



**IN THE MATTER OF AN INVESTIGATION INTO A FATAL OFFICER-INVOLVED
SHOOTING IN WINNIPEG ON DECEMBER 3, 2022**

FINAL REPORT OF THE CIVILIAN DIRECTOR
OF THE INDEPENDENT INVESTIGATION UNIT

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Introduction

On December 3, 2022, the Winnipeg Police Service (WPS) notified the Independent Investigation Unit (IIU) of an officer-involved shooting that occurred in Winnipeg.

This notification disclosed the following information (edited for clarity):

“Winnipeg Police Service (WPS) officers became aware that the affected person (AP) may be at a residence on Portage Avenue. WPS applied for and received a warrant for entry into the residence for the purpose of arresting the AP on the strength of outstanding warrants for arrest. On Saturday December 3, 2022 at approximately 7:30 pm, WPS officers attended to the residence and observed the AP driving away in his vehicle. Members of the WPS Tactical Unit conducted a high-risk vehicle stop on the vehicle at Portage Avenue and Bourkevale Drive. At this time a use of force encounter occurred where the subject officer (SO) discharged his service weapon at the AP.

The AP was conveyed to the Health Sciences Center (HSC) where he was pronounced deceased at 8:13 pm. WPS located a firearm on his person.”

As this matter concerned the death of a person caused by the discharge of a firearm by a police officer, the 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.

IIU investigators obtained the following information, among other items:

- Call History Log;
- Narratives of 27 WPS police officers;
- Notes of 27 WPS police officers;
- Notes and Reports of four WPS forensic identification officers;
- Copy of Warrant to Enter a Dwelling-house;
- RCMP Officer Safety Bulletin (dated fall of 2022*);
- Radio transmissions and phone call recordings;
- WPS Forensic Identification Section (FIS) list of exhibits seized, 131 autopsy photos and 25 photos of the BMW;
- FIAS examination worksheets - note sheet and firearm serial number restoration;
- Firearms trace summary and pistols document;
- Firearms examination reports regarding ballistic comparison work on firearms found in vehicle, but not related to the firearm found on the AP;
- WPS FIS photographs of the SO, police firearms, the BMW motor vehicle and its contents, and the AP's clothing;
- SO's firearm magazine and spent rounds;
- Drone images of scene;

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- Expert Opinion regarding the Use of Force, dated June 28, 2023

The civilian director designated the WPS officer who discharged his firearm as the subject officer (SO), and designated fifteen WPS officer as witness officers (WO1-15). IIU Investigators met with and interviewed eight civilian witnesses (CW1-8). IIU investigators interviewed two member of the Tactical Emergency Medical Services (PW1-2). The SO declined to provide an interview to IIU investigators; however, he provided a written statement and handwritten notes.

Scene Examination

The incident took place at the junction with Bourkevale Drive and Portage Avenue in Winnipeg on December 3, 2022 shortly after 7:30 p.m. IIU investigators attended the scene on the evening of the incident. WPS forensic officers attended to take photographs and drone images, and seized exhibits.

Tactical Support Team (TST) and other marked WPS police vehicles had surrounded a grey coloured BMW 3 series (the AP's vehicle) in a high-risk traffic stop. IIU investigators observed the BMW facing north at the junction with one TST vehicle (TAC2) of WO11 and WO10, facing the front passenger corner of the BMW. IIU investigators observed damage on the front passenger corner (bumper, headlight area) of the BMW and noted that the front-end push bars of TAC2 and the BMW had made contact. They also noted that the glass of the front passenger window of the BMW had been smashed out. A marked WPS vehicle of WO12 and WO13 was found facing southbound to the left of TAC2.

IIU investigators also observed TST vehicle (TAC3) of WO8 and WO9 facing south to the front drivers side of the BMW. A third TST vehicle (TAC65) of the SO and WO7 was to the south of the BMW (behind the BMW). (*see Appendix A*)

IIU investigators had received information that the SO had discharged his Glock 9-mm service pistol when he was standing by the front passenger door of the BMW. His pistol was found to have one chambered round plus 12 rounds of ammunition in the seated magazine (missing four rounds of ammunition). They observed four spent 9-mm casings on the ground close to the front passenger door of the BMW vehicle. The SO had been equipped with Glock service pistol (with attached flashlight), a baton and conducted energy weapon (CEW) and had been wearing full WPS TST uniform.

IIU investigators had also received information that the AP had been wearing a cross body sling/strap containing a firearm, which had been removed from him once he was taken out of the BMW. IIU investigators observed a black-coloured strap object on the ground near the driver side door, a 9-mm Smith & Wesson firearm, along with a magazine containing nine rounds of ammunition located on the hood of the BMW.

IIU investigators inspected all other involved WPS officers' firearms and all ammunition was accounted for. They also noted projectile damage to the AP's jacket and sweater. A short-sleeved

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t-shirt was found to be damaged with holes around the right back shoulder/right back arm area, front right chest area and lower left side.

Civilian Witnesses

CW1 was interviewed by IIU investigators on December 5, 2022. She advised that on December 3, 2022, sometime after 7:00 p.m., she heard a loud crash or car accident outside her residence. She looked out her window and stated that she heard screaming and yelling coming from eight to 10 police officers who had their guns drawn out pointed at the car. It was obvious to her they were police officers. The police officers had surrounded a car in a semi-circle shape. She heard clear loud commands for someone to "get out of the car" and "turn off the car." She saw two to three police officers by the passenger side of the car who were wearing black uniforms and had their guns out. She observed an officer on the passenger side of the car holding a gun with two hands and straight arms, fire three shots into the passenger side. She believed the officer who shot was the same officer who had been shouting out commands. After a couple of minutes, she saw the police open the car door and she observed a large man wearing a light/bright-coloured t-shirt and a dark-coloured coat/jacket, which was open and not done up. The man was put into an ambulance. CW1 noticed an object on the ground, which she described as a belt, by the driver's side door. She took five photos and gave these photos to IIU investigators. The photos depict police officers in uniform standing around the BMW and a black-coloured object consistent with the strap removed from the AP on the ground near the driver's door.

CW2 was interviewed by IIU investigators on December 5, 2022. He advised he was at his home during the evening of December 3, 2022 when between 7 p.m. - 7:30 p.m he heard shouting coming from outside his residence. He looked out his window and saw a dark-coloured sedan car facing Portage Avenue in a northeast direction, surrounded by black-coloured police SUVs and other police cars. He saw one SUV facing in a southwest direction very close to the front of a sedan, and another SUV towards the back of the sedan. He described seeing police officers dressed in dark clothing shouting. He thought there were maybe three or four officers, by the right of the sedan car, by the open front passenger door, and one of the officers was pointing their gun into the open door in the direction of the driver of the sedan. He believed he could hear emergency sirens at the time. He heard more than three gunshots.

