

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

On January 11, 2019, at 8:35 p.m., Winnipeg Police Service (WPS) notified the IIU of an officer-involved shooting that occurred a short time earlier that evening following a foot pursuit and altercation between officers and a male (later identified as the Affected Person (AP)). The salient portion of this notification read, in part:

On Friday January 11th, 2019 at 7:50pm, WPS officers observed a male suspect acting in a nervous and suspicious manner while in front of a Pawn Shop on Sergeant (sic) Avenue. The suspect had his hands in his pockets and was not removing them. The suspect fled from police with a WPS officer in pursuit and subsequently conducting a track. During the track, the WPS officer observed the suspect to be throwing debris and was armed with an axe.

The suspect subsequently jumped a fence into a vacant and enclosed lot next on Sherbrook Avenue. Limited information to date is that while in the lot, a WPS officer deployed a Taser (CEW) and three other WPS officers discharged their firearms.

Further information is that two WPS officers performed C.P.R. on the suspect who was subsequently conveyed to the Health Science Center (sic) (HSC) where he underwent surgery. Two bullets were recovered and turned over to police. The suspect is presently listed in Critical but Stable condition. Further surgeries are pending.

AP subsequently succumbed to his injuries and was pronounced deceased on January 12. As this matter concerned the death of a person which resulted from the actions of a police officer, the IIU assumed responsibility for this mandatory investigation in accordance with section 65(1) of *The Police Services Act* (PSA). 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. On January 14, IIU requested the Manitoba Police Commission to appoint a civilian monitor. The initial briefing with the civilian monitor took place on January 25 followed by regular monthly briefings thereafter.

A team of IIU investigators was assigned to this investigation.

Information obtained by IIU investigators included:

- WPS officers' notes and narrative reports;
- Identification Unit photographs;
- Witness statements;
- Physical evidence seizures;
- CEW downloads;
- Computer Assisted Dispatch (CAD) report on foot pursuit;
- WPS radio/dispatch audio recordings;
- Cell phone video seized by WPS from civilian witnesses;

- Security video from nearby apartment block on Sherbrook Street;
- Autopsy report respecting AP;
- Drug analysis of AP.

Three WPS officers were designated as subject officers (SO1-SO3) while eight WPS officers were designated as witness officers (WO1 – WO8). For the sake of brevity, summaries of only the most significant and revealing statements by six witness officers are included in this report.

IIU investigators also met with and interviewed seven civilian witness (CW1- CW7). A canvass for witnesses and evidence disclosed the existence of video footage concerning this incident that was posted on FaceBook. While the footage was downloaded and retained by IIU investigators, efforts to locate the individual who posted the footage, or anyone else heard in the background of the video, proved fruitless and no one responded to IIU investigator requests posted online. On January 12, IIU made a public appeal for witnesses and video evidence. Two individuals responded to the public appeal and shared the same FaceBook video footage with IIU investigators. These two individuals were not interviewed as neither witnessed the incident and only shared the video on FaceBook.

Finally, IIU investigators mapped out the foot pursuit of AP and relative placement of WPS officers and AP at the location of the shooting—a vacant lot south of the Safeway store at Sargent and Sherbrook. (Maps are attached to this report as Appendices 1 and 2 respectively).

Civilian Witnesses

CW1 provided IIU investigators with a video recorded with his cell phone immediately after the shooting. CW1 stated he was at home watching a show on his computer when he heard sirens in the area. CW1 looked out from a second-floor window and saw four or five police officers standing with their weapons drawn. CW1 heard some muffled sounds and then he saw shots fired by the police. CW1 stated he saw muzzle flashes from the police officers' guns and heard at least three shots. CW1 believes at least two were from one police officer.

CW1 stated that he grabbed his cellphone to record video after the shots were fired. CW1 saw two or three police officers walk toward someone. CW1 went out onto his porch and took more video of medical people working on someone. CW1 did not see the victim except when he was on the stretcher; he saw the victim's leg. Once outside, CW1 did not hear any conversation between the police officers.

CW2 was in his suite on Sherbrook Street when he heard the sound of police sirens outside. He looked out his window and saw a number of police cars and a male standing in front of the house across the street. According to CW2, the male walked towards a brown fence and stopped a few feet in front of it. Then, according to CW2, "*the police basically swarmed him.*" CW2 stated that he saw the male "*put his hands up quick, like he was gonna surrender.*" CW2 did not see the male point any weapons at the police. Then, according to CW2, the male put his hands down. At this point, CW2 thought "*it looked like he was gonna make one last dash towards that brown fence there to get away.*" CW2 also stated that it was like the male wanted the police "*to tackle him or something.*" Then, according to CW2, the police shot the male as soon as he put his hands down and the male "*dropped dead.*"

According to CW2, at least five or six officers, and upwards of 10 police officers, went at the male immediately after the shooting. CW2 did not hear anything said between the police officers and the male. CW2 stated the windows to his suite were frozen shut and could not be opened.

CW2 said that he heard about four or five shots and believes a CEW was deployed by one of the police officers. CW2 stated he saw something lying on the sidewalk, such as wires from the CEW.

CW3 was at his residence that evening and his window was open when he heard shouting outside that sounded like a "*halting command*." He heard a number of voices that sounded like arguing but he could not make out words. Within 30 to 60 seconds, there were gunshots in immediate succession. CW3 believes he heard four gunshots. After the shooting, an ambulance arrived. When CW3 looked outside his window, he saw a police car down the street and more emergency vehicles coming. CW3 did not go outside his residence.

CW4 was driving on Sargent Avenue when she saw a male she described as "*a young Native guy*" walking in front of the pawn shop between Sherbrook Street and Furby Street. CW4 stated that, just then, a WPS police canine vehicle, travelling eastbound on Sargent Avenue, turned north on Furby Street, cutting her off in the process. CW4 stopped her car and saw two police officers exit the canine vehicle and call to the young man (gesturing with their fingers for the person to come toward them).

CW4 stated the male shook his head "no," turned towards a Safeway store and ran. According to CW4, the male's hat fell from his head and a small black case or bag fell to the ground. CW4 stated that one police officer chased after the male on foot as the second officer drove the canine vehicle. CW4 said she saw the male run behind the Safeway store, followed by the officer on foot and a number of police vehicles that had their emergency lights activated.

CW4 stated she was driving again when she received a phone call from a relation and was told that, according to a posting on FaceBook, a "*young guy*" got shot in front of the Safeway store. CW4 responded that she saw the male on foot (referring to him as "*a little guy*", 5'5" - 5'6¹, looked young, wearing all dark clothes and a black cap which fell off when he started to run). CW4 told IIU investigators she did not see anything in the male's hands.

CW5 was at a residence on Sherbrook Street on the night of the shooting when he heard sirens and saw police cars driving the wrong way on the street. CW5 was outside when he saw police officers chasing a male and screaming at him to stop. The male and the police officers were about 10-15 feet apart. CW5 saw three police officers on foot, two were close to the male and one was further behind. Two of the police officers had their firearms out.

