

FINAL REPORT: IIU concludes investigation into man's death in officer-involved shooting in Winnipeg

On August 27, 2022, the Winnipeg Police Service (WPS) notified the Independent Investigation Unit (IIU) of an officer-involved shooting that occurred in a back lane behind a residence on Bernier Bay in Winnipeg. This notification disclosed the following information (edited for clarity):

“On August 27, 2022 at approximately 1:50 a.m., the Winnipeg Police Service was conducting traffic enforcement in the form of a Check-Stop. WPS was set up on westbound Portage Avenue, (just west of the underpass) in the 1400 Block of Portage Avenue, at Empress Street. Several police cruisers had their overhead lights activated and officers were on the roadway waving vehicles in as they approached.

A red 2021 Chevrolet Camaro SS...with a lone male driver failed to slow or stop contrary to the directions of officers on the roadway and continued westbound Portage Avenue. Officers voiced this information for dispatch and attempted to catch up to the vehicle. The vehicle proceeded southbound onto Kenaston Boulevard and two police units maintained a distant follow until AIR1 (the WPS operated helicopter) spotted the vehicle and took control near Bishop Grandin Boulevard.

Two other WPS vehicles (single officer units) attended to the area of the residence of the registered owner, the affected person (AP). The subject vehicle driven by AP attended to the rear of his residence on Bernier Bay at approximately 2:12 a.m. AP observed police pull in to the back lane near his vehicle and he immediately retrieved a baseball bat and charged at the first officer he saw causing this officer to retreat (running). As the second police unit arrived, AP attended back to his vehicle but advanced towards police again with the weapon. The two officers discharged their firearms. Other police units soon arrived. AIR1 recorded this incident and provided updates over the radio.

Medical attention was immediately provided and AP was conveyed to the Health Sciences Centre (HSC) where he succumbed to his injuries”

As this matter concerned the death of a person that may have resulted from the actions of a police officer(s), IIU assumed responsibility for this mandatory investigation in accordance with section 65(4) of The Police Services Act (PSA). IIU Investigators were assigned to this investigation.

Among the agency information obtained by IIU Investigators included:

- WPS investigative summary report
- WPS officers' notes and narratives
- WPS officers' supplementary reports

- audio recordings of WPS radio communications
- Forensic Identification Service reports
- photographs of scene and exhibits
- AIR1 video recording
- CEW logs and analysis reports
- pathology and toxicology reports concerning AP

The civilian director designated the two WPS officers who discharged their respective firearms as subject officers (SO1 - 2). The civilian director designated four WPS officers as a witness officer (WO1 - 4). IIU Investigators met with and interviewed with four civilian witnesses (CW1-4).

IIU Investigators received and reviewed AIR1 video recordings which captured the continuous events from AP's operating his vehicle from the intersection of Kenaston Boulevard and Tuxedo Avenue until it came to a stop in the rear driveway of his residence on Bernier Bay and captured all of the circumstances thereafter leading to the officer involved shooting. This video recording proved to be invaluable source of information in this investigation.

Facts and Circumstances

Scene Examination and Analysis of Seized Exhibits

IIU investigators attended the scene of the shooting on August 27. A WPS drone was used to take the overhead view of the scene of the shooting. It shows the rear lane behind the residence on Bernier Bay, AP's vehicle parked in the driveway, x2 marked WPS SUV's and the location of various exhibits.



The following details some of the key exhibits as located and analyzed:

A conductive energy weapon (CEW, commonly known as a Taser) that was assigned to SO1, was located on the ground in the back lane at the rear of the residence on Bernier Bay – just below the front end of the police vehicle operated by SO2. The CEW had been previously discharged and wires were located under that vehicle’s front passenger tire. An analysis was done on SO1’s CEW, and it was determined that it had been deployed twice on August 27, at 2:15:33 a.m. each lasting approximately 3 seconds. Neither of these deployments achieved a proper connection with any person to cause any incapacitation.