CW3 was interviewed by IIU investigators on December 5, 2022. She advised that on December 3, 2022, she was at home and saw a red light was flashing through the blinds of her window. She observed vehicles and police all around and observed an officer open the passenger door of a car. A few seconds elapsed before she heard three shots. A police officer then came to the driver's side of the vehicle, opened the door and pulled a person out. An ambulance took him away. CW3 stated that she saw at least half a dozen officers and they were Winnipeg Police in dark uniforms.

CW4 was interviewed by IIU investigators on December 6, 2022. She advised she heard two to three shots outside her residence. She looked out of a window and saw police vehicles and lights.

She observed a black vehicle and an ambulance on the scene. She believed that the black vehicle may have been a police SUV.

CW5 was interviewed by IIU investigators on December 7, 2022. He advised that at around 7:45 p.m., he heard a loud crash outside his residence. He heard shouting and what sounded like arguing outside. He looked out of a window and saw police vehicles. He heard three to four gunshots and saw police lights flashing. CW5 stated that the officers were wearing grey uniforms with vests and dark police uniform with stripe on the pants.

CW6 was interviewed by IIU investigators on December 8, 2022. She advised that she had been travelling eastbound on Portage Avenue at around 7:30 p.m. At the approach to Bourkevale Drive, she observed several police cars converged in the area and the traffic stopped; some vehicles were marked and others unmarked, and some of the vehicles had emergency lights activated. She believed that she could hear sirens. She heard three gunshots in close succession. She saw officers pulling someone out of the vehicle that they had surrounded. She knew the people involved were police officers as some were in uniform.

CW7 was interviewed by IIU investigators on December 9, 2022. She advised that she was inside a residence near the scene and heard tires screeching and people yelling. She looked out a window and saw police squad cars in a circle, surrounding another car. The police were yelling, “*put your hands up, turn off the car, get out of the car.*” CW7 pulled her phone out and began recording. She heard three gunshots and then a fourth one. CW7 gave the video she had taken to IIU investigators. The video shows the BMW with its reverse light on, then switching to off. The reverse light was activated again, and almost immediately, the sounds of four gunshots are heard.

CW8 was interviewed by IIU investigators on December 9 2022. He advised that between 7 p.m.-7:30 p.m. police cars were outside his home. He looked out a window saw about seven police cars including three or four he described as police SWAT type SUVs. The police vehicles had surrounded a BMW; two of the SUVs were facing the car and another SUV was behind it. He noted a regular marked police vehicle had its emergency lights on, and the unmarked police vehicles did not have lights on. He watched the “*tactical officers*” get out of their vehicles and go to the BMW. Most of them were at the driver's side, a few were also standing near the back of the BMW, and three or four officers were on the passenger side. Some of the officers had guns pointed at the driver's side of the vehicle. He stated that officers were yelling, telling someone to get out of the vehicle. He then heard four gunshots. He saw officers pulling a man out of the driver's door. The officers did CPR and the ambulance arrived. He took a photograph at the moment he saw police officers approach the BMW and took a second photograph after the shots had happened. CW8 gave IIU investigators the photos he took. The first photo depicts the officers standing to the left rear and to the rear of the BMW, and the second photo depicts officers standing around the driver's side of the BMW.

Facts and Circumstances

There were two paramedics (PW1-2) as well as 15 police officers (general patrol officers and members of the Tactical Support Team TST) involved in the incident on December 3, 2022. The TST officers were dressed in grey uniforms and other WPS officers were in standard uniforms. All members attended a briefing at a staging area at approximately 7 p.m. where they were advised by the SO officer that they would be assisting with a warrant execution at an apartment nearby. The arrest was considered high-risk given information received about the AP. The information obtained was that the AP was at an apartment block at 1806 Portage Avenue, he had a warrant out for his arrest, he was using a BMW vehicle, he was involved in the supply of illicit drugs, he was armed and dangerous and commented that he had no intention of being taken into police custody or going back to jail.* TST were in charge of the plan to execute the warrant and the initial intention was to arrest the AP in the apartment. During the briefing, the SO received information over the police radio that the BMW had been spotted leaving the apartment block. The members abruptly left the staging area. The plan changed to stopping the vehicle and arresting the AP in his vehicle. The incident took place at the junction of Bourkevale Drive and Portage Avenue. Upon arrival, TST members boxed in the BMW and other police vehicles surrounded the BMW. (*see Appendix A*)

Professional Witness (PW 1-2)

PW1 was interviewed by IIU investigators on December 28, 2022. He was a Tactical Emergency Medical Service (TEMS) paramedic, assigned to assist the WPS TST. On December 3, 2022, he was partnered with PW2. PW1 was driving the ambulance and was following a marked police SUV which had its emergency lights activated, and used its siren. He saw a number of police vehicles pinning and surrounding a grey BMW. TST officers were positioned behind and beside the BMW in a semi-circle holding weapons. He heard officers yelling to get out of the vehicle and "*Show me your hands*" twice over a one to two minute period. He heard a vehicle engine revving coming from the area where police were situated. PW1 then heard four or five gunshots. Approximately 20 seconds later, a TST officer came to the ambulance to get him and PW2. He noted a male being removed from the BMW by TST officers. He appeared to have been shot in the chest and had agonal breaths. He observed one TST officer removing a handgun from a concealed holster on the male that was inside his layers of clothing. The male was placed on the ground and emergency care was commenced. He was then put in the ambulance where care continued. The male was in cardiac arrest and had multiple gunshot wounds. They transported the patient as critical to HSC where his care was turned over to the trauma team.

PW2 was interviewed by IIU investigator on December 28, 2022. On December 3, 2022, he was partnered with PW1. Their ambulance followed the police vehicles to the scene. He heard four gunshots about three minutes after they stopped. A TST officer came to get them from the ambulance. The AP was on his back on the ground. He was wearing pants, a dark jacket with a zipper, with a shirt and sweater underneath. The male subject was taking agonal breaths. A TST officer started first aid. PW2 commenced CPR, moving him to the back of the ambulance.

Witness Officers (WO1-15)

WO1 was interviewed by IIU investigators on January 23, 2023. The interview was video recorded. WO1 is a general patrol officer. He and his partner WO2 had received confidential information in relation to the AP which suggested that the AP was at an apartment block at 1806 Portage Avenue, he had a warrant out for his arrest, he was using a BMW vehicle, he was involved in the supply of illicit drugs, he was armed and dangerous and commented that he had no intention of being taken into police custody or going back to jail*. WO1 obtained a Warrant to Enter a dwelling-house for the apartment, in order to arrest the AP on outstanding warrants. Due to the high-risk nature of the information and that the AP was believed to be armed and dangerous* WO1 requested the services of TST. WO1 briefed the SO regarding the information he knew. Upon arrival at the scene, the SO's stopped his vehicle behind the BMW. Both the SO and WO7 got out of their vehicle. Two other TST vehicles stopped in front of the BMW. WO1 was unable to get out of the police vehicle as the rear doors were locked. WO1 could hear officers yelling, "put the car in park" and "stop the car." He could also hear the sound of tires spinning fast. He recalled hearing a crunching sound of vehicles coming together, and after one to two minutes, he heard the sound of three to four gunshots. WO1 was then let out of the police vehicle. He saw the AP being removed from the BMW, and he noticed a sling or strap around his chest area, which contained a black-coloured handgun.

