



**IN THE MATTER OF THE SERIOUS INJURY OF A MALE
WHILE BEING TAKEN INTO CUSTODY BY MEMBERS OF THE
VANCOUVER POLICE DEPARTMENT IN
THE CITY OF VANCOUVER, BRITISH COLUMBIA
ON SEPTEMBER 23, 2017**

**DECISION OF THE CHIEF CIVILIAN DIRECTOR
OF THE INDEPENDENT INVESTIGATIONS OFFICE**

Chief Civilian Director:	Ronald J. MacDonald, Q.C.
General Counsel:	Clinton J. Sadlemyer, Q.C.
IIO File Number:	2017-120
Date of Release:	March 1, 2018

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Facts

On September 23, 2017, at 3:30p.m., the Vancouver Police Department (VPD) was called about a man [the Affected Person (AP)] attempting to break into a home in a residential neighbourhood of Vancouver. Police arrived and located AP at the rear of the residence. AP was seen by police trying to break the rear door of the home with a lawn chair. AP then moved to the back of the yard and went into the garage through a broken window.

A total of 13 police officers, including Officer 1, the subject of this investigation, arrived to the residence. AP left the residence and was shot by police.

The Independent Investigations Office (IIO) was notified by the VPD at 5:05 p.m. that day. The IIO commenced its investigation as AP's injuries fall within the definition of serious harm as defined by the *Police Act* and are related to the actions of an officer.

Evidence collected during the investigation included the following:

- 1) Statements of 19 civilians including neighbours, paramedics, visitors to the neighbourhood and family members of AP;
- 2) Statements of 12 Witness Officers;
- 3) Recordings of police radio transmissions;
- 4) Photographs of the scene;
- 5) Medical records of AP; and
- 6) Cellular telephone video.

At 4:26 p.m., AP came out of the garage and moved towards Officers 4 and 5. Officers 4 and 5 were in the back yard of the neighbouring residence to the east. They were standing on top of a covered hot tub looking over the fence.

AP was carrying an axe and held it above his head. Officer 4, who was clearly visible to AP, was armed with, and pointing his rifle at AP. Officer 4 directed AP to drop the axe but AP did not comply.



The axe recovered from the scene.

Officer 4 told the IIO it appeared that when AP realized he could not physically reach either officer, he began walking along the west fence towards the front of the residence and away from Officer 4's view.

AP walked along the west side of the residence toward the front yard still carrying the axe. Police repeatedly directed him to drop the axe; however, AP continued towards the gate next to the front of the house.

A civilian witness recorded 38 seconds of video starting as AP approached the front of the house. At five seconds into the video AP can be seen with the axe in his left hand walking along the west side of the residence towards the gate to the front yard.



In this crop of an enlarged video still at second five, Officer 2 (far left) is shown going up the neighbouring stairs. Officer 1 (wearing a ball cap) and officer 3 remain at or near ground level. AP (right) is shown moving towards the front gate carrying the axe.

Officer 2 can be heard saying, at eight seconds into the video, *“talk to me okay, I just wanna talk about what’s going on.”*

At the same time Officer 2 can be seen moving to the top of the stairs of the house next door.

AP did not respond to the directions nor did he stop moving towards the gate.

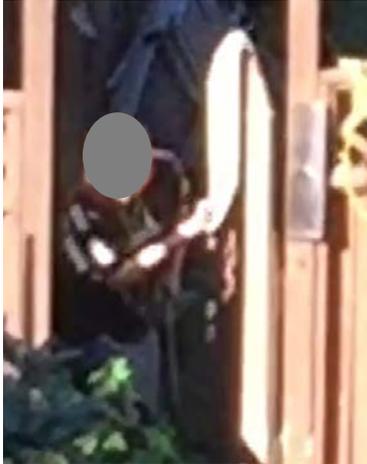
Officer 2 can be heard and seen firing at AP two times with an ARWEN gun, which shoots what are commonly called rubber bullets. Officer 2 can be heard directing AP to put the axe down prior to shooting a third ARWEN round.



A spent ARWEN round recovered from the scene

At 24 seconds, AP opened the gate and the axe is visible in his left hand. The video shows Officer 2 shooting a fourth round and, as AP moved across the front yard towards the gate leading to the street, Officer 2 shot his fifth and final round.

