millilitres of urine (Less than 10 mg %). The urine also contained evidence of the presence of acetone,

methamphetamine, amphetamine, cocaine, mirtazapine, diazepam, temazepam, oxazepam and a metabolite of quetiapine.

Pathology and Autopsy Report:

The Chief Medical Examiner's office determined that the cause of death was: (a) Cardiac Arrhythmia[4] due to (b) Dilated Cardiomyopathy[5]. Other significant conditions contributing to the death but not causally related to the immediate cause was Methamphetamine toxicity and physiologic stress of recent physical struggle and restraint. In the section of the report labeled Summary and Opinion, it is specifically noted "*... there is no possibility that use of the Taser device contributed to death in any way.*" (My emphasis).

Conclusion:

Does this investigation disclose any causal link between the actions of SO and AP's death? If there is a link then the question to be asked is whether the force used by SO was reasonable or excessive under the circumstances?

Reasonableness of an 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 considered in light of the dangerous and demanding work and the expectation the officer will react quickly to emergencies.

Sections 25 (1), (3), (4) and Section 34 of the Criminal Code of Canada are relevant to this analysis:

> Section 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.*

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[4] Cardiac arrhythmia refers to a group of conditions that cause the heart to beat irregular, too slowly, or too quickly. There are several categories of arrhythmia, including: bradycardia, or a slow heartbeat. tachycardia, or a fast heartbeat. irregular heartbeat, also known as a flutter or fibrillation.

[5] The disease starts in the left ventricle, the heart's main pumping chamber. The heart muscle begins to dilate, meaning it stretches and becomes thinner. Consequently, the inside of the chamber enlarges. The problem often spreads to the right ventricle and then to the atria. As the heart chambers dilate, the heart muscle does not contract normally and cannot pump blood very well. As the heart becomes weaker, heart failure can occur. Dilated cardiomyopathy also can lead to heart valve problems, arrhythmias (irregular heartbeats) and blood clots in the heart.

(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.

In addition, police officers are entitled to rely on the self-defence provisions of the Criminal Code of Canada under section 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.

(2) In determining whether the act committed is reasonable in the circumstances, the court shall consider the relevant circumstances of the person, the other parties and the act, including, but not limited to, the following factors:

(a) the nature of the force or threat;

(b) the extent to which the use of force was imminent and whether there were other means available to respond to the potential use of force;

(c) the person's role in the incident;

(d) whether any party to the incident used or threatened to use a weapon;

(e) the size, age, gender and physical capabilities of the parties to the incident;

(f) the nature, duration and history of any relationship between the parties to the incident, including any prior use or threat of force and the nature of that force or threat;

(f.1) any history of interaction or communication between the parties to the incident;

(g) the nature and proportionality of the person's response to the use or threat of force; and

(h) whether the act committed was in response to a use or threat of force that the person knew was lawful.

Following a detailed review of this investigation, I am satisfied that the WPS officers were lawfully placed and in lawful execution of their duties when they dealt with AP. I am satisfied that AP's physical size, aggressive nature and bizarre behaviour, coupled with the high levels of methamphetamine and other intoxicants in his system, supports the conclusion that he was likely in excited delirium at the time he was combative with the WFPS personnel, Cadets and WPS officers.

I am satisfied there is no evidence that any WPS officer used such force on AP that would be found to be excessive and unnecessary in these circumstances. In fact, in this particular matter, the primary cause of death was pre-existing heart disease, in addition to a contribution of methamphetamine toxicity and physiologic stress of recent physical struggle and restraint. No weapon, other than the deployments of the CEW, were used on AP. All force used by WPS officers was in relation to control and restraint of AP. It is noteworthy that the medical examiner has specifically ruled out the use of the CEW as a contributor, in any level, to the death of AP. It can be concluded that the death of AP, as tragic as it is, resulted from pre-existing conditions to which no police action unlawfully contributed in any degree.

In this investigation, the IIU mandate was to determine whether consequences should flow from the actions of any, some or all of the WPS officers, in consideration of all the circumstances and information known to them at the time. In my view, there is no evidence that SO bears any responsibility for AP's death. There does not exist any reasonable and probable grounds to support the laying of any Criminal Code charges against any WPS officer and specifically SO.

The conclusion of the investigation and the final report were delayed due to the time and efforts expended to seek and obtain disclosure of the notes and reports of the two cadets involved with AP.

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

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

Final report prepared by:
Zane Tessler, civilian director
Independent Investigation Unit
October 28, 2020

Ref 2018-0037