WO2 was interviewed by IIU investigators on January 23, 2023. The interview was video recorded. He was a general patrol officer, partnered with WO1. They received confidential information about the AP, in liaison with the RCMP. WO1 obtained a Warrant to Enter a dwelling-house related to an apartment at 1806 Portage Avenue. On December 3, 2022, he attended WPS HQ along with other officers. The information shared was that the AP was armed and dangerous and commented that he had no intention of being taken into police custody or going back to jail.* The SO was in charge of the policing plan, which was to locate the BMW at the residence before executing the warrant. At 6:55 p.m., he and WO3 saw the BMW parked at the location. That information was passed onto WO1. At 7:30 p.m., he noticed the lights on the BMW flash and saw two people go to the rear of the BMW and something was placed in the trunk. One person went into the driver side of the BMW and then left in an eastbound direction. The second person got into a second vehicle which left westbound. That information was passed on to TST. He was instructed to follow the second vehicle. After a short time he became aware that shots had been fired. He returned to the scene to secure it.

WO3 was interviewed by IIU investigators on January 23, 2023. The interview was video recorded. WO3 was partnered with WO2. TST was involved due to their specialized training and was in charge of the plan to execute the warrant. WO3 was aware of the confidential information and had also seen an RCMP Officer Safety Bulletin, which mentioned the AP was considered armed and dangerous*. He along with WO1 and WO2 initially attended the apartment location. Upon arrival, the vehicle was not there. However, when they returned to the apartment, they saw

the BMW parked. They kept observations on the BMW and passed information back to WO1. Shortly after that, WO3 observed the taillights of the BMW blink. He saw two persons approach the trunk of the BMW. One person went to the driver's side of the BMW and the other went to an SUV. He was advised to follow the SUV and that a high-risk vehicle take down would be made by TST on the BMW. He followed the SUV and then found out that shots had been fired. He attended the scene of the incident to secure it and stop traffic.

WO4 was interviewed by IIU investigators on February 17, 2023. The interview was video recorded. WO4 advised that on the date of the incident he was in full WPS uniform. He was the supervisor in a plan to execute a warrant in relation to the AP. WO4 was located towards the rear of the police line of vehicles. He stopped his vehicle two to three blocks away, and did not know until he attended the scene that there had been a police involved shooting.

WO5 was interviewed by IIU investigators on February 9, 2023. The interview was video recorded. WO5 was partnered with WO6, using an unmarked police SUV. WO5's vehicle was one of the last vehicles to attend the scene. He had not activated the emergency lights or sirens on his vehicle as to not alert anyone that police were coming. TST boxed in the BMW and other police vehicles surrounded the BMW. WO5 placed his police vehicle nose to nose with the BMW, in between the two TST vehicles. He heard a crunching sound, the engine of the BMW revving and tires spinning. WO5 got out of his vehicle with his firearm drawn out. The AP was trying to free his vehicle. He heard officers yelling commands at the AP to "stop," to "get out of the car" and "show hands." He noticed WO11, WO13 and the SO were on foot at the passenger side of the BMW. WO7 was towards the rear of the BMW and to WO5's right was WO14. WO5 was standing next to the driver's door of his police vehicle, in line with the passenger seat of the BMW. He saw the AP's right shoulder moving back and forth, as he was trying to free the vehicle and he assumed he was trying to reverse the vehicle. He heard officers yelling out for OC spray and Taser. The AP appeared calm, was looking around assessing the situation and trying to break the BMW free by putting it in reverse. WO5 could see the SO had his firearm drawn, pointed towards the driver. As officers were yelling for less lethal options he heard shots go off. Police vehicles were immediately moved out of the way to gain access to the driver's door, where the AP was taken out of his vehicle and put on the ground. WO5 noticed the AP was wearing a dark jacket and saw a firearm holstered in a strap around his abdomen area under the jacket. Someone yelled out "gun." The firearm was removed from the AP by WO9. It was approximately one minute from the time he pulled his vehicle up, to the time shots were fired.

WO6 was interviewed by IIU investigators on February 8, 2023. The interview was video recorded. WO6 advised she was in full uniform, partnered with WO5, and drove an SUV. Three TST vehicles led the police convoy of vehicles, and she and WO5 followed them. As they approached the junction, TST vehicles pinned the BMW in. She saw two TST vehicles go towards the front of the BMW, and she heard the sound of a collision. WO5 placed their vehicle in between two TST vehicles, facing the BMW. WO6 observed the AP scanning the area and appeared emotionless. She could hear loud repeated verbal commands being given to the AP, "hands on the steering wheel" and "turn off the car." She made her way towards the rear driver's side of the BMW and noticed the reverse lights were on. She alerted her colleagues and

advised “*he's going to back out.*” She could see that the AP was shifting around in his position but she could not see his hands. At that point, she heard the engine of the BMW rev and saw the tires spinning fast. She believed the AP was not going to surrender peacefully. She did not recall seeing any police standing directly behind the BMW. She heard an officer say “*Taser*”. Then she heard a couple of shots. The TST vehicle that had pinned in the BMW driver door area was backed out so that the AP could be taken out of the BMW. She noted that the AP was wearing an unzipped jacket or hoodie and a white t-shirt, and she saw a black handgun in a sling/holster around the left side of his chest area. She assisted the paramedics with giving first aid to the AP. The AP was brought to HSC and was pronounced deceased by hospital staff.

WO7 was interviewed by IIU investigators on March 2, 2023. The interview was video recorded. WO7 was wearing WPS TST uniform, and was partnered with the SO, using an unmarked TST vehicle (TAC65). Upon arrival at the junction, WO7’s vehicle went to the rear of the BMW and other TST vehicles went to the front of the BMW to contain it. WO7 was in the process of getting out of his police vehicle on the passenger side when he heard the sound of vehicles crashing. He saw that the BMW had driven into the two other TST vehicles. He thought the BMW and driver had tried to ram the TST vehicles in an attempt to escape. He heard the engine of the BMW revving. One TST vehicle had pinned the driver’s side door and the other TST was in front of the BMW. WO7 placed himself near the rear, driver’s side of the BMW. He was issuing commands to the driver for him to turn the vehicle off and to show his hands. Several other officers were issuing similar commands, “*put your hands on the steering wheel,*” “*put the car in park*” and “*show us your hands.*” Commands were ignored by the AP. WO7 was looking through the BMW towards the front and he could only partially see the back of the AP’s head. The SO was at the front passenger side. WO7 heard the window to the front passenger side get smashed. Someone announced, “*he's got the car in reverse.*” WO7 said that he feared death or grievous bodily harm at that point so he moved from his position in case the vehicle managed to reverse. Commands continued. The front passenger door was opened and then he heard, “*he's reaching, he's reaching.*” Suddenly he heard multiple shots fired. TEMS Paramedics tended to the AP. As he was being taken out of the vehicle, WO7 noted that the AP’s shirt was raised up and saw a pistol style handgun holstered around the left side of his body. WO7 estimated it was a couple of minutes from the time he got out of his police vehicle to the time shots were fired. WO7 had his firearm drawn out at the time of the incident.

