

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

On October 18, 2019, the Winnipeg Police Service (WPS) notified the IIU of an officer-involved shooting that occurred in Winnipeg. The notification (edited for clarity) read in part:

“On October 18, 2019, at approximately 7:37 a.m., two Winnipeg Police Service (WPS) officers were dispatched to a residence on Riverton Avenue in response to a domestic complaint.

Initial information received indicated that a male caller had called 911 requesting police assistance as he was having a domestic dispute with his girlfriend.

Upon entering the residence, the attending officers located an unresponsive female lying face down on the floor. Officers immediately attended to the female to render medical assistance and then called for medical assistance.

Shortly thereafter, attending members came into contact with a male, later identified as the Affected Person (AP) inside the residence. During this encounter, a WPS member fired his pistol at AP striking him once in the upper body.

AP was subsequently taken into custody, upon which, Winnipeg Police Service members noted that he was also suffering from what appeared to be self-inflicted wounds to his arms and neck. Medical assistance was immediately rendered and a second ambulance was summonsed.

AP was later transported to the Health Sciences Center in critical condition.

No further information with respect to what had transpired prior to police arrival or after police arrival is available at this time.”

According to this notification, AP sustained a gunshot wound from the discharge of a police officer’s service pistol and he was subsequently hospitalized. IIU assumed responsibility for this matter in accordance with section 65(1) of The Police Services Act (PSA), as this met the definition of a serious injury pursuant to regulation 99/2015. A team of IIU investigators was assigned to this investigation.

Information obtained by IIU investigators included:

- witness and subject officers’ notes and reports
- occurrence supplementary report
- audio of 911 telephone calls
- WPS radio communications
- Forensic Identification Unit report
- scene photographs

- Conductive Energy Weapon (CEW) download report
- medical report concerning AP
- WPS firearm qualification information

The civilian director designated the police officer who discharged his service pistol as the subject officer (SO). IIU investigators interviewed three designated witness officers (WO1-WO3). IIU investigators attempted to meet with and interview AP but he refused to cooperate, though he did sign a consent to the release of medical information. A canvass of the vicinity of the officer-involved shooting was conducted to locate witnesses and any video footage, without success.

Facts and Circumstances

Affected Person

IIU investigators met twice with AP at the Winnipeg Remand Centre. He declined to provide a statement on the matter, but did consent to releasing his medical information to IIU.

Medical Report respecting AP

IIU investigators received a medical report concerning treatment and diagnosis of AP on the day of the officer-involved shooting. The records show that AP was treated for a gunshot wound to his left shoulder, as well as lacerations to his neck and forearms. AP advised hospital staff that he used cocaine and crack cocaine at the time of the incident.

Witness Officers

WO1 stated that he and SO were dispatched to a 911 call to the Riverton residence at 7:37 a.m. They arrived on scene at 7:57 a.m. Knocking on the front door yielded no response from inside the residence, so the officers decided to depart. They remained in the vicinity to follow up and assess the situation. Following the receipt of a second 911 call, at 8:17 a.m., both WO1 and SO returned to the residence at 8:27 a.m., where, once again, no one answered the door in response to police knocking. WO1 stated that, at this point, he believed there was an urgent need to enter the residence, without a warrant or legal authorization. WO1 opened the unlocked front door and found a female lying on the floor. WO1 called out for anyone inside to come to the door. There was no response.

WO1 and SO entered the residence. They both had their service pistols drawn and separated to conduct a search of the residence. WO1 stated that he entered a bedroom and observed a large quantity of blood on the bed. WO1 heard SO call out, "*Show me your hands.*" WO1 immediately went to where SO was standing. Facing into a bathroom of the residence, WO1 saw a male, later identified as AP, standing with his right hand hidden from view and his left hand pressed against his neck. Both WO1 and SO commanded AP to show his hands but he did not comply. AP was approximately seven to eight feet from the police officers.

WO1 stated that he holstered his service pistol and drew his CEW, at which point AP turned and advanced towards the officers. AP exits the bathroom and approaches the police officers, who are standing in the kitchen. AP's right hand became visible and WO1 observed him holding a knife. When AP was approximately four to five feet from the police officers, he raised the knife, with an overhand grip and blade pointed towards them. WO1 discharged his CEW and at the same moment, heard a single gunshot coming from his side where SO was standing.