A second CEW, fully loaded with cartridges intact, was located and seized from a holster on SO2’s duty belt. A similar analysis was conducted on SO2’s CEW and it was determined that this unit was not deployed on August 27th.

SO1’s duty pistol and spare magazines had been seized from him that morning and examined. The duty pistol was found to contain four live rounds following the shooting (one chambered round with three rounds remaining in the magazine seated in the pistol). Two spare magazines, taken from SO1, were found to each contain 15 live rounds. Based on all the round counts, it was determined that SO1 had fired 11 rounds that morning. SO2’s duty pistol and spare magazines had been seized that morning and examined. The duty pistol was found to contain one round in the chamber and 11 rounds remaining in the seated magazine. Two spare magazines, taken from SO2, were found to each contain fifteen live rounds. Based on all the round counts, it was determined that SO2 had fired three rounds that morning. Fourteen empty shell casings were located in and around the scene of the shooting, along with five expended bullets.

A silver coloured softball baseball bat, model SBB400, with a black rubber grip/ handle, was found in the back lane, near to the spot where AP’s body was located. The top of the bat is dented, scraped, misshapen, discolored and had screw indentations on its side. At its widest portion the baseball bat was 2.25 inches in diameter and was 34 inches in length.



AP's vehicle, found parked in the rear driveway of the residence on Bernier Bay, was searched. A knife and sheath were located on the front driver's floor area, just below the front portion of the driver's seat.



The knife was removed from its black cloth sheath and examined. It was found to be an "*Mtech Xtreme*", fixed blade tactical knife model, with a 6-inch serrated blade. At the time of its seizure, the knife was found contained within the black cloth sheath.



AP

According to the autopsy report, the cause of death was listed as “*gunshot wounds*”. It was determined that AP had sustained thirteen gunshot wounds, causing damage and injuries to multiple internal organs and arteries. Three expended rounds were recovered from inside AP’s body, along with numerous bullet fragments.

Toxicology results obtained from AP’s bodily fluids showed that his blood alcohol level at the time of the shooting was 154 mgs% of alcohol in 100 ml. of blood at the time of the shooting¹. There were trace amounts of tetrahydrocannabinol (THC)² together with acetaminophen, pseudoephedrine and dextromethorphan, (common ingredients found in cough syrup) detected in his system.

Civilian Witnesses (CW):

CW1 is a resident of the neighbourhood and stated that at approximately 2:13 a.m., she heard the sounds of five “*bangs*”. She did not see the shooting.

CW2 stated she was at her home with her children when she was awoken around 2:16 a.m. by what she initially believed to be the sounds of “*banging on metal*”. CW2 stated that she then heard the sounds of three or four bangs prompting her to retrieve her cellphone and look at her camera. At first, CW2 thought there were a bunch of people outside trying to break into her son’s car but soon realized that this group were police officers. CW2 did not see the shooting incident.

¹ The legal blood alcohol limit in Canada to operate a motor vehicle is 80 mgs% in 100 ml. of blood

² The active component of cannabis

CW3 was at home when at approximately 2:00 a.m., he heard a car drive by at a high rate of speed down the back lane. CW3 stated that he then heard the sounds of at least five rapid gunshots. He noted that the gunshots all “*sounded the same*”.

CW4 was laying in bed when he heard the sound of three “bangs”. CW4 did not witness the shooting.

Witness Officer (WO):

WO1 was working at a WPS check stop location that was set up on Portage Avenue at Empress Street, when AP’s vehicle failed to stop. WO1 stated that there were a number of police vehicles stopped at the check stop location, with all vehicles having emergency lights activated. Additionally, there were uniformed police officers working at the check stop, wearing high-visibility jackets and holding flashlights. WO1 stated that he and WO2, were in a marked WPS cruiser, with emergency lights activated, and followed AP southbound on Kenaston Boulevard. AP failed to stop for police and continued driving to Bernier Bay. WO1 stated that they drove to the back lane behind AP’s residence on Bernier Bay, found AP laying on the ground in the back alley, with one police officer standing nearby. WO1 stated that AP had sustained multiple gunshot wounds, and WO1 stated that he commenced first aid.