According to CW5, the male was repeatedly swearing at the police officers as he was running backwards with one of his hands raised up. The police officers kept telling the male to get down but the male refused. CW5 stated that it appeared the male went for something in his waistband and that is when he heard four "*pop*" sounds. CW5 did not see anything in the male's hands.

¹ During his post-mortem on January 14, AP was weighed and measured and found to be 6'5" tall and 236 pounds in weight.

CW6 and **CW7** lived across the street from where the shooting occurred. Both advised that they were in their bedroom when they heard a number of pop sounds from outside. They went to their living room window and saw several police officers and police vehicles across the street.

Witness Officers

WO1 was working in a marked Canine Unit cruiser and partnered with **SO1** that evening. **WO1** heard a police radio transmission that police were attending an address on Maryland Street to locate a male who may have been involved in a domestic incident earlier that evening on Kennedy Street. From previous information, **WO1** was aware that this male suspect may be armed with a homemade handgun that was last seen in the male's waistband. **WO1** saw a male walking on the sidewalk of Sargent Avenue near Sherbrook Street. The male appeared similar to the description of the male suspect. The male then changed his direction of travel and entered a pawn shop on Sargent Avenue. **WO1** decided to spot check this male based on this suspicious behaviour and on the belief that he might be involved in the broadcast domestic incident.

WO1 stopped the police vehicle at Sargent Avenue and Furby Street, where he exited and said to the male (later identified as **AP**), "*Winnipeg Police, what's going on?*" **AP** stepped onto Sargent Avenue, with his left hand concealed in his pocket, and said, "*What's up officers?*" **WO1** asked **AP** to remove his hand from his pocket, at which time **AP** turned and ran westbound across Sargent Avenue towards Sherbrook Street. **WO1** pursued **AP** on foot.

WO1 voiced the foot pursuit over his police radio and followed **AP** to the south back lane of Sargent Avenue, then continued to run westbound from Sherbrook Street. **WO1** noted that **AP** dropped some articles and a jacket in the lane. **WO1** observed and broadcasted that "*the male to have in his right hand a small axe type of weapon*". He broadcast this information over the radio and then ordered **AP** to drop this weapon. At one point, **AP** walked backwards and faced **WO1**. **AP** was holding a hatchet in his right hand and above his head as he was making a throwing motion. In fact, according to **WO1**, **AP** repeated this motion while standing in a backyard on Sherbrook Street (shooting scene). Once again, **WO1** commanded **AP** to drop the hatchet. **WO1** continued to tell **AP** several times to stop and at one point said he was going to get his dog. **AP** jogged out onto the west sidewalk of Sherbrook Street and into the front yard of the shooting scene as other police units arrived to assist.

WO1 heard a CEW deploy but reported it to be ineffective on **AP**. **WO1** continued to order **AP** to drop his weapon. Other police officers issued similar orders to **AP**. **WO1** stated that **AP** continued holding the hatchet above his head, making "*short throwing gestures toward other officers.*" **WO1** stated that **AP** then lifted the hatchet "*higher, backwards, above and behind his head, making the motion that he is going to throw the axe.*" **WO1** stated that he heard several gunshots and saw **AP** fall to the ground. **WO1** did not see where the hatchet landed. **WO1** does not believe he had his firearm drawn and stated he "*was not in a direct position to do that.*"

WO1 reported that he saw a CEW on the ground and that he secured the scene while other officers attended to **AP**. **WO1** confirmed that he picked up a CEW from the sidewalk right after the shooting and handed it to **SO3**.

WO2 stated that at approximately 7:50 p.m. he heard **WO1**'s voice on the radio "*...screaming in a stressed voice that he was in foot pursuit behind the Safeway on Sherbrook.*" **WO2** responded to assist **WO1**. While en route, **WO2** again heard **WO1**'s voice on the police radio, now stating

the male had a weapon and he was commanding him to drop it. As WO2 made his way near the Safeway at Sargent Avenue, he saw a male running southbound on the west sidewalk of Sherbrook Street *“with a hatchet in his left hand.”* WO2 stopped the police vehicle in front of the shooting scene and assisted other police officers in containing the male (later identified as AP) in the yards along Sherbrook Street. WO2 reported that AP was *“dressed all in black, his jacket was open, he was breathing hard and holding the hatchet in his left hand up in the air in a threatening manner.”* WO2 drew his pistol and commanded AP to drop his weapon, which he refused to do. WO2 stated that SO2 also had his pistol out, therefore he (WO2) holstered his pistol and drew out his CEW. WO2 heard an officer to his right yell out *“Taser, Taser”*, and deployed a CEW on AP. However, it was ineffective and failed to incapacitate him.

WO2 then yelled *“Taser, Taser”* and fired his CEW at AP. It appeared to make contact very briefly as AP *“...reacted for a split second, appearing as though he had been electrocuted, but then shook it off.”* AP continued to raise the hatchet up and make throwing motions with it. WO2 stated that he feared for his life and it caused him to duck down and protect himself from possible harm. WO2 stated that he deployed a second cartridge on his CEW. However, as with the first, it proved to be ineffective and AP walked north into the shooting scene.

WO2 was in the process of drawing his pistol when AP

“...drew his arm back over his head and did a shuffle step towards officers shifting his body weight forward as if he was going to throw the hatchet hard at the officers in front of him like a quarterback in football would be throwing a long bomb.”

WO2 stated that he heard three shots and saw AP fall to the ground. WO2 then approached AP and handcuffed him. WO2 also assisted in providing first aid to AP. WO2 stated he saw the hatchet in AP’s left hand but did not see it again after AP was shot. WO2 stated that his

“...entire interaction with the suspect may appear long on paper but in reality it was only thirty seconds to a minute long.”

WO3 was working with WO4 as part of the WPS Tactical Support Team (TST). WO3 was involved in a domestic assault call at approximately 6:35 p.m., at an address on Kennedy Street, where a male had *“pistol whipped”* his girlfriend. The male suspect had fled prior to police arrival and a *“BOLO (be on the lookout)”* was broadcast to alert police units to the incident. WO3 stated that at 7:43 p.m., he and WO4 were attending an address on Maryland Street to check for the suspect male. WO3 stated he heard WO1 voicing a foot pursuit of a male, who was armed with a weapon, behind the Safeway on Sargent Avenue. This location was approximately a block away. WO3 stated he believed that WO1 was in foot pursuit of the suspect male he was looking for from the Kennedy St. assault. WO3 immediately responded to assist WO1. WO3 said he heard WO1 on the police radio voice *“Drop the axe.”* WO3 stated that WO1 was involved in a *“high stress, dynamic situation.”*

WO3 stopped his police vehicle in front of the shooting scene where he exited, drew his firearm, and assisted other police officers who were attempting to contain AP. AP had

“...his right hand raised up beside the right side of his head..... he was holding a hatchet and shaking it in a threatening manner towards officers.”