WO8 was interviewed by IIU investigators on March 6, 2023. The interview was video recorded. On the incident date, he was working in full WPS TST uniform partnered with WO9 and WO8 who was the driver of an unmarked TST police vehicle. He did not use his emergency equipment at that time due to how quickly the event unfolded. WO8 placed his vehicle to the driver’s side of the BMW, almost driver door to driver door with the BMW touching his own police vehicle. WO8 recalls seeing the BMW accelerating forward making contact with the TST vehicle. He saw the AP in the driver’s seat. WO8 put his driver window down and drew out and pointed his firearm at the AP. WO8 began giving the AP loud verbal commands to show his hands and to exit the vehicle via the passenger side, as the driver would not have been able to be open the driver door due to the two vehicles being too close. WO8 could see the AP’s left hand which was on the steering wheel. His view of the AP’s right hand was obstructed by the dash of the BMW.

He could see inside through the windshield and the driver's window. If the AP had lifted his right hand up, WO8 believed he would have been able to see it. He did not see his right hand go up towards his chest area. The AP made eye contact with WO8 on multiple occasions as well as looking at other officers. The AP was shifting his weight back and forth and did not remove his left hand from the steering wheel. He announced to other officers that he could only see his left hand. Out of his periphery vision, he knew officers were around the passenger side and around the back area of the BMW. He recalled hearing someone breaking out a window on the passenger side and heard several commands shouted. WO8 then heard several shots. WO8 reversed his police vehicle so officers could remove the AP from his vehicle in order to provide medical attention. WO8 saw the AP was wearing a large jacket and a white shirt underneath. There was a strap around his mid-section, which contained a handgun around the left side of his body. WO8 estimated it was around a minute to a minute and a half from the time he pulled his vehicle up to shots being fired.

WO9 was interviewed by IIU investigators on February 21, 2023. The interview was video recorded. WO9 advised he was on duty in full TST uniform and was partnered with WO8. As they approached the junction, he saw the AP's vehicle at the stop sign. The SO and WO7's vehicle went to the rear of the BMW. WO8 stopped their vehicle with the front bumper of his police vehicle positioned towards the driver's door area, around the mirror of the BMW. At that point, the AP's vehicle accelerated forward. His vehicle was hit by the BMW. A third TST vehicle came in. He was able to see the AP in the BMW at that point. WO9 quickly got out his vehicle and took up a position near the rear quarter panel of the BMW on the driver's side by the rear tail light. He could hear people yelling, "*watch, the reverse lights are on.*" WO7 was directly to his right, moving between being at the rear of the BMW but also further forward on the driver's side of the BMW. He could hear numerous shouts of "*show me your hands*" and "*get out of the vehicle*" coming from the SO, who was positioned near the front passenger door area with his firearm drawn out. He could not recall if there were other police officers on the passenger side but he did hear someone unknown smashing a window. He assumed the smashing of the window came from the passenger side, which happened prior to shots being fired. From where he was located, he could not see into the vehicle due to the windows having a heavy tint and the headrest. He could see some of the AP's head/ear area. WO8 had remained in the driver position of his TST vehicle. He heard a few shots fired. WO8 reversed the police vehicle and WO9 went to the driver's door and opened the unlocked car door. He then removed the AP from the driver's seat position. Upon doing so, he noticed the AP was wearing an unzipped jacket with a strap around his chest area, which contained a black handgun. He removed the firearm and handed it to WO5. The area was well lit.

WO10 was interviewed by IIU investigators on March 3, 2023. The interview was video recorded. WO10 advised he was a TST officer partnered with WO11. All officers involved proceeded west on Portage Avenue. His vehicle was third in the convoy of police. His police vehicle went towards the front passenger side of the BMW and made contact with it. He noticed the tires of the BMW were turning as if it were trying to move forward and get between the two TST vehicles at the front. The BMW was pinned-in to prevent escape. As soon as his police vehicle came to a stop, he got out of his vehicle and initially positioned himself in front of the

BMW. WO10 was yelling at the AP to put his hands up with his own gun drawn out and other officers were yelling commands at him. He saw that the AP's eyes were jotting around and he could see him clearly at that point. He could see that the AP's hands were not up as he looked through the windshield. WO10 could hear the engine of the BMW revving and he felt he was not in a safe position so he moved to the rear passenger door window area of the BMW. The SO was standing next to the front passenger door. Officers were yelling at the driver to “*show hands*” and/or “*put your hands up*”. He believes an officer in standard WPS uniform smashed the front passenger window but he only heard it. He believes that same officer may have tried to open the door first. He noticed the windows of the BMW were tinted but he could see inside the rear passenger window and saw no one was in the back seat. WO10 said he was focused on the back seat area first which switched to the driver. He could only see the back of the AP's head and shoulders. WO10 was around one foot from the BMW at that point. He could see the AP was moving around while people were still yelling at him to put his hands up. He then heard four shots go off. Officers opened the driver's side door and began to remove the AP from the vehicle. WO10 ran to get TEMS paramedics who were parked on Portage Avenue. WO10 saw a fabric holster strapped around the AP's chest area, under his outer clothing. He saw a Smith & Wesson semi-automatic type gun at the scene that he believed might have fallen from the holster as the AP was being removed from the BMW.

WO11 was interviewed by IIU investigators on March 7, 2023. The interview was video recorded. WO11 was a TST officer working in full WPS TST uniform, partnered with WO10 and using an unmarked TST vehicle. As he approached the BMW, he saw the wheels of the BMW turn and the driver attempted to drive away. WO11 placed his police vehicle front bumper to front bumper, offset to the passenger side, making contact which forced the BMW into TAC3 thus preventing its ability to escape. He stated that he BMW may have been hung up on his police vehicle. He could hear the engine of the BMW revving. WO11 got out of the driver's side of his vehicle with his pistol drawn out at low ready and positioned himself near the front passenger side hood area of the BMW. He saw that the AP had shifted the car into reverse and was attempting to free the BMW from containment. He saw the AP's left hand on the steering wheel but could not see his right hand as it was down by his side and from his view; the dash of the BMW obstructed his view inside. He could see the shoulder area up of the AP. It was clear the AP was not following directions. A uniform officer was to the left of the SO. WO11 recalled a uniform officer attempted to open the front passenger side door but was unsuccessful as it was locked. The window to the passenger door was broken by a baton and cleared out. Continuous verbal commands were being issued by the SO for the AP to put his hands up and put the vehicle in park but his left hand remained on the steering wheel and his right hand down beside him out of sight. He doesn't recall the AP putting his hands up. He didn't recall seeing the right hand up by the chest area. WO11 transitioned from his pistol to his CEW with a plan to deploy the CEW through the open window. At that point, the SO fired several shots at the driver. The passenger door was opened by a uniform officer. WO9 opened the driver's door and began removing the AP. WO11 went to the driver's side to help give life-saving measures and he observed a pistol holstered on his left chest area. The firearm looked similar to his own service issue Glock pistol and which looked real. From the time he pulled his police vehicle up to the time shots were fired,

he believes it was approximately 30 seconds to a minute. Lighting was good as he had good visibility.