WO2 stated he was working at a WPS check stop location that was set up on Portage Avenue at Empress Street, near Polo Park, when AP’s vehicle passed through and failed to stop in accordance with police signals. WO2 stated that there were a number of police vehicles present at this check stop, each with their respective emergency lights activated. WO2 stated that he and WO1, entered a marked WPS cruiser, and with emergency lights activated, followed after AP’s vehicle southbound on Kenaston Boulevard. They were not successful in getting AP to stop his vehicle. AP was driving his vehicle at the speed limit and in his proper lane of travel. WO2 stated that AIR1, the WPS helicopter, took over the follow of AP’s vehicle in the vicinity of Kenaston Boulevard and Bishop Grandin Boulevard. WO2 stated that their vehicle pulled back but continued to follow along AP’s direction of travel to the area of Speers Road. At this location, WO2 stated that he heard on the police radio AIR1 announce that the driver (AP) had returned to his vehicle to get something. WO2 stated that he then heard the sounds of a number of gunshots. WO2 stated that he and WO1 drove to the shooting scene and found SO1 and SO2 standing over AP, who was laying on the ground in the back alley, having sustained a number of gunshot wounds. WO2 stated that he and WO1 immediately commenced first aid on AP.

WO3, a WPS patrol sergeant, stated that he was aware of AP’s vehicle follow while in the area of Grant Avenue and Stafford Street. WO3 stated that he drove his marked police SUV to the intersection of Grant Avenue and Kenaston Boulevard in time to see AP’s vehicle pass southbound and was followed by a WPS traffic vehicle operated and occupied by WO1 and WO2. WO3 stated that he joined in the follow. WO3 stated that his vehicle had emergency lights activated as it followed the car operated by AP. WO3 stated that he was aware that AIR1 took over management of this follow and the WPS vehicles (his and the one operated by WO1/WO2) turned off their respective emergency lights but continued to follow at a distance. Other than failing to stop at police direction, WO3 stated that AP was obeying traffic laws as he drove. WO3 stated that he eventually drove to the vicinity of AP’s residence on Bernier Bay, arriving a short time after the shooting had occurred. WO3 stated that both SO1 and SO2 were present when he arrived. WO3 stated that AP was laying on the ground in the back

alley and had sustained multiple gunshot wounds. WO3 stated that he was told by both SOs that they had each discharged their respective pistols.