WO3 then stated that AP was holding the hatchet

“...high, with the cutting surface facing forward in preparation to slash downward with it as well as his mannerisms specifically how he had taken an aggressive stance with his knees bent lowering his center of mass”

Police officers yelled at AP several times to drop the weapon. WO3 believed it was important to contain AP as he *“believed that he posed a significant risk to public safety.”*

WO3 deployed his CEW, as did another officer. However, neither deployment had any effect on AP. WO3 stated that he heard AP say *“shoot”* or *“shoot me.”* WO3 saw that SO3 had drawn his firearm. WO3 stated that AP:

“...drew the hatchet back just as someone would to throw a baseball. It was clear to me he was winding up to throw the hatchet at me.”

WO3 stated he feared for his life and began to re-draw his firearm, intending to shoot AP. However, at least two officers to his left fired their pistols and AP fell to the ground. WO3 last saw AP's hatchet flip in the air and fall to the ground, where it became covered in snow.

WO4 stated he was partnered with WO3 and confirmed their involvement in the domestic incident at Kennedy Street, referred to above. Shortly after 7:43 p.m., he heard WO1 on the police radio voicing that *“he had located a male armed with a weapon on Maryland Street near the Safeway on Sargent.”* WO1 was also heard yelling, *“Drop the axe.”* WO4 stated that he and WO3 made their way to the Sherbrook Street area in response to WO1's transmissions. Other WPS units and officers were already present. On exiting his vehicle, WO4 heard police officers *“repeatedly issuing loud and clear verbal commands for the male to drop the weapon.”* WO4 stated he saw a male (later identified as AP) holding a hatchet in his right hand *“up high by the right side of his head”* with the head of the weapon raised above his head. WO4 stated that

“...by holding the hatchet in this manner, combined with him directly looking at officers, I firmly believed this male was posturing and aggressively gesturing his intention to strike any one of the officers who came near him.”

WO4 stated that AP *“verbalized words to the effect ‘shoot me’”* though was uncertain if AP said *‘kill me’* or *‘shoot me’*.

WO4 had his CEW out and moved into position to deploy his CEW, approximately 20-25 feet away from AP. However, WO4 stated that before he was able to aim and deploy his CEW, AP stopped,

“...locked his eyes on an officer to my right ... cocked his arm further back while still tightly gripping the hatchet.”

WO4 believed that AP would throw the hatchet at some officer with the intention of killing or causing a severe injury. WO4 then heard several gunshots, in quick succession, and saw AP fall to the ground.

WO5 was partnered with WO6 when, at 7:50 p.m., they responded to the vicinity behind the Safeway on Sargent Avenue to assist WO1 who had radioed that he was in a foot pursuit. WO5 stated that WO1 had broadcast that the male he was pursuing had a weapon and WO1 was heard saying *“drop the axe”* several times.

WO5 stated they then made their way to the shooting scene and, within 10 seconds of arrival, heard an unknown police officer radio that shots had been fired. WO5 immediately provided first aid to a male lying on the ground until first responders arrived and took over care.

WO6 stated that he and WO5 attended to the vicinity behind the Safeway store on Sargent Avenue in response to WO1 radioing that he was in a foot pursuit. He heard WO1 “...over the radio screaming to drop the axe and that he had a weapon multiple times.” As WO6 and WO5 drove towards the shooting scene, an officer voiced that shots had been fired and requested a rush on an ambulance.

Subject Officers

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, each of the three subject officers declined to attend for an interview, however each provided detailed notes, narratives and/or written statements regarding their involvement in this incident. The following are summaries of those notes, narratives and statements.

SO1 was partnered with WO1 on the evening of January 11. In response to a WPS radio transmission, they were on the lookout for a male who was alleged to have pistol whipped his girlfriend. SO1 reported that at approximately 7:48 p.m., in the area of Sargent Avenue and Maryland Street, he observed a male matching a broadcast description. The male's behavior was suspicious to the officers as he stopped walking, turned and started back in the opposite direction. The male then entered a pawn shop and stood inside the door, staring back at police. When the police vehicle pulled over, the male exited the pawn shop and walked eastbound along the sidewalk while keeping one hand in his jacket pocket. SO1 believed the male was attempting to conceal something in this pocket. The male started to run when the police officers exited their vehicle. WO1 commenced a foot pursuit of the male. SO1 returned to the police vehicle and heard WO1 voice over the radio that he was running in behind the Safeway store located on Sargent Avenue. SO1 activated the vehicle's emergency equipment and drove to the intersection of Sargent Avenue and Sherbrook Street. As he turned to access the entrance to a back lane, SO1 heard WO1 radio that the male was armed with a weapon.

SO1 observed the male run out onto the west sidewalk of Sherbrook Street and move at a steady jog. SO1 drove ahead of the male, stopped the police vehicle, exited and stayed to the front of the engine block, unsure what the male was armed with. SO1 drew his firearm. From his position of cover, SO1 saw the male was holding a hatchet in his left hand. SO1 announced “Winnipeg Police” and gave verbal commands to the male to stop and to drop the hatchet. However, the male did not comply with the commands. The male then raised the axe in his left hand, holding it out in front of him in a throwing position. SO1 raised his firearm toward the male, at which time he lowered the axe. The male then raised it again. The male then continued moving south along the sidewalk on Sherbrook Street. When the male again came to a stop, SO1 saw sets of red LED lights from CEWs move over the male's body. SO1 heard an officer yell “Taser” and witnessed the deployment of a CEW. This deployment had no effect on the male, who then moved to the shooting scene. SO1 reported a second officer then deployed a CEW, which also had no effect on the male. The male looked at the officers on scene and raised the hatchet, holding it out in front of him in a throwing position. SO1 reported the male appeared to “...lock on and fixate in the direction of one of the officers” to his right. SO1 reported that he

feared for the lives of the police officers that the male was facing and, knowing that multiple attempts of a less lethal force option had failed, felt that if he did not take action someone's life could be lost. SO1 discharged his firearm, aiming for center mass on the male. As he fired, SO1 saw the hatchet fly forward and land in the snow ahead of the officers. SO1 believes he fired between two to four rounds at the male “...in order to stop the threat of grieves (sic) bodily harm or death to my fellow officers.”

SO2 reported that he was partnered with WO2 that evening. At 7:42 p.m., they were on Maryland Street to arrest a possible armed male. At 7:50 p.m., WO1 broadcast that he was in foot pursuit of a male armed with a hatchet at the rear of the Safeway at Sargent Avenue and Maryland Street. WO1 could be heard giving loud, clear and concise commands to the male suspect to drop the axe. SO2 and WO2 proceeded to the front of the Safeway, then east across a parking lot. The male could be seen in the distance on the west sidewalk of Sherbrook Street, running southbound.

SO2 reported that

“...the suspect male could be clearly seen, where he was holding what could be described as a 10-12” hatchet in his right hand.”