WO12 was interviewed by IIU investigators on February 27, 2023. The interview was video recorded. WO12 advised he was in full WPS uniform, partnered with WO13, using a fully marked WPS vehicle. Upon arrival at the junction, his police vehicle stopped slightly east of the BMW, on the passenger side of the BMW. He heard a collision and saw the BMW had accelerated towards the TST vehicles. He heard the sound of tires spinning and the BMW engine revving. As he exited his vehicle, he heard officers yelling, "*stop the car*" and "*turn off the car.*" WO12 positioned himself near the front passenger window, to the right of the SO. His own vantage point of the driver was through the passenger window. He stated that WO13 was also on the passenger side of the BMW and tried smashing the front passenger window, which created a large hole. He stated that initially the AP had both hands on the steering wheel but then his right hand went to the shifter and he placed it in reverse but the car must have been hung up on a police vehicle. He noted that the AP's right hand went back and forth from the steering wheel to the shifter. He appeared to be calmly looking around. WO12 transitioned from his pistol to his CEW as a less lethal option. He then saw the AP was wearing some kind of jacket or sweater which was unzipped. He clearly saw the right hand of the AP reach inside the jacket towards the left side, with his right elbow up. At that point, WO12 believed he was trying to access some kind of weapon. Someone yelled out, "*he's reaching*" so he went to draw out his own pistol. The SO had been giving out constant verbal commands to the AP to turn off the car and to show his hands but at the point where he saw the AP reaching, the SO discharged his firearm. During the incident, one TST officer was still inside the TST vehicle that had pinned in the driver's door of the BMW. He knew some officers were around the front area of the BMW. WO12 went to the driver's side and helped with removing the AP out of the vehicle. He noticed a firearm right where he had been reaching around the left side of his torso area which was inside a make shift holster under his jacket.

WO13 was interviewed by IIU investigators on February 27, 2023. The interview was video recorded. WO13 advised he was on duty working in full WPS uniform, partnered with WO12, using a marked WPS vehicle. WO13's vehicle was behind the TST vehicles. WO13 described seeing two TST vehicle going towards the front of the BMW and as they did so, it appeared that the BMW was floored and smashed into the TST vehicles, trying to ram the police vehicles and take off. WO13 placed his police vehicle on the passenger side of the BMW, facing south, to the left of a TST vehicle. He observed WO12 get out of his police vehicle and could hear officers yelling comments such as, "*stop, police*" and "*show us your hands.*" At that same time he could hear the engine of the BMW revving, the wheels were spinning and the BMW was moving forward and backwards while hearing the sounds of crunching vehicles. WO13 went to the passenger side of the BMW and saw the SO there also looking into the front passenger side window with his pistol drawn out. WO13 was to his left and WO12 was to the SO's right side. The SO was yelling, "*stop*" and "*police.*" Verbal commands to the driver continued and the wheels were still spinning on the BMW. WO13 recalled the windows on the BMW had a heavy

tint, it was dark out as well. WO13 used his light on his pistol to look inside the rear window. The front passenger window was also tinted and dark. WO13 asked the SO if he wanted him to break the window and he agreed. WO13 pulled out his baton and tried to smash the window but only created a small hole before breaking a basketball size hole in it. The SO was looking into the car and was yelling at the driver to *"stop putting the car in gear"* and *"show us your hands."* Clear verbal commands were issued to the driver, and the AP was still moving around in the car and not co-operating. The BMW appeared still trying to break free. WO13 opened the rear passenger door and could see inside. He told the AP to stop what he was doing or he may be shot. The AP calmly looked over his shoulder at WO13, but he was moving around in his seat. WO13 believed the AP had heard what he had told him. The AP looked forward with his left hand on the steering wheel and right hand on the shifter trying to move the car. Suddenly the AP appeared to be rummaging around the front area of his body with his hands almost as if he was trying to remove something or lift clothing. WO13 recalled the AP was wearing a jacket, which he thought was open. WO13 feared he was trying to access something so he yelled at the AP and told him to *"stop reaching."* WO13 thought about the information he knew about the AP, that he had no intention of being taken into police custody or going back to jail, being potentially armed with a firearm *, the dangerous actions of the car, along with him clearly not co-operating, and also now reaching for something. WO13 began to consider if he may have to shoot the AP at that stage. The AP returned his left hand to the steering wheel and right hand on the shifter. The car was put in reverse again and the wheels were again spinning. WO13 felt he was in a bad position with the open door and feared he may be run over, so he stepped back and slammed the door shut. The AP again appeared to begin digging around his body with his hands. However, from WO13's position, he could not see the front of the AP. At that same time, the AP was looking around as if he was determining where police officers were. The AP's hands again began reaching around his jacket but his own view into the car was obstructed by the centre pillar. He could not see what he was trying to access. The SO yelled out, *"stop, stop, stop,"* and then WO13 heard between four to six rounds discharged in quick succession. TST officers opened the driver's door and began removing the AP out of the driver's position. They immediately began giving him first aid and TEMS paramedics arrived quickly. Someone then yelled, *"gun."* WO13 could see a black-coloured semi-automatic pistol in what appeared to be a makeshift body holster around the left body area of the AP's body. WO13 estimated from the time he stopped his police vehicle to the time shots were fired it was around a minute to a minute and a half.

WO14 was interviewed by IIU investigators on February 8, 2023. The interview was video recorded. WO14 advised he was working in full uniform partnered with WO15. He observed the TST vehicles move towards the BMW, conducting a high-risk vehicle stop on the BMW at the junction. WO14's police vehicle was to the west of the junction, in the eastbound lane with emergency lights activated. He heard the sound of screeching tires and police officers shouting clear commands of *"show us your hands"* and *"exit the vehicle."* He believed the AP was trying to flee the containment. WO14 approached with his pistol drawn in a *"sul"* position and went behind the police SUV, towards the driver's side door of the BMW. He had a clear view into the front windshield of the BMW but could only see the AP from the chest up. WO14 observed other officers positioned to his left, by the passenger side of the BMW. The tires were still spinning and the BMW appeared to be in a rocking movement. WO14 could not see the AP's hands as his

view was obstructed by the dash of the BMW. WO14 believe that if the AP's vehicle had broken through the containment, he felt the person behind the BMW may have been hit. He could see the AP's shoulders and his upper body moving about. The AP was stone-faced, calm and appeared to be looking for a target or assess how to get away. Although he did not see the AP reaching for something, he believed at that time he might be due to his body movements. WO14 felt that the officers to the passenger side were in a vulnerable position. Tires continued to spin. The SO, who was standing on passenger side, continued to give verbal commands to the AP to show his hands and to exit the vehicle. He then heard between four to six shots come from the SO. The police SUV was moved backwards to remove the AP from the BMW. WO14 began directing traffic. At the time of the events the lighting was quite good.