WO4 was working as a Tactical Flight Officer (TFO) on AIR1 on August 27³. AIR1 became involved in this situation when WO4 and the pilot were made aware of a vehicle follow taking place southbound on Kenaston Boulevard, after it had failed to stop at a check stop in the vicinity of Portage Avenue and Empress Street. WO4 stated that the southbound subject vehicle, followed by a marked WPS vehicle, was initially located by them at the intersection of Kenaston Boulevard at Tuxedo Avenue, at which point he began to monitor it. AIR1 is equipped with a video camera which was on and switched to daytime mode in order to ascertain the color of the subject vehicle and to confirm that the WPS vehicle following it had its emergency lights activated. The camera's other mode, Infra Red (IR), does not capture color, only heat and cold signatures. The subject vehicle was driving within the posted speed limits and was obeying traffic control devices along its route. The only issue with the subject vehicle was that it would not stop for police. At 1:59 a.m., as the subject vehicle was passing over the overpass (where Kenaston Boulevard became Bishop Grandin Boulevard), WO4 stated that he the pursuing WPS vehicles to "back off" and let AIR1 continue the follow. The subject vehicle drove eastbound on Bishop Grandin Boulevard to Lagimodiere Boulevard and ended up in the back lane behind a residence on Bernier Bay. The subject vehicle then stopped and parked on a rear driveway. There were two WPS supervisor vehicles waiting near that residence's location for the subject vehicle to arrive. That residence was the address listed for the registered owner of the subject vehicle and the supervisors had driven in advance to that location waiting for the subject vehicle to arrive. One supervisor's vehicle stopped behind the subject vehicle as it stopped. WO4 stated that he was looking at the video screen on AIR1, which was now in IR mode, and he could not tell if the emergency lights on the police vehicle were activated as it followed the subject vehicle behind the Bernier Bay residence. WO4 stated that as soon as the supervisor vehicle stopped behind the subject vehicle, the driver of the latter quickly exited from the driver's side and charged at the operator of the supervisor's vehicle. The driver of the subject vehicle was holding a long cylindrical item in a two-handed grip and raised over his shoulder. He was running straight at the supervisor who had exited his vehicle. That supervisor immediately retreated, running down the back lane, and away from the charging and armed male, in the direction of the second supervisor vehicle that was driving to this scene. The person holding the cylindrical item in his hands stopped running after the first supervisor, returned to the subject vehicle, opened the driver's door, leaned in and appeared that he was reaching for something inside. The first supervisor returned to the vicinity of the rear driveway and stood at the front of his police vehicle, parked behind the suspect vehicle. The driver of the subject vehicle stood back from the driver's door, turned and charged at the first supervisor again. The male continued to brandish the long cylindrical item in a two-handed grip and raised over his shoulder. WO4 stated the IR camera recorded muzzle discharges of the first supervisor's pistol as he fired at the armed male multiple times. Despite being shot at, this male continued to advance around the police vehicle targeting the first supervisor and remained armed. Eventually, the male dropped the item he was holding and fell to the ground. WO4 stated that AIR1 crew departed the scene shortly thereafter, as they were running low on fuel.

³ AIR1 was operated by another WPS officer. That pilot was not interviewed by IIU investigators as it was determined WO4 had a more detailed observations and information of the shooting as it unfolded.

Subject Officers (SO):

Pursuant to the provisions of the Police Services Act (PSA), a subject officer cannot be compelled to provide his or her notes regarding an incident nor to participate in any interview with IIU Investigators. In this case, both SO1 and SO2 provided IIU Investigators with a copy of their respective notes and a prepared narrative statement. Neither SO1 nor SO2 attended the IIU office to meet with IIU investigators for an interview.

In his prepared statement, SO1 wrote that he was the first police vehicle to follow behind AP as he drove into the back alley behind his residence on Bernier Bay. SO1's statement continued:

"The suspect vehicle traveled the length of approximately 6-7 houses and then made an abrupt left hand, northbound turn to the east of a garage on the north side of the lane. The writer then pulled the fully marked cruiser car in behind the suspect vehicle and angled it to the northeast, in an effort to pin the vehicle in and prevent it from fleeing.

The driver door was observed to fly open in an aggressive manner, which caused the writer to open the cruiser car door, draw my Conducted Energy Weapon +(CEW/Taser) and yelled to the occupant to "SHOW ME YOUR HANDS". I then exited the cruiser car, which was in close proximity to the southeast corner of the garage the suspect pulled in beside. The driver then immediately exited the vehicle and ran towards the writer in possession of an aluminum baseball bat in both hands, over his shoulder. He held it up in a threatening manner, in both hands, preparing to hit me. In an effort to create distance and stop the advance, I deployed both Taser cartridges, which had no effect in stopping him from advancing.

With the situation escalated to a Lethal Force encounter and absolutely no time to transition to my service pistol, I turned and ran westbound up the lane, with the male chasing me, still holding the baseball bat, preparing to strike me.

As I started up the lane [SO2] was approximately 3-4 houses down the lane. He then hit his horn and accelerated to where I was running from.