SO2 exited his vehicle, drew his service pistol, and yelled, “Stop, police.” He could hear other police officers yelling similar commands at the male, who was approximately 20 to 30 feet away from him. SO2 wrote:

“The suspect was acting erratically, where he was not running at this time but had slowed down and was bouncing around. The writer with his pistol drawn moved closer to the sidewalk to ensure the suspect could not escape, along with [WO2] to my left. The suspect male appeared to be high on an unknown drug, where his eyes appeared glazed, his body language was irregular, and even though multiple police units were on scene with emergency equipment activated, the suspect ignored us and seemed as if he look through us, as if to not even notice police were present.”

WO2 deployed his CEW, which visually appeared to make contact but was ineffective. SO2 then reported:

“...the suspect raised the hatchet and made jerking motions with his body, as if he was going to charge at officers. The writer yelled at the suspect ‘Drop the axe’, where he did not comply and continued to act erratically. The suspect raised the hatchet over and behind his head, making a motion with it as if he was going to throw it at the officers directly in front of him, to the right of me. The suspect pulled the hatchet back over his head and at this time the writer feared for grievous bodily harm or death for himself and his fellow officers. The suspect was displaying Aggravated Active Aggression at this time. The use of intermediate weapons at this time proved in effective (sic) and lower levels of force would be inappropriate for the circumstances. The writer felt the only option at this time was to use lethal force to stop the immediate threat. The writer fired his service pistol, firing 2 to 3 rounds at the center mass of the suspect in order to stop the threat. The writer could also hear other shots being fired to my right by unknown officer(s). During the time the shots were fired, the writer was standing at the north fence line of [the shooting scene], where the suspect was approximately 10 to 15 feet away

from the writer. The suspect fell quickly and the immediate threat was stopped. Due to snow being on the ground the writer could not determine where the hatchet fell to and it was unclear where the weapon was. The surrounding officers had an approximate 180 degree angle around the suspect and yelled at [WO2] who was to my left to get closer, to prevent any friendly fire should the suspect re-arm himself. The writer could hear another officer voice to dispatch that shots had been fired and it should be noted that arriving/arrived units still had there (sic) sirens activated so it was difficult to communicate with each other.”

SO3 reported that he was on duty and working alone on the evening of January 11. At approximately 7:46 p.m., he was on Maryland Street with SO2, WO2, WO3 and WO4 regarding a domestic incident. At that time, he heard WO1 “screaming” on the portable radio, “... male armed with an axe behind Safeway ... Drop the axe.... Drop the axe.” According to SO3, WO1 requested help and advised that he was behind the Safeway store on Sargent Avenue. As SO3 travelled southbound on Sherbrook Street, he saw a male walking on the west sidewalk with a hatchet in his right hand. SO3 stopped his police vehicle and exited without turning off his siren. He and other police officers approached the armed male. The male held the axe in his right hand and held it up while officers yelled at him, “Police, drop it...drop the axe.” Several officers had their firearms drawn and pointed at the male and SO3 believed he was in a position to safely deploy his CEW. The CEW caused the male to “flinch or wince” but otherwise did not affect him. The male continued moving to the north with the hatchet in his right hand. Multiple officers continued to order the male to drop the weapon, however he did not comply. SO3 felt that the male “was high on some illicit drug.”

SO3 saw another police officer deploy his CEW, striking the male in the back, however that deployment was also ineffective. SO3 attempted a second deployment of his CEW but this, too, was ineffective. SO3 dropped his CEW and transitioned to his pistol. SO3 continued ordering the male to drop his weapon while at a distance of approximately 15 feet. The male did not comply and was holding the hatchet above his right shoulder and making slashing motions “as if he is taunting the officers.” SO3 reported the following sequence of events;

“I yell ‘drop the axe now!’ Subject male then turns quickly towards the writer and while taking a step forward, had his right arm fully cocked up and behind his right shoulder and is following through in a fast forward motion to throw the hatchet at me. Axe extended back and above his right shoulder. Fearing for my life if the hatchet hits me, and to stop the lethal force encounter I fire my service pistol at the subject two or three times. At the same time I hear another officer fire their pistol from the south (my left). I observe the hatchet spinning in the air from the force that was applied by the subject when his arm was in a forward motion to throw the axe. The axe lands to the right of the subject male, and the subject male falls to his left face down in the snow.”

Afterwards, WO1 handed SO3 his CEW which he had dropped prior to the discharge of his firearm. WO1 showed SO3 where he had located the CEW. SO3 replaced the CEW back at that location.

WPS Radio Traffic

IIU investigators received and reviewed audio of the radio traffic related to this incident. The following is a chronology of that traffic from the time WO1 first voiced the foot pursuit until an officer reported that shots had been fired:

- 7:50:11 p.m. - WO1 voices *“foot pursuit behind the Safeway on Sargent, I’m on foot, (inaudible) jersey, thirty-two on the back.”*
- 7:50:30 p.m. – WO1 voices, *“Behind the Safeway. Behind the Safeway.”* A police dispatcher asks WO1 for a description of the male he is pursuing. WO1 responds *“He’s got a weapon! He’s got a weapon! Drop that! Drop the axe!”* The police dispatcher asks if there are any units that can attend to the rear of the Safeway on Sargent. WO1 then voices, *“Coming through to Sherbrook. Drop the axe!”*
- 7:51:04 p.m. - WO1 voices, *“Drop that axe! Drop it! I’m coming up to Sherbrook. Right there (inaudible), male black, all in black. Right there! Right there! Drop your weapon!”*
- 7:51:51 p.m. - the police dispatcher asks if anyone *“has eyes”* on WO1.
- 7:51:59 p.m., - an unknown male at the scene broadcasts *“Shots fired, shots fired. Send an ambulance please, A-S-A-P.”*

Total time lapse from WO1’s first radio broadcast until the *“shots fired”* broadcast is 1 minute, 48 seconds.

Video Analysis and Review

CW1:

CW1 provided IIU investigators with a DVD containing two videos and photographs from his cell phone. Five seconds into the first video (timestamped as January 11, 2019, 7:52:23 p.m.) two police officers in a vacant lot move closer to where AP is likely lying (outside of field of view). One police officer jumps over a wrought-iron fence and moves toward where AP is likely lying (outside of field of view). At the 24 second mark into the first video, two police officers from a cruiser car on Sherbrook Street run to where AP is likely lying.

The first video shows a police officer pick up an object from the sidewalk in front of the shooting scene and take it to a cruiser car on Sherbrook Street. The officer returns to the scene within two minutes and hands the item to another police officer. That police officer then places the item back on the sidewalk, near to where it was originally located. According to interviews with WPS officers, the item located and returned to the sidewalk was SO3’s CEW.

The second cell phone video (January 11, 2019 8:03 p.m.) was recorded from CW1’s front porch, showing police officers tending to an individual later identified as AP.

CW2:

CW2 provided three short videos (each less than one minute in duration) and 42 photographs to IIU investigators. All concerned post-shooting activities, with some taken during daytime hours the following day. Some were blurry and none showed AP involved or interacting with any police officers prior to the shooting.