WO15 was interviewed by IIU investigators on March 6, 2023. The interview was video recorded. WO15 advised he was working in full WPS uniform, he was partnered with WO14, and using a fully marked WPS vehicle. As they approached the junction, there was a collision between a TST vehicle at the front of the BMW. Their police vehicle pulled up and stopped with emergency lights and sirens activated in the eastbound lane of Portage Avenue. Both he and WO14 got out of their police vehicle. WO15 positioned himself near the hood on the passenger side of the TST vehicle, by the driver's side of the BMW. He drew out his service pistol at low ready position. He was around 15 to 20 feet away from the BMW and could only see a silhouette of the driver's head. He saw the SO along with other officers on the passenger side of the BMW. Officers were also positioned towards the front of the BMW. He heard several loud verbal commands "*show us your hands*" coming from the passenger side and around the BMW. At no time did he see the driver put up his hands. Suddenly he heard someone yell, "*he's in reverse,*" the sounds of tires squealing, and the BMW was rocking forwards and backwards. He was nervous the vehicle would break free. He believed the BMW was trying to escape the containment. He recalled seeing an officer trying to break the window of one of the passenger doors. The SO was face on with the front passenger window with his firearm drawn out. Verbal commands continued and then he heard four to six shots coming from the SO's direction. Police vehicles were moved so that that the driver could be removed out of the car as quick as possible. As the driver was being removed, he saw a black holster strap across the driver's chest over the top of clothing and noticed it contained a black-coloured handgun. He yelled out, "*gun*" to alert other officers. TEMS were on scene quickly and gave medical attention to the driver. Although it was nighttime, streetlights were on and lighting was fairly good.

Subject Officer

The SO was contacted on December 28, 2022 and asked if he wished to provide an interview and or notes. He declined an interview but gave a written statement and handwritten notes. He included information he knew about the AP, that he was armed, he was involved in the supply of illicit drugs, he was using a BMW vehicle, and information about the residence associated to the AP*. The SO advised the decision was to intercept the BMW prior to getting into traffic and avoid a pursuit. He noted seeing the vehicle at the intersection of Bourkevale Drive and Portage Avenue sitting at the stop sign. He stated that the BMW tried going left and pushing between the vehicles causing a collision. He notes the BMW's driver door was almost aligned with TAC3's driver door. He states that WO8 (the driver of TAC3) was in dangerous spot. The BMW was

trying to push through. He stated that he was located at the passenger side of the BMW, yelling "police" and issuing commands "stop vehicle." He stated that the BMW was trying to free itself, and with a slight movement, it could have broken free at any point. He noted that the AP stopped trying to move the vehicle. He noted he could see his hands; the left hand on the steering wheel and the right hand/arm floating back and forth around his waist, side to front and back and forth as if adjusting body and clothing. He believed the AP was armed, based on the information that he was armed and commented that he had no intention of being taken into police custody or going back to jail*, together with his body movements.

He noted that WO13 had smashed out passenger window giving an unobstructed view. He noted the AP's left arm staying on the steering wheel, his right arm now still, and his hand resting at bottom centre console at edge of seat. He believes the AP had a firearm either in his waist area or between seats. Commands were constantly being given, "show your hands" and "raise your hands up." The AP was not complying at all. The SO was trying to get any type of compliance and telling him to turn off the car. The non-compliance continued; he refused all verbal commands by a variety of different officers surrounding the car.

The SO noted he was fearing for WO8's safety (trapped in driver's seat of TAC3) right next to driver seat of the AP. The AP's arm was still on the steering wheel blocking WO8's view. He also feared for his own safety and the numerous other officers that have surrounded the vehicle on all sides. He noted that if shots were fired by anyone, all at risk of grievous bodily injury or death, including bystanders. He noted, based on circumstances, if a weapon was produced, he had a complete deadly force threat — weapon, intent and delivery system — and all lower levels of force perceived to be inappropriate or ineffective (could not Taser, the AP was still in control of vehicle, it was a poor angle, could not spray (OC), could not use baton). He noted that the AP had been given every opportunity to comply.

He noted BMW was not fully contained, possibly hung up, but could free in reverse, causing grievous bodily harm or death to officers. He noted he could not move position as he was now protecting WO8 and the other officers. There was still no compliance at all and the AP was ignoring all commands. He stated that the AP was looking around as if targeting, looking for escape. He noted the AP began adjusting his arm and body then reached for the gearshift, put it in reverse and accelerated. The SO fired three or four rounds, center mass, at the AP until he saw his arms come off steering wheel and to his body. The SO noted the immediate aftermath and aftercare to the AP and that he saw a "belly band holster" containing a firearm.

The SO also provided a statement, which contained the following information. That he had received information from several sources (WPS and RCMP), that the AP was armed and dangerous and commented that he had no intention of being taken into police custody or going back to jail.* During his briefing to TEMS, information came over the radio that the AP may be going into the BMW, and it might be going mobile. Due to the heavy traffic and concern for the AP to flee and/or shoot at police, the SO decided to stop the BMW before it went mobile. Units immediately roll out, led by TAC65, followed by the other TAC units. As they approached Bourkevale Drive, the SO saw the BMW at the intersection of Bourkevale and Portage facing

north, waiting to make an eastbound turn on to Portage Ave. The SO pulled past the BMW and immediately pulled in behind at a 45-degree angle to block escape to the rear. TAC3 pulled up in front of the BMW driver's side corner, and TAC2 in front of it; emergency lights were active. As the SO was getting out on foot from his vehicle, the BMW accelerated and went left to try and break out of the containment. The BMW collided with the driver side of TAC3 and the front of TAC2. The AP was trying to free the BMW, but it couldn't go forward. He could hear the vehicle accelerating and the sound of plastic and metal contacting. The driver door of the BMW was almost lined up with the driver door of TAC3, where WO8 was in the driver's seat and was in a dangerous position, trapped in the driver's seat and completely exposed to the BMW. He could not open his door or exit through the passenger side. He proceeded on foot directly to the passenger side of the BMW and drew his weapon on the AP. He yelled out "*Police, stop the vehicle*" and "*Show me your hands.*" The BMW windows were heavily tinted but there was enough light coming from the streetlights and police vehicle lights through the front windshield to allow him to see the AP and his hands. The SO was also using his weapon light for illumination. The SO heard other members approaching and surrounding the BMW with firearms drawn and issuing similar verbal commands of "*Police,*" "*Get out of the vehicle,*" "*Show me your hands*" and "*Don't move.*" The SO continuously gave directions to the AP, "*raise your hands, show me your hands.*"

The SO believed the AP was trying to free the vehicle, putting it in forward and reverse. The SO believed it wouldn't take much for the vehicle to break free. The SO saw the AP's left hand on the steering wheel and an empty right hand. The AP was shifting his torso in his seat, with his right arm against his body. With the information he knew about the AP, combined with personal experience and training, the SO recognized his actions and believed the AP was armed and believed the AP was preparing to produce a firearm.