I discarded my Taser, as it was ineffective, inappropriate and out of cartridges and drew my service pistol, as this was a Lethal Force encounter, where I was fearful of grievous bodily harm or death to myself or others and had no time to de-escalate this urgent situation.

I went around the back of [SO2]'s cruiser car and walked along the passenger side of his cruiser car and mine, eastbound. The male was observed to be at the drivers [sic] side door of his vehicle and as I approached the front of my cruiser car, the male started running towards me a second time still armed with the aluminum baseball bat, holding it in both hands, over his shoulder preparing to strike me. Fearing grievous bodily harm or death to myself or others, I fired my service pistol multiple times in an attempt to stop the threat of the male advancing. As I was firing, I was moving backwards, southwest from the male, attempting to create distance between myself and the suspect, however he continued to advance and the rounds did not stop him from continuing to threaten me with the baseball bat.

I stopped shooting briefly in an effort to reassess the situation, to see if the male had stopped attempting to strike me with the baseball bat, at which time it was noted that he

was still advancing, in possession of the baseball bat and still holding it prepared to strike, over his shoulder. I then fired additional rounds at the suspect, as [SO2] approached from my left side, along the passenger side of my cruiser car.

The suspect male then went down to the ground and dropped the baseball bat at his feet.”

Similarly, in his prepared statement, SO2 wrote:

As I pulled up, [SO1] came running fast out of the yard, turned west down the lane towards me. He was followed by a male hot on his heels, within a step or two. The male was slim, 5"10 to 6 feet, short dark hair, mid to late 20's in appearance, wearing a red basketball jersey and lighter colored shorts.

The male was only a step or two behind [SO1]. The suspect was holding a silver colored aluminum baseball bat in a two-handed grip raised above his head, poised for a downward striking motion. Based on age disparity, body size, and [SO1] wearing 20 pounds of police equipment, I was in great fear that the suspect would quickly close the distance and cause grievous bodily harm or death. I believed that this would be the result of a downward strike of the bat on the rear of [SO1]’s head with the added momentum of the suspect running.

I immediately turned my SUV into the path of [SO1] and the suspect running towards me and accelerated. I was fearful that I would not be able to intercept them in time and began to honk the horn to break the concentration of the suspect and divert his attention to me. The male slowed and [SO1] disappeared from my view. During this encounter I became briefly fixated on the bat raised above the suspects [sic] head and could see a red rectangular label on the blunt end of the bat.

The suspect then backed towards [SO1]’s SUV parked in the lane approximately 4--5 feet in front of my SUV. The male suspect briefly stopped near the rear driver side bumper of [SO1]’s. He stared at me and I observed that he was wearing glasses, and had a narrow beard along his chin and jaw line. His eyes were wide open and crazed looking. He did not say anything and turned and fled into the rear yard of Bernier. I lost sight of him due to the garage mentioned above.

I exited my SUV, drew my sidearm, and began moving towards the rear yard of the residence on Bernier. I did not know where [SO1] was at this time and I was concerned he may have been injured. I did not see him injured but I had not seen the initial encounter in the rear yard and did not know if [SO1] had been struck. I chose my sidearm as I felt the TASER was inappropriate. Due to the physical environment (sight line compromised by the garage, placement of vehicles) I believed if the suspect re-engaged aggressively he would close the distance required for a proper neuro-muscular incapacitation deployment of the TASER. The TASER would therefore be ineffective.

I made my way east down the lane and made it to approximately the driver side rear bumper of [SO1]’s SUV when [SO1] suddenly re-appeared running south out of the rear of the residence on Bernier and crossing in front of his SUV. The suspect was again in full chase with the bat, this time held over his shoulder in a cocked position. He was several feet further back from [SO1] this time but I again quickly feared for [SO1] and again considered this a lethal force encounter. I was frightened by the drive of the

suspect as I had just moments earlier nearly struck him with an SUV and he now knew he was facing two officers and yet he persisted in his attack.