AP fell to the floor in the kitchen and was disarmed. The police officers commenced first aid, as AP also had a large laceration to his neck in addition to a gunshot wound to his left shoulder.

WO2 was partnered with WO3 and both attended the Riverton residence shortly after being advised that WO1 had discovered the female body inside of it. WO2 took a position outside the back of the residence, while WO1 and SO entered. A short time later, WO2 states he heard a single gunshot coming from inside the residence. WO2 immediately went to the front of the residence, where he was instructed to obtain a first aid kit.

WO3 stated that he and WO2 arrived on scene after WO1 had discovered the female body. WO3 stated that he went to the back of the residence, while WO1 and SO entered. WO3 stated that he heard a single gunshot coming from inside a short time later. WO3 did not hear any voices coming from inside before the gunshot.

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, SO provided copies of his notes and his report, and consented to be interviewed by IIU investigators.

In his narrative report, SO wrote that he and WO1 entered the Riverton residence after two 911 calls were received from this address. Once inside, SO noted a deceased female lying on the floor near the door. He and WO1 went inside, after which time SO wrote the following:

The writer proceeded slowly to the rooms to the right as I could see nobody was to the left in the open kitchen. As I exited the living room, I observed a male in the bathroom which is the first room on the right. The male was shirtless, standing facing this unit, holding his neck with his left hand and concealing his right hand down the side of his right leg. The male appeared to be holding an item but nothing could be seen. The male showed no emotion and just had a blank stare. This unit maintained a distance of approximately 6-7 feet away from the male outside the bathroom.

The writer advised him to show us his hands numerous times. The male did not respond or show any emotion what so ever. He didn't move and just stayed there staring out. WO1 advised the writer that he was transitioning (putting his firearm away and switching to his taser). The writer maintained contact with the male again telling him to show his hands again to which he ignored. The male was observed to have self-harming lacerations to his neck that appeared to be 3-4 inches in length on the right side and possibly on the left side, with both fresh and dried blood on it. WO1 then proceeded back over to the writers [sic] right side. The writer then lowered his firearm away from the male so the taser could be utilized and there was no startle response by the writer. At this point the male started to quickly take a few steps out towards us. The male still did not say anything. The writer also took a few steps back and to the left. The male at this point was observed to have a large knife in his right hand raising it from behind his leg up to his waist. The male was continuing to move towards us closing the distance to 4-5 feet at which point, the writer feared death or grievous bodily harm for myself and WO1. With the male armed with the knife, suspect in the murder of the female, hiding in

an ambush position in the washroom, ignoring all commands including coming to the front of the house, and came to within 4-5 feet of this unit, the writer fired one shot with his firearm at the male while moving to the left out of the line of attack. Of note, the taser and firearm were fired almost simultaneously.

In his interview with IIU investigators, SO read his narrative report, then answered clarifying questions. SO stated his contact with AP lasted no more than ten seconds. When AP displayed the knife, he was holding it in an overhand grip. SO was asked whether a repositioning was an option he considered when initially dealing with AP. SO stated that was not considered, as there was no room in this area of a small house to reposition safely and the incident happened very fast. SO stated that he initially loaded his service pistol at the beginning of his shift with fifteen live rounds.

911 Telephone Calls

There were two audio recordings of 911 calls requesting police attendance at the Riverton residence. In the first call, at 5:00 a.m., a male subject asked police to attend due to a domestic disturbance. In the second call, at 8:17 a.m., the same day, a male caller simply said he needed the police at that residence.

Firearm and CEW Analysis

SO's service pistol was seized following the officer-involved shooting incident and was found to contain one live round in the chamber and thirteen live rounds in the magazine seated in the gun. His two extra duty magazines, held in his belt pouch, each contained fifteen live rounds. The firearm was not submitted for analysis as physical evidence from the scene and officer accounts of the incident suggest only one round was expended by SO during this incident.

WO1's CEW data was downloaded in the course of this investigation. Records showed that it was deployed once in probe mode at 8:33 a.m. for a five-second cycle.