He noted that WO13 smashed out the passenger side front window, which then allowed the SO to have a complete unobstructed view of the AP's right side. The AP then stopped trying to move the vehicle and the SO believed the transmission to be in park. The AP's demeanour changed from what looked to be frustration, to being stoic and motionless. The SO could still see the AP's left hand on the steering wheel with the right arm down alongside the AP's body. His right hand was resting on the gap between his seat and center console. Now that the SO could fully see the AP, he could tell that the AP was trying to plan on what to do. The SO stated that everything seemed to have slowed down, but up until that point, things had been developing very rapidly. According to the SO, the AP was planning on what to do and the SO was considering options. The SO stated that based on his experience and training, he believed the AP would either surrender, fight or flee. He believed the AP was prepared to produce a firearm from his waistband or from between the centre console and seat. According to the SO, if the AP were to produce a firearm, the SO would have had a complete deadly force threat (weapon, intent and delivery system). Due to the impending threat, the SO could not move his position and leave WO8 unprotected. The SO could not risk losing a visual of the AP's hands, and of what threat the AP may produce. The SO feared for WO8's safety, and his own, as they were both fully exposed. WO8 would not be able to see the AP's right hand and would not be able to react in time to defend himself. The SO understood the self-imposed jeopardy, but had to remain in place

in order to prevent the AP from causing harm to WO8. The SO stated that the other immediate concern was if the AP were to put the BMW back into gear, the AP would be able to break the vehicle free and drive over numerous officers.

The SO stated that the AP could not move forward and could only go in reverse. If put into reverse, the front of the BMW would have swung to the right, striking/driving over the SO and at least three other officers. The officers located at the driver's side rear of the vehicle would also be struck/driven over or sandwiched between the BMW and TAC3. The SO believed that the AP would have used that window of opportunity to draw his firearm and engage with officers. The AP began looking around at officers, but still refused to comply with any verbal commands. The SO commanded him to "Turn off the vehicle" and hoped verbal commands might elicit some form of surrender. In the SO's experience, even if a person is overwhelmed but wanting to comply, they will simply raise one hand or say things to the effect of "Okay, okay" or "I'm done." With the AP's absolute refusal to comply, the SO believed the AP was taking the time to visually target officers and look for a route of escape. Even if he did nothing and simply stayed motionless, officers would have eventually adjusted tactics to an armed and barricaded situation. Although non-compliant, the AP was not a complete deadly force threat until he produced a firearm or made another attempt to move the vehicle. The SO observed that the AP's demeanour suddenly changed again, this time from stoic and motionless (except for turning his head to look around), to staring forward rigid and upright. At that point is when the SO believed the AP had decided to act.

The SO stated that that all lower levels of force were precluded as being inappropriate and/or ineffective as the AP was wearing a puffy style winter jacket and the SO did not have an ideal angle or large enough exposed target to incapacitate the AP effectively. OC would have been inappropriate, as it would contaminated everyone in proximity. The baton was also inappropriate due to needing to be in arms reach and to have an effective target.

Summary of Other Evidence

RCMP Officer Safety Bulletin, dated fall of 2022*, which detailed the AP was believed to be armed and using a BMW vehicle*.

An autopsy was performed on December 5, 2022. The cause of death was four gunshot wounds. Postmortem blood was tested and found to contain 1.06 mg/l and 1.07 mg/l of methamphetamine and 0.162 mg/l and 0.164 mg/l of amphetamine.

Video footage was obtained from a business situated on the north side of Portage Avenue, east of Bourkevale Drive, showing police vehicles (marked police vehicles and SUVs) stopping around the BMW. The top portion of the BMW could be observed. At one point it lunges forward quickly, in the direction of TST vehicles. Emergency lights were visible, and an ambulance was present.

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Expert Report

The IIU obtained an expert opinion regarding the police Use of Force. The expert reviewed the evidence collected by the IIU and issued a 46-page report. In his opinion, the actions of the SO were appropriate. The expert's opinion is that other less lethal options, such as conducted energy weapons (CEW), OC spray and the baton, were not feasible or would not have been effective at the time the shots were fired.

The expert opined that the basketball-sized hole in the passenger side window of the BMW would not have provided sufficient clearance to deploy CEW probes even if the opportunity had presented itself. In his opinion, it is unlikely that an officer would be able to stand far enough back from the vehicle in order to ensure full neuromuscular incapacitation (NMI) resulted without one or probably both probes impacting on the outside of the passenger window (rather than on the AP).

He also opined that although OC spray would have been possible, it would have had almost no effect on the AP given his mentally focused goal-oriented behaviour. He stated that research has found that the effectiveness of OC spray can be related to the state of mind of the subjects (a determined attacker was less likely to be affected by OC spray than the general population), and the level of activity of the subject prior to being sprayed. Similarly, persons with an offensive mindset can accomplish a short-term goal more than 90 per cent of the time, despite being OC-sprayed. Research also suggests that OC spray may be considerably less effective on subjects who are on drugs. Although it was not known at the time of the incident, the toxicology report indicates that the AP had acute methamphetamine intoxication. It is the expert's opinion that even if an OC spray had been attempted, it would have had little to no effect upon the AP given his level of drug intoxication.

The expert also opined that there was no opportunity for a baton deployment. In order for an officer to be able to strike an offender effectively with a baton, he officer must be able to both swing the baton with full arc of movement and have accessible muscular targets to be able to strike. In this case, given that the AP was seated in a vehicle with closed and locked doors, there was no opportunity for baton deployment.

The expert considered several factors, including the following:

The SO's perception of the very high nature of the threat he was faced with at this point, due to the fact he believed the AP was armed with a handgun, is supported by police experience and by the research that has been conducted. Furthermore, if the SO had waited to let the AP have the 'first move', the AP would likely have got the first shot off. Also, it is probable that not only would the AP have been able to draw and fire his weapon, but he would also have likely hit at least one of the TST or other WPS officers with gunfire. The fact that WO8 was sitting in the driver's seat of his SUV directly across from the AP placed him at high risk of harm. The SO was correct when he decided he

could not disengage away from the passenger door when he had a visual on the AP because he felt he had a duty to provide cover for WO8, who was exposed and could not disengage or reposition. ...Once the TST and other WPS officers had approached the BMW to within close proximity of the AP, he would have had the ability to point his firearm, fire the weapon and possibly strike at least one of the officers in close proximity.

Due to both the immediate and rapidly unfolding string of events with the AP revving his engine, moving his vehicle, putting it into reverse with multiple officers on foot, and the known information that he was armed and making movements consistent with reaching behaviour to access a firearm concealed on his person, the AP had the ability to cause grievous bodily harm or death by use of his vehicle or his firearm, he had certainly demonstrated his intent to do so despite being given multiple opportunities to comply with the officers and give up. Additionally, the AP had the immediate means to use either the vehicle or his weapon to harm the officers. Therefore, I am of the opinion that the SO's use of lethal force in this circumstance is within both WPS policy as well as the broader Canadian policing practices involving the training and policy on the use of lethal force.

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

The critical question in this investigation is whether the SO's decision to discharge his firearm at the 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.”