I instinctively moved forward to approximately the driver side mirror of [SO1]’s SUV, at this point [SO1] had cleared the front passenger side corner of the SUV and had turned west down the lane. The suspect was about turn [sic] the same corner in pursuit. I heard [SO1] yelling "stop" and "drop it". I recognized that if I followed in pursuit an officer-suspect-officer deployment would develop and this was not tactically sound due to potential cross-fire. I began to redeploy to the rear of [SO1]’s SUV to re-engage in a more tactically advantage position.

As I turned and began to move I heard popping and believed [SO1] had engaged the suspect with his sidearm {I later observed a discarded TASER under the SUV and initial pops may have been a TASER deployment). At this time the suspect was starting to charge west towards [SO1] going along the passenger side of [SO1]’s SUV. I could not see [SO1] through the SUV and heard several more pops. As [SO1] could only retreat west down the lane, or curl south to re-engage I was worried that rounds could pass through the SUV had [SO1] curled and fired.

I crouched down and made my way to the rear of [SO1]’s SUV (in between rear bumper of [SO1]’s SUV and front bumper of my SUV). [SO1] had made his way to the passenger side of my SUV by this point. The suspect, with the bat still raised continued to aggressively move forward despite being shot at. From the first pops I heard to when I got in position between the SUVs, the suspect male had advanced from the front corner of [SO1]’s SUV to the rear passenger corner. I was further fearful of death of grievous bodily harm to [SO1] due to the suspects determined attack. As the suspect male continued to move forward I was able to engage him from the side with my sidearm and fired 3-4 shots in about a second. I aimed at the centre of mass to incapacitate the threat as trained. I believe [SO1] was also firing at the suspect at this time. It was a dynamic situation and I do not recall if I issued verbal commands as I fired.

The suspect male collapsed in the back lane. I approached him using my sidearm to cover him. I voiced "shots fired, suspect down, conscious breathing" or something similar at approximately 2:12 a.m.

Analysis of AIR1 Video Footage:

AIR1’s video camera captured the entire shooting incident, which began with a police vehicle following AP’s vehicle into the back alley behind the residence on Bernier Bay at 2:11 a.m. WO4 provides a running commentary on the video recording on events as they unfold. AP’s vehicle pulls onto a driveway and stops. The WPS SUV stops behind AP’s vehicle and the officer (and lone occupant) exits and approaches. AP quickly exited his vehicle and ran at the police officer holding a long item (which appears to be a bat) in both hands. The police officer points something at AP, then turns, moves backwards, and runs from AP, who had continued to advance on the officer while continuing to brandish the long item in both hands. As the officer ran down back lane and away from AP, another police vehicle drove up, causing AP to stop, turn and run back towards his vehicle. AP is seen leaning into his vehicle through the open driver’s door. AP appears to be rummaging and looking for something in or around the driver’s seat area. SO1 is heard (over the radio) saying ‘...he came at me with a bat’ as WO4 says, “...this

male is out of the vehicle with a bat, he's run at officers". Three seconds later, AP steps back from the driver's side of his vehicle, closes the door, turns, and runs towards the police vehicle stopped behind him, still holding the long item held in his hands. WO4 states, "...*he's reached for something in the car here*". Two police officers are now visible on the recording, one at the front of the original police vehicle and one approaching the rear. The first police officer (at the front of the parked police vehicle) is holding something in a two-handed grip and pointing it at AP. AP runs at this police officer (who is standing in the front of the parked original police vehicle). WO4 states on the video recording, "...*he's coming right at officers in the back lane*". As AP is running, the long item held in both hands is now cocked and prepared to be swung. A series of muzzle flashes are seen from what the first police officer is holding, meaning gunshots are fired at AP. Notwithstanding the series of gunshots fired by the first police officer, AP continues to advance on the police officer with the long item still visible and cocked. Several more muzzle flashes could be observed as this police officer walks backwards and away from the police vehicle and AP, continuing to fire at him. Muzzle flashes are now observed coming from the firearm held in two hands by the second police officer who is to the right and slightly behind AP. After the last muzzle flash is seen from the first police officer's firearm, AP drops the long item which rolls forward and collapsed backwards to the ground. AP is now on the passenger side of the police vehicle. There are no more muzzle flashes seen from either police officer's firearm. A voice is heard on the video saying, "*we're going to need an ambulance right here now*". No further muzzle flashes are seen and no further firearm discharges occur.