Conclusion

Issues and Conclusion

This investigation must consider whether the actions of the subject officer to fire upon and wound AP was justified at law.

In this incident, WPS received two 911 calls requesting police assistance at the Riverton residence. WO1 and SO were dispatched to the residence. They attended the front door on two occasions. At the second attendance, it was determined that there was an urgency to check inside the residence. The door was opened and a deceased female was observed lying on the floor. After calling out for any other occupants to exit but getting no response, both police officers entered the residence. The police officers located AP in the bathroom, who turned and advanced on them. AP had a knife in his right hand and aimed it at the police officers. SO discharged his firearm once, striking AP in the left shoulder, while WO1 fired his CEW. AP fell to the floor where he was disarmed and first aid was administered, both for the gunshot wound and for a self-inflicted laceration to the left side of his neck.

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.

(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.

Effectively, the question is whether the decision of the subject officer to discharge his firearm at AP was reasonable and necessary for the self-preservation of the police officer or the preservation of any one under their protection from death or grievous bodily harm in the given circumstances. Reasonableness of a police officer's use of force will 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 actions must be assessed in light of these pressures. Where lethal force is used (intended or likely to cause death or grievous bodily harm), there must be a reasonable belief by the subject officer 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 react quickly to emergencies. Their actions should be judged in light of these exigent circumstances."

That is to say, police officers caught up in violent encounters are not expected to measure their

responding force with precision. What is required is a reasonable response, not an exacting one.

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 occasion, police responded to a call for service concerning a possible domestic disturbance at the residence. Police officers became concerned about the safety and well-being of persons within the residence during a second attendance. Police officers opened an unlocked front door and immediately noticed a female body lying on the floor. Police officers entered the residence and called out for anyone else within to exit. Receiving no response to that, police officers began a search of the residence. Within moments, SO found AP, who was standing in a washroom. AP had visible injuries to his neck and concealed his right hand from police officers. The area of this contact was small and cramped. AP suddenly advanced at police officers and produced a knife held and displayed in a threatening manner. The distances between AP and the police officers was short and police had very little time to react. AP was using real and potentially lethal violence at police officers. There existed a real likelihood that AP could have delivered a potentially lethal injury with his knife.

Therefore, was it reasonable, in these circumstances, for the subject officer to fire at AP to prevent the injury or death to either of them, or any other police officer in the vicinity?

The evidence gathered in this investigation, establishes that:

1. SO and WO1 were lawfully placed and acting within their lawful authority as police officers.
2. A body of a female was in the home.
3. AP was found suffering from self-inflicted injuries.
4. Possibility that AP was involved in the death of the female was very high
5. AP was in possession of a knife.
6. AP refused to comply with police officers demands to show his hands.
7. AP advanced at officers, with full view of his knife and held in a threatening manner.
8. AP was targeting the police officers with his knife.
9. AP and the police officers were in very close proximity and distance – time to react

was extremely limited.

10. SO was the only police officer to discharge a firearm.

11. SO discharged his service pistol one time, the threat was neutralized and there was no need or actual second or subsequent discharge of the firearm.

I am satisfied that the evidence gathered from all sources, including SO's consent to be interviewed by IIU investigators, that there is sufficient support for the conclusion that SO held the reasonable belief that his decision to shoot AP was necessary to prevent grievous bodily injury or death to either police officer.

An individual threatening with and actually using a dangerous weapon at close range confronted these police officers. AP's actions of advancing at police while armed with a knife, left SO with few, if any, options for a less lethal use of force. SO had a difficult decision to make and split seconds in which to make it. In the circumstances, I am satisfied on reasonable grounds that the SO acted within his rights and authorities in choosing to fire at AP.

In this investigation, the IIU mandate was to determine whether consequences should flow from the actions of the subject officer, in light of all the circumstances and information known to him at that time. It is my conclusion that the use of potentially lethal force by the subject officer was reasonable, necessary and justified.

As AP remains before the courts in respect to other matters arising out of this incident, this report will be publicly released once that prosecution has been completed.

The IIU investigation is complete and this file is closed.

Final report prepared by:

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Independent Investigation Unit
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