CW6:

CW6 recorded a 55-second video clip of the post-shooting activity with his cellphone. It depicts police officers gathered around AP, who is lying on the ground in the vacant lot on Sherbrook Street. The police officers have flashlights pointed at AP and appear to be tending to him. Sirens can be heard from some of the stationary police vehicles.

Apartment Block Surveillance Video:

The apartment block is located on the west side of Sherbrook Street and north of the shooting scene. The time-stamp on the video is approximately 1 hour and 16 minutes “faster” than the actual time of the occurrence. The video footage received and viewed by IIU investigators is 5 minutes and 33 seconds in duration. There are 16 camera views featured, of which three are exterior views. These three exterior view cameras recorded some actions of AP and police officers on the night of this incident.

Camera #8 (labelled “Outside Par”) is attached to the north side of the apartment block and points east down the south back lane of Sargent Avenue towards Sherbrook Street. This lane is shared with the rear of the Safeway store and the apartment block.

Camera #9 (labelled “Back Alley”) is attached to the west side of the apartment block, pointing north.

Camera #14 (labelled “Front”) is attached to the east side and the front of the apartment block.

It has been previously referenced that at 7:50:11 p.m., WO1 voices the foot pursuit over the police radio. **Note: All times referenced from the apartment block video have been adjusted in this report to take into account the “fast” time stamp on the video.**

At 7:50:24 p.m., AP is observed running westbound through the lane between the Safeway store and the apartment block. At 7:50:28 p.m., WO1 is seen running westbound through the same lane and pursuing AP. AP’s jacket is seen falling to the ground as he leaves the video view.

At 7:50:35 p.m., AP is observed running southbound in the west lane between Sherbrook Street and Maryland Avenue. An axe or hatchet can be seen in AP’s left hand and is being held by the handle. At 7:50:40 p.m., WO1 enters the same lane, running southbound, passing an unidentified civilian² who has entered the lane from a side door. WO1 appears to be talking into his radio microphone as he is running. The reflection of flashing emergency lights can be seen at the front of the apartment block.

A series of stills captured from the apartment block video are attached to this report, showing the hatchet handle being held by AP as he runs down the lane. Note that the time stamp on each image is the uncorrected time. The red circle has been added to each still to highlight the hatchet.

Still 1

² IIU investigators attempted to identify and locate this civilian male without success.

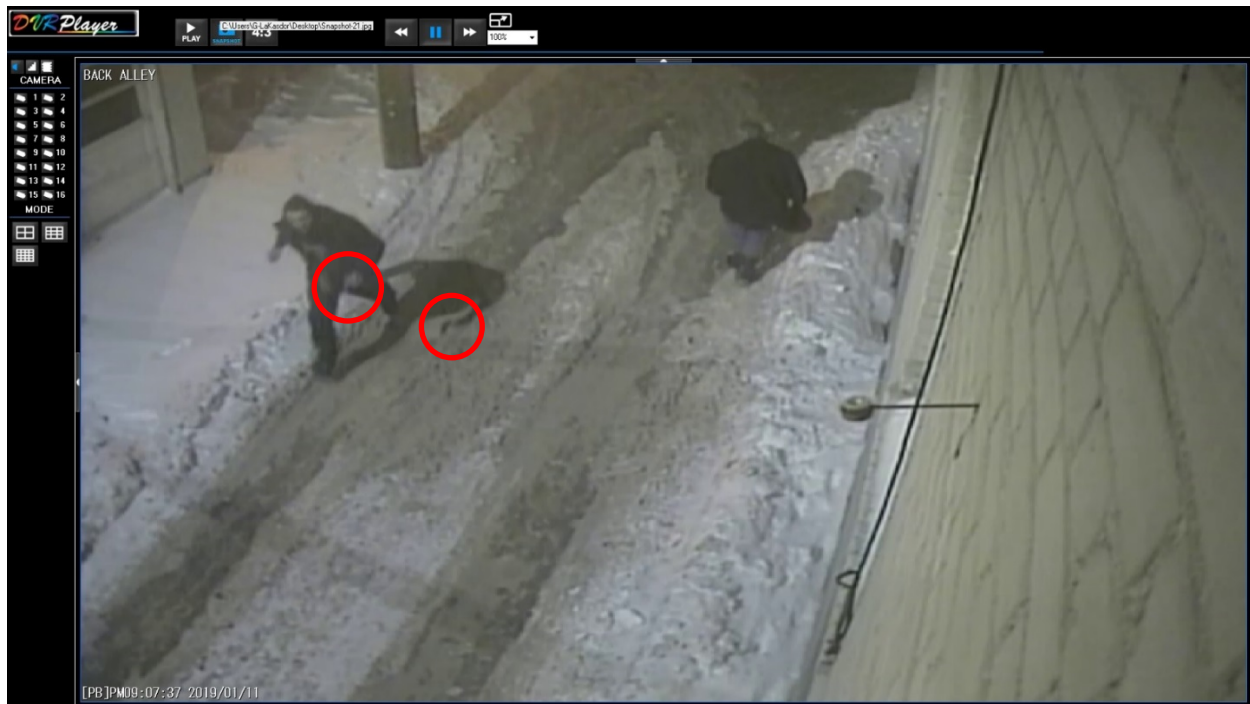


First view of AP running in lane between the Safeway store and the apartment block. The male to the right of the still is the unidentified civilian male.