Conclusion

This investigation must consider whether the actions of the subject officers to shoot AP were justified by law. In this incident, in the early morning of August 27, WPS officers were conducting a vehicle check stop on Portage Avenue near the Polo Park shopping centre, when a vehicle, operated by AP, failed to stop as directed. AP drove off and proceeded southbound on Kenaston Boulevard. He was driving at the posted speed limit, while being followed by police vehicles which had their emergency lights activated. AIR1 became involved and took over monitoring AP's vehicle as it proceeded along Bishop Grandin Boulevard to Lagimodiere Boulevard, and eventually to the rear of a residence on Bernier Bay. SO1, operating a marked WPS SUV, pulled in behind AP. SO1 exited his police SUV and approached AP, at which time AP quickly exits his vehicle and charged at him while holding a baseball bat. SO1 attempted to twice deploy a CEW but the device was ineffective, resulting in SO1 running away from the AP, who continued to pursue holding the bat. SO2, in his marked WPS SUV, drove towards the two and used his horn in an effort to distract AP. AP then stopped his pursuit and ran back to his car, followed by SO1 and SO2, who each had drawn their service pistols. AP appears to look for something in his driver's seat area of his vehicle and then, again, runs at SO1 with the bat in his hands. AP was shot by the SO1 eleven times, and four times by SO2, before collapsing to the ground beside SO1's SUV.

Applicable Law:

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

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

- (a) as a private person*
- (b) as a peace officer or public officer*
- (c) in aid of a peace officer or public officer*
- (d) by virtue of his office, is,*
if he acts on reasonable grounds, justified in doing what he is required or
authorized to do and in using as much force as is necessary for that purpose.

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

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

- (a) the peace officer is proceeding lawfully to arrest, with or without warrant, the person to be arrested*
- (b) the offence for which the person is to be arrested is one for which that person may be arrested without warrant*
- (c) the person to be arrested takes flight to avoid arrest*
- (d) the peace officer or other person using the force believes on reasonable grounds that the force is necessary for the purpose of protecting the peace officer, the person lawfully assisting the peace officer or any other person from imminent or future death or grievous bodily harm*
- (e) the flight cannot be prevented by reasonable means in a less violent manner*

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

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*
 - (c) the act committed is reasonable in the circumstances*

It is an extremely difficult task to discern a rational explanation for AP's actions on August 27. We know that he was under the influence of alcohol and medication at the relevant times. We know that he failed to stop at the WPS check stop and drove away, at the posted speed limit and

stopping at controlled intersections. When he parked his vehicle in his driveway and was approached by SO1, AP immediately charged at the police officer while armed with a baseball bat. When the second police officer arrives, AP returns to his own vehicle to look for something then charges at SO1 a second time, still armed with a baseball bat. Despite being shot multiple times, AP continues to advance on SO1 and continues to brandish the baseball bat. The cause and impetus for AP's actions on August 27 remain uncertain and undetermined.

The critical question in this investigation is whether SO1 and SO2's decision to discharge their respective firearms at AP was reasonable and necessary in all of the circumstances. The reasonableness of an officer's use of lethal force (force that is intended or likely to cause death or grievous bodily harm) must be assessed in regards to the circumstances, as they existed at the time the force was used and in light of the constraints that were present.