Therefore, the question is whether it was reasonable in these circumstances for the subject officer to discharge his pistol at the AP to prevent an injury or death to himself or other persons in the vicinity.

The evidence demonstrates that:

- The SO was in lawful execution of his duties when he and other police officers attended to stop the AP’s vehicle and proceed to execute a warrant and arrest the AP.
- The facts suggest that the AP did not want to be arrested by police and was trying to escape.
- The SO wanted to intercept the BMW and avoid a high-risk traffic pursuit.
- The AP was avoiding being arrested and attempting to flee by trying to push through the police vehicles with his BMW.
- The AP's vehicle accelerated forward and hit WO9’s vehicle.
- The SO and other officers repeatedly gave clear verbal directions to the AP to cease his resistance and comply with the demands to give up, to stop his vehicle, to show his hands and to stop reaching.
- Several of the civilian witnesses heard the police officers’ verbal commands given to the AP, and they knew the persons yelling were police officers.
- The AP refused to comply with all demands and commands.
- The AP continued revving the engine of the BMW, moving the vehicle back and forth, and putting it into reverse.
- WO6 saw the BMW’s reverse lights were on and yelled “*he’s going to back out.*”
- The AP posed a real threat to the life and safety of the SO and all officers nearby.
- There were eight officers, moving on foot, around and in proximity of the BMW. The SO feared for his own safety and the numerous other officers who had surrounded the AP’s vehicle on all sides.

- The SO feared for the safety of WO8 as he was trapped in a dangerous spot, in the driver's seat of TAC3, which was right next to the BMW. The AP's left arm was on the steering wheel blocking WO8's view, thus not having a view of the AP's right arm, which appeared to be reaching into his jacket.
- Due to the impending threat, the SO felt he could not move his position and leave WO8 unprotected. The SO could not risk losing a visual of the AP's hands, which would have left him vulnerable to the threats the AP may have produced.
- The AP had the immediate means to use either the BMW vehicle or his weapon to harm the officers.
- The actions of the AP had become a potential lethal event in which the SO had an instant to respond.
- The SO believe that if shots were fired by anyone, there was a risk of grievous bodily injury or death, including to bystanders.
- The SO believed that less lethal options would not have been effective in the circumstances.
- The use of force expert opined that other less lethal options were not feasible and would have been ineffective at the time the shots were fired.
- The use of force expert opined that AP had the ability to cause grievous bodily harm or death by use of his vehicle or his firearm and had demonstrated his intent to do so despite being given multiple opportunities to comply with the officers.
- Just prior to shots being fire, an officer yelled "*he's reaching.*"
- In observing the AP's body hand and movements, along with the information that he had received about the AP including that he was armed and dangerous and commented that he had no intention of being taken into police custody or going back to jail*, combined with his personal experience and training, the SO believed the AP was armed and was preparing to produce a firearm.
- The SO made the decision to discharge his firearm at the AP to stop the advancement and eliminate the lethal threat posed by the AP.
- The SO discharged his pistol four times, until the SO saw the AP's arms fall off the steering wheel to his body, and the lethal threat that he posed was eliminated.

I am satisfied that the extensive evidence gathered from all of the referenced sources, provides support for the conclusion that the decision by the SO to use lethal force on the AP was necessary to prevent the injury or death to himself and to others in the vicinity. The potential for more serious injuries and loss of life was high. The SO's use of lethal force was necessary to eliminate the significant risk to public safety.

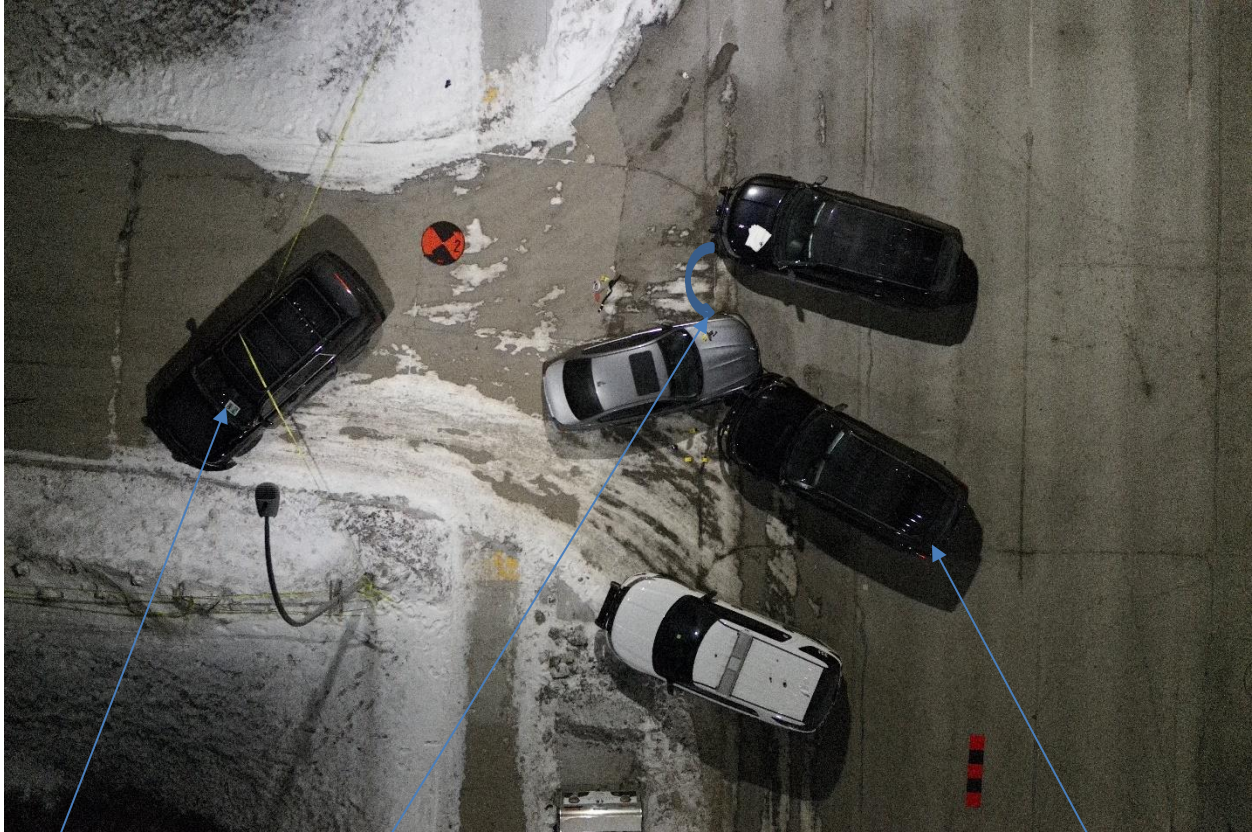
In consideration of all the circumstances, the use of lethal force by the subject officer was authorized and justified by law. There are no reasonable grounds to support any charges against

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

**this information has been edited as it is privileged*

APPENDIX A



TAC65

Original position of TAC3

TAC2