Still 2



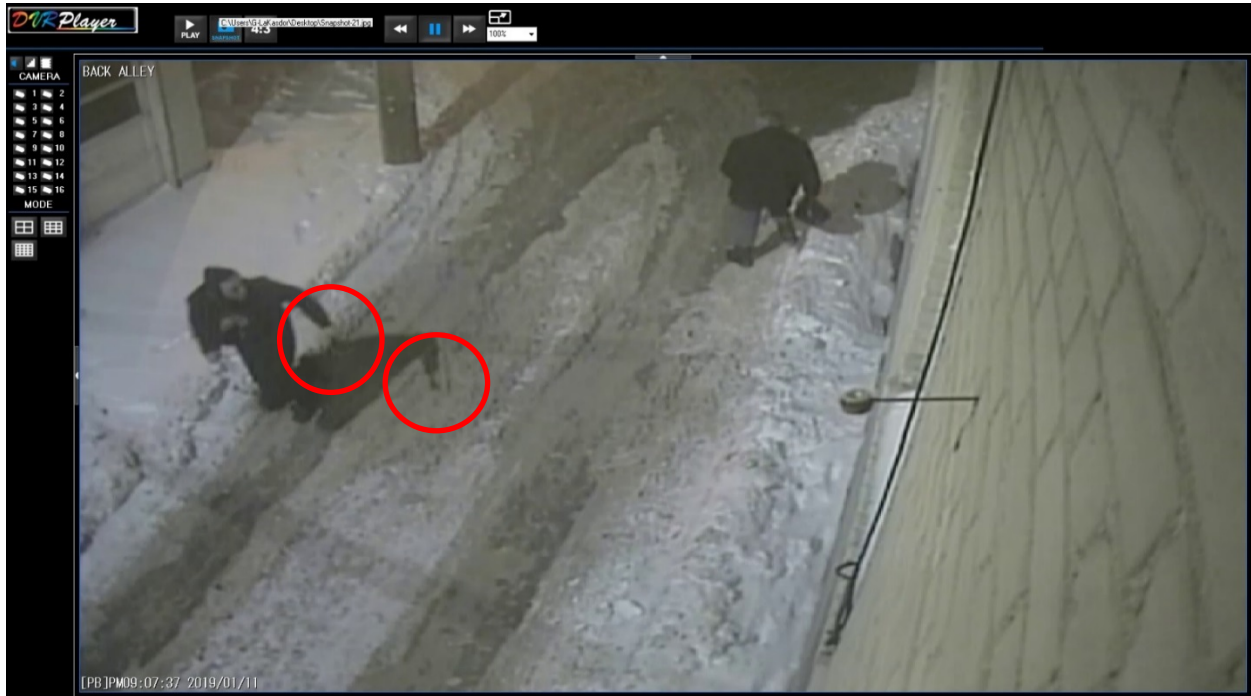
Still 3



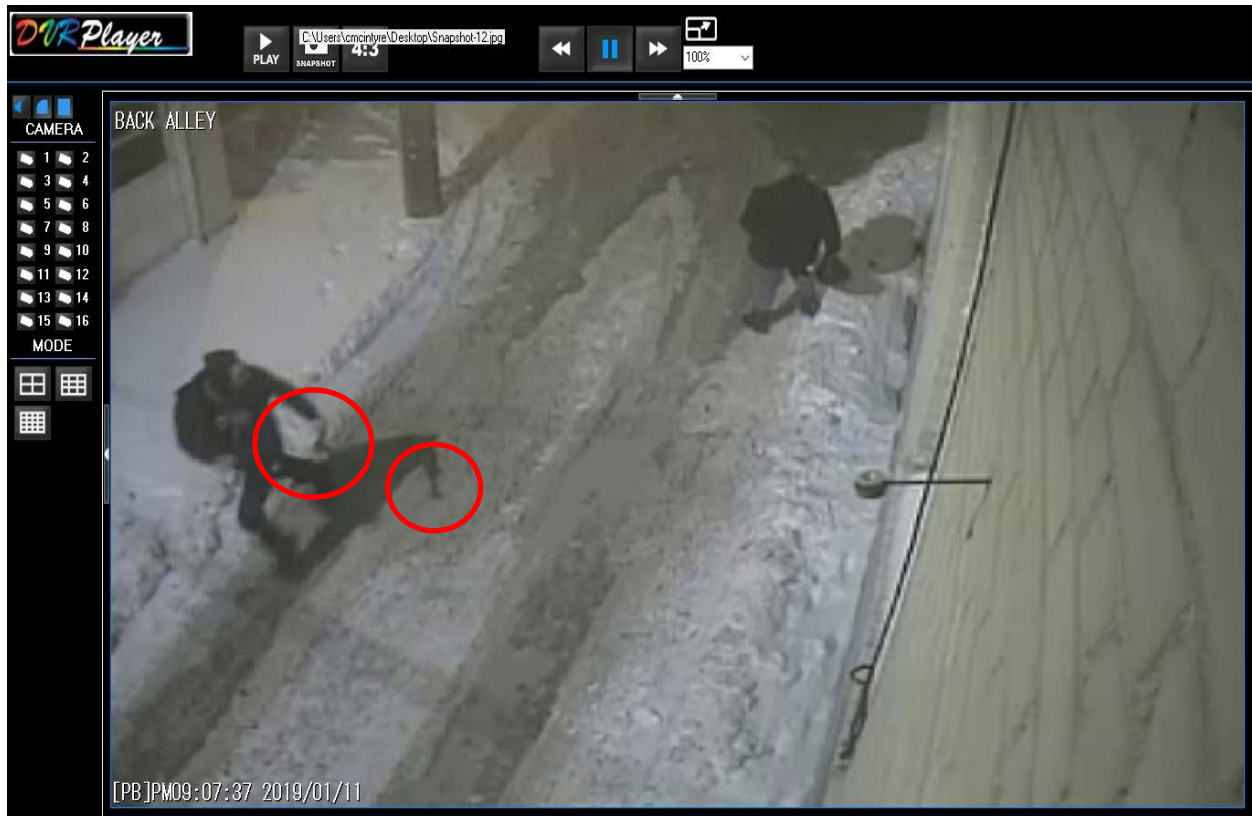
Still 4



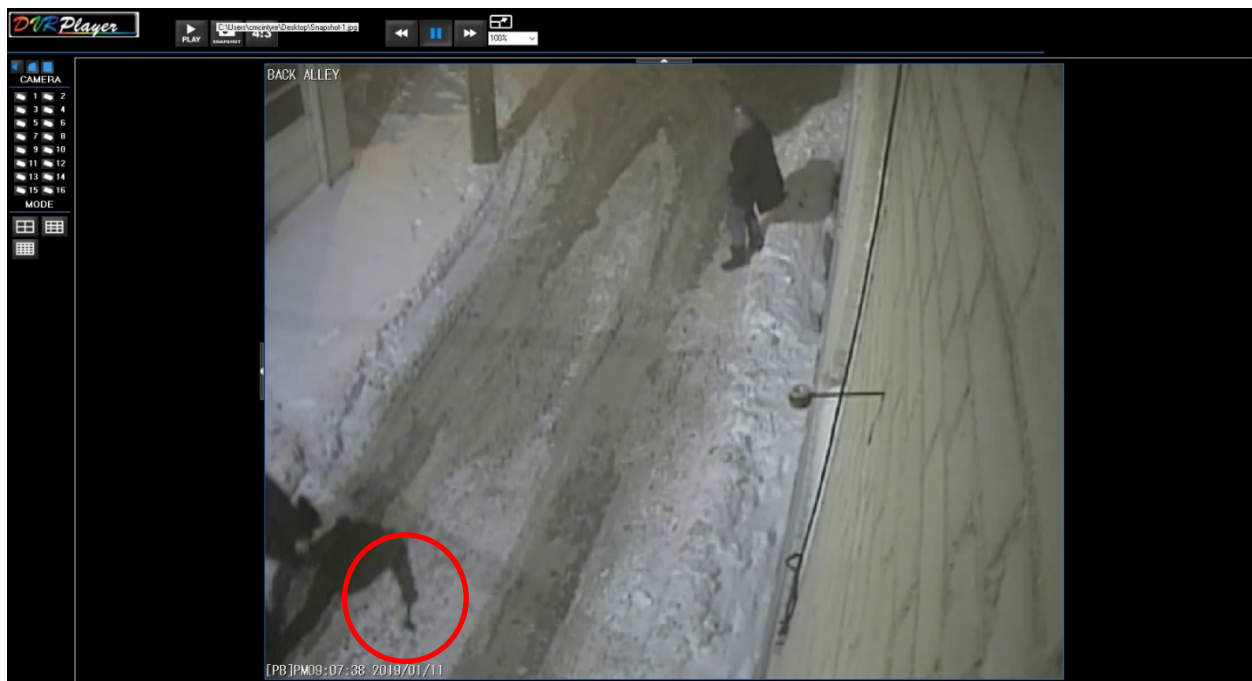
Still 5



Still 6



Still 7



At 7:50:41 p.m., a white police vehicle, with emergency lights activated, proceeds southbound on Sherbrook Street and enters the south lane of Sargent Avenue, between Safeway and the apartment block.