Where lethal force is used, there must be a reasonable belief, held by a subject officer, that the use of lethal force was necessary for his or her own self-preservation or the preservation of any one under their protection, from death or grievous bodily harm. The allowable degree of force to be used remains constrained by the principles of *proportionality, necessity and reasonableness* (*R. v. Nasogaluak, [2010] 1 S.C.R. 206*).

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

“Police actions should not be judged against a standard of perfection. It must be remembered that the police engage in dangerous and demanding work and often have to react quickly to emergencies. Their actions should be judged in light of these exigent circumstances.”

Also see *R. v. Power, 476 Sask. R. 91 (CA)*, where (at para. 35), the court notes:

“On the basis of the foregoing, a determination of whether force is reasonable in all the circumstances involves consideration of three factors. First, a court must focus on an accused's subjective perception of the degree of violence of the assault or the threatened assault against him or her. Second, a court must assess whether the accused's belief is reasonable on the basis of the situation as he or she perceives it. Third, the accused's response of force must be no more than necessary in the circumstances. This needs to be assessed using an objective test only, i.e. was the force reasonable given the nature and quality of the threat, the force used in response to it, and the characteristics of the parties involved in terms of size, strength, gender, age and other immutable characteristics.”

Was it reasonable, in these circumstances, for the subject officers to fire at AP to prevent the injury or death to either of them or other persons in the vicinity?

From a review of all of the available evidence:

- AP was in possession of an aluminum baseball bat, capable of causing grievous bodily harm or death.
- SO1 and SO2 were on duty and in the process of responding to AP's failure to stop at a WPS check stop
- AP's travel was monitored by AIR1 while SO1 and SO2, with information on the address of registered owner of the vehicle, attended to that address in advance to wait for AP to arrive
- AP did arrive at this address, pulled into a driveway and stopped his vehicle
- SO1 arrived within seconds afterwards, pulled his SUV in behind AP's vehicle, exited and began to walk to AP
- AP immediately exits his vehicle, and while armed with a baseball bat held in both hands, he charges at SO1
- SO1 deploys his CEW twice in an attempt to incapacitate AP but the deployment was not successful
- SO1 runs away from the charging AP
- As SO1 runs down the back lane to elude AP, SO2, in his police SUV, drives towards him and tries to distract AP
- AP stops pursuing SO1, turns and runs back to his vehicle where he attends to the driver's side and appears to look for something
- SO1 turns and runs back to his vehicle and to deal with AP.
- SO2 stops his police SUV, exits and runs towards SO1's SUV
- Both police officers have now drawn their respective service firearms
- AP steps back from his vehicle, closes the driver's door and runs at SO1, who is now at the front passenger side of his police SUV
- AP is still armed with the baseball bat and has it pulled back, preparing to swing as he runs at SO1
- AP refused to comply with all demands and commands to drop his weapon.
- As AP approaches, SO1 discharges his firearm several times at AP and is walking backwards and away from the approaching AP
- SO2 also discharges his firearm at AP
- Despite being struck with multiple gunshot rounds, AP continues to advance on SO1 while armed with the baseball bat
- AP ultimately drops the baseball bat and falls backwards to the ground at which point SO1 and SO2 cease discharging their respective firearms and call for an ambulance

I am satisfied that the extensive evidence gathered from all of the referenced sources, in particular the AIR1 video footage, provides substantial support for the conclusion that the decision by SO1 and SO2 to shoot AP was necessary to prevent the injury or death to either of them and others in the vicinity.

The circumstances of this incident are tragic. The potential for more serious injuries and loss of life was high. AP's decision to arm himself and charge at police officers was unexplained and dangerous. SO1 and SO2's use of lethal force was necessary to eliminate the significant risk to public safety and lives posed by AP.

It is my view that, in the full consideration of the circumstances of this incident, the use of lethal force by the subject officers was authorized and justified by law.

There are no reasonable grounds to support any charges against the subject officer.

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

Final report prepared by:

Zane Tessler, civilian director
Independent Investigation Unit
April 17, 2023

Ref 2022-0041