At 7:50:42 p.m., additional police vehicles, with emergency lights activated, are seen driving through the south lane of Sargent Avenue, between the Safeway and the apartment block.

At 7:51:11 p.m., a white police vehicle eastbound in the south lane of Sargent Avenue turns onto Sherbrook Street southbound, and followed by a dark colored police vehicle.

Between 7:51:13 p.m. and 7:51:25 p.m., reflections of emergency lights are seen travelling southbound on Sherbrook Street, passing the apartment block.

It has been previously noted that at 7:51:59 p.m., a police officer radios "*Shots Fired.*"

The Hatchet

WO1 voiced on the police radio that AP was armed with "*a weapon.*" In his narrative, WO1 wrote that AP had "*a small axe type of weapon*" in his right hand. While AP was in the front yard on Sherbrook Street, WO1 wrote that "*the male still has the hatchet in his hand holding it above his head.*"

WO3 reported that when he approached AP he "*saw the suspect still had his right hand up by the right side of his head and he was holding a hatchet and shaking it in a threatening manner towards officers.*"

WO4 reported that he "*saw a male dressed in dark clothing and could clearly see that he was tightly clenching what I would describe as a hatchet in his right hand.*"

SO1 reported that when he confronted AP on Sherbrook Street, he "*was holding a hatchet in his left hand and tapping the head of the hatchet in his right hand.*"

SO2 reported "*the suspect male could be clearly seen, where he was holding what could be described as a 10-12" hatchet in his right hand.*"

SO3 reported that when he approached AP on Sherbrook Street, he "*begins to move and hop in a fighting stance with the hatchet (axe) raised in his right hand.*"

At 7:50:35 p.m., the apartment block surveillance video shows that AP running southbound from the south lane of Sargent Avenue into the west lane of Sherbrook Street, holding a small axe or hatchet by the handle in his left hand. WO1 is seen pursuing AP on foot.

On January 12, while processing the shooting scene, WPS Forensic Identification Unit reported that police located "*an axe or hatchet*" with an 11-inch handle, with grey duct tape wrapped around it and black electrical tape wrapped near the steel head. The head of the hatchet was 5 ½ inches and had "*Made in Sweden*" stamped on one side and "*0.6/14*" stamped on the other. The hatchet was located under approximately nine inches of packed down snow, through the use of a metal detector and digging in the front yard of the shooting scene. This area was reported as "*well travelled by medical and police foot traffic.*"

Photos



Forensic Identification Unit members locate a hatchet under the snow, marked as Exhibit "P"





Views of the recovered hatchet photographed by WPS Forensic Identification Unit



Views of the recovered hatchet photographed by WPS Forensic Identification Unit

Autopsy Report and Drug Analysis

AP was pronounced deceased on January 12 at 5:54 a.m. at HSC. A post-mortem examination of AP was conducted on January 14. AP had been struck by six bullets. Two bullets entered the posterior side of the right arm/shoulder. One bullet entered the right side of the mid back area and was recovered from the left side of the chest. One bullet went completely through the right forearm and into the right side of the abdomen. One bullet entered the right side of the leg and exited through the top of the right thigh. One bullet travelled and exited the top of the upper left thigh. One bullet grazed the upper right shoulder/arm. The cause of death was noted as due to AP's gunshot wounds.

In addition, a number of drugs, including methamphetamine and amphetamine, were detected in AP's blood. In particular, it was noted that:

Methamphetamine is a potent central nervous system (CNS) stimulant that is used recreationally for its euphoric and energizing effects. The acute stimulant effects of methamphetamine may last 8 hours or longer...higher doses are associated with more intense euphoria, rapidly flowing thoughts, and feelings of increased abilities. The risk of experiencing hallucinations and delusions may also be increased...amphetamine is an active metabolite of methamphetamine. The effects of amphetamine, if abused, are expected to be similar to those described for methamphetamine. The levels of methamphetamine and amphetamine detected represent those present when the blood sample was collected and, as found, may be associated with high-dose and/or binge methamphetamine use.

Issues and Conclusion

This investigation must consider whether the actions of the three subject officers to fire upon and cause the death of AP are justified at law. In this incident, police were required to be prepared for all risks when they met up with and pursued AP in the vicinity of Sargent Avenue, Maryland Street and Sherbrook Street. This included the observations and broadcasts that AP was armed with an axe or hatchet and there was cogent information to believe that AP was involved in a violent incident that may have involved a firearm. AP posed a significant risk to both public and police safety.

It made sense for all police officers to arm themselves as they exited their vehicles and confronted AP. A number of radio broadcasts were voiced noting that AP was armed and was refusing all directions to drop his weapon.

Applicable Law:

Sections 25 (1), (3), (4) and Section 26 of the Criminal Code of Canada are applicable to this analysis:

25 (1) Every one who is required or authorized by law to do anything in the administration or enforcement of the law

(a) as a private person,

(b) as a peace officer or public officer,

(c) in aid of a peace officer or public officer, or

(d) by virtue of his office, is,

if he acts on reasonable grounds, justified in doing what he is required or authorized to do and in using as much force as is necessary for that purpose.

(3) Subject to subsections (4) and (5), a person is not justified for the purposes of subsection (1) in using force that is intended or is likely to cause death or grievous bodily harm unless the person believes on reasonable grounds that it is necessary for the self preservation of the person or the preservation of any one under that person's protection from death or grievous bodily harm.

(4) A peace officer, and every person lawfully assisting the peace officer, is justified in using force that is intended or is likely to cause death or grievous bodily harm to a person to be arrested, if

(a) the peace officer is proceeding lawfully to arrest, with or without warrant, the person to be arrested;

(b) the offence for which the person is to be arrested is one for which that person may be arrested without warrant;

(c) the person to be arrested takes flight to avoid arrest;

(d) the peace officer or other person using the force believes on reasonable grounds that the force is necessary for the purpose of protecting the peace officer, the person lawfully assisting the peace officer or any other person from imminent or future death or grievous bodily harm; and

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

26. Every one who is authorized by law to use force is criminally responsible for any excess thereof according to the nature and quality of the act that constitutes the excess.

In addition, police officers are entitled to rely on the self-defence provisions of the Criminal Code under section 34:

34. (1) A person is not guilty of an offence if

(a) they believe on reasonable grounds that force is being used against them or another person or that a threat of force is being made against them or another person;

(b) the act that constitutes the offence is committed for the purpose of defending or protecting themselves or the other person from that use or threat of force; and

(c) the act committed is reasonable in the circumstances.

Effectively, the question is whether the decisions of the subject officers to discharge their firearms at AP were reasonable in the given 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 it is considered in light of the dangerous and demanding work engaged in by police and the expectation that they react quickly to all emergencies. These police officers' actions must be assessed in light of these exigencies. Where lethal force is used (intended or likely to cause death or grievous bodily harm), there must be a reasonable belief by the subject officers that the use of lethal force was necessary for their own self-preservation or the preservation of any one under their protection from death or grievous bodily harm. The allowable degree of force to be used remains constrained by the principles of 'proportionality, necessity and reasonableness' (see *R. v. Nasogaluak*, [2010] 1 S.C.R. 206).

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

“Police actions should not be judged against a standard of perfection. It must be 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.”

On this evening, it was alleged that AP was suspected in a violent domestic assault where it was alleged a firearm was present. When AP was first spotted by police as matching a description of the suspect, he acted in a suspicious manner and then ran from police. During the foot pursuit of AP, WO1 broadcast that AP was in possession of a weapon (axe or hatchet) several times. AP refused to comply with each and every direction and command by police to drop his weapon and surrender. Video surveillance captured AP holding the hatchet as he ran, a short time and distance before being shot by police. Attempts to subdue AP through several uses of less lethal tools (CEW) proved fruitless and ineffective. AP responded with threats of his own and raised his hand holding the hatchet several times, in a throwing motion, aiming at police officers. It was a real likelihood that AP could have delivered a potentially lethal injury with a throw of the hatchet. The hatchet was located on the ground where AP fell after being shot.

Therefore, if the statements of all the witnesses and the subject officers are accepted, and when other corroborating information such as the various videos are considered, was it reasonable, in these circumstances, for the subject officers to fire at AP to prevent the injury or death of any of them or any other police officer in the vicinity?

The next step is to determine whether the evidence from the various police officers and witnesses is credible. When determining issues of credibility, one must look to the evidence itself, and consider whether it is internally consistent, consider whether it is consistent with evidence given by others, consider whether it “makes sense” on common sense principles, and consider whether it is consistent with the available objective evidence. In this case, and in the circumstances that existed, all of this evidence made sense, was consistent with statements given by numerous officers and with statements by witnesses. Minor variations in the recollections of various witnesses (such as in which hand AP held the hatchet while pursued and confronted) are not unusual or unexpected. When considered as a whole, I am satisfied that this finding of consistency is appropriate in these circumstances.

More importantly, the eyewitness evidence and statements are consistent in that:

1. The available video surveillance evidence showed AP in possession of a hatchet while being pursued by police.
2. The hatchet, carried and brandished by AP, was located in close proximity to where he fell after he was shot.

3. Audio captures confirm the repeated directions and commands made by police officers to AP to drop the weapon and surrender.

This objective evidence materially corroborates the evidence of all the witnesses. Although no subject officer participated in full interviews with IIU investigators and instead provided prepared statements and narrative reports, I am satisfied that the extensive evidence gathered from the referenced sources provides sufficient support for the conclusion that the decision by SO1, SO2 and SO3 to shoot AP was necessary in order to prevent the injury or death of any or all of them and all other police officers in the vicinity.

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

In conclusion, there are no grounds to justify any charges against any or all of the subject officers.

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

Final report prepared by:

Zane Tessler, civilian director
Independent Investigation Unit
August 26, 2019

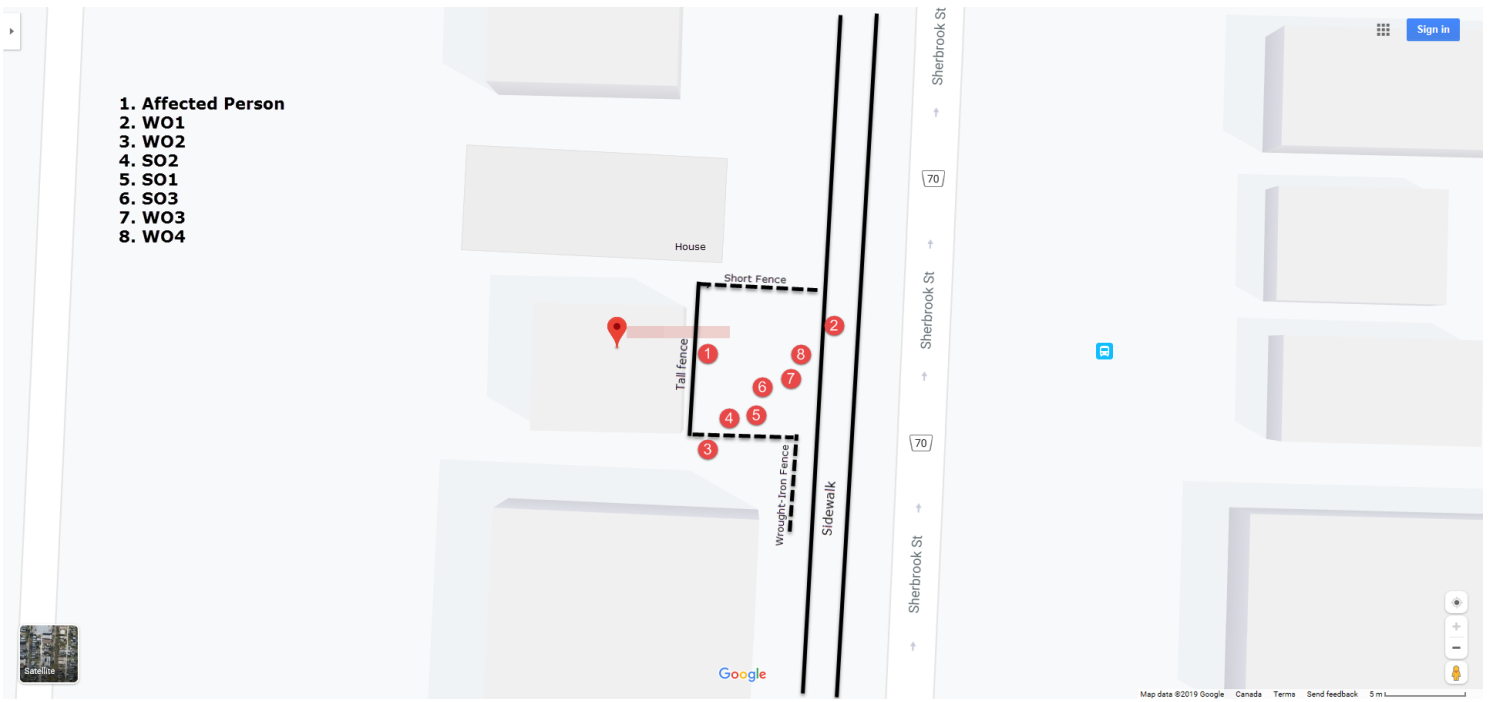
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Appendix 1 - Foot Pursuit Route



For reference only; not to scale.

Appendix 2 - Shooting Scene - Approximate Location of Police and AP



For reference only; not to scale.