The fifth round is shown in the photo to the left bouncing off AP (second 29) with no visible effect to his mobility. The IIO has confirmed that Officer 2 was certified to use an ARWEN gun.

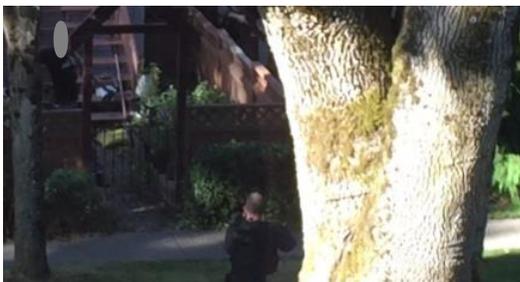


AP coming out of the side gate at second 24, the axe visible in his left hand down to the side of his leg.



AP running across the front yard at second 29 of the video. The green cylindrical object to AP's left is an ARWEN round bouncing off AP, the axe still in his left hand.

Officers 4 and 5 moved to the front of the neighbouring residence. The three photos below are stills from the video at seconds 30, 31 and 32 and show Officer 4 moving back and away from AP.



At second 33 (below) of the video, AP can be seen leaving the front yard of the residence with the axe raised over his shoulder. Officer 4 (not shown) continued to retreat eastbound (to the right in the photos) away from AP who was pursuing him. Officer 5 is seen in the front yard to the east.



AP continued onto the street eastbound. Stills from seconds 35 and 36 below show Officer 5 aiming his rifle at AP who is swinging the axe as he runs.



Stills below at 37 and 38 seconds show AP continuing eastbound.



The video is 38 seconds long. No other video of the interaction was discovered by the IIO.

Officer 4 described AP as, “*jogging*” towards him with the axe raised over his head and a blank expression on his face. He said that AP ignored repeated commands to drop the axe. Officer 4 said that as he “*back-pedaled*” eastbound, AP continued to advance towards him and it appeared to Officer 4 as though AP was going to throw the axe at him.

Officer 5 joined Officers 1 and 2 across the street and they ran eastbound and parallel to AP.

Earlier, Officer 6 had parked his unmarked SUV three houses to the east (to the right in the photos). Officer 6 told the IIO that he felt there was too much risk to the safety of his police dog to deploy it to stop AP. Given how quickly the matter evolved, all decisions had to be made very quickly.

Officer 7 had a Conducted Energy Weapon (CEW) and was in the yard near Officer 6’s SUV. Officer 7 was behind some bushes and not visible to AP as AP chased Officer 4 past Officer 6’s vehicle. Officer 4 was continuing to direct AP to drop the axe as he (Officer 4), “*back-pedaled*” away from AP and past where Officer 7 had taken cover. Officer 7 moved from his cover and deployed his CEW at AP.

Only one of the barbs struck AP (both must attach to a subject to deliver a shock) who, “*lurched, twitched, flinched and shook it off.*” Data downloaded from the CEW device indicated that it had been deployed but no shock delivered.

Officer 4, who was not aware of the CEW deployment, told the IIO that AP appeared to pause his pursuit.

Officer 2 thought that the incident was over when he saw the CEW was deployed but then, “*all of a sudden he pops out from behind the SUV and just runs at us.*”

A resident observed AP near the SUV. AP, still with the axe, broke away east from the officers and went around the back of the SUV and crossed to the south side of the street and onto his (the resident’s) lawn. He said AP moved quickly across the street, shaking the axe menacingly with two hands. AP wasn’t saying anything. The resident said AP came onto the grass near the sidewalk, turned to face west, and was facing west when he was shot.

He said the officer to the west of AP (Officer 1) was “*10 to 20 feet away, not less than 10, he is facing directly at the AP to the east....He fires three shots.*”

The resident described the cadence of the shots as close together, and then AP went down. He said AP went down immediately on the sidewalk right in front of his house. He said there was no noise, AP didn’t yell, he just fell down on the sidewalk and dropped the axe.

Officer 4 told the IIO that he was moving east and Officer 1 was moving west. AP almost ran between the two officers but then diverted his course and advanced on Officer 1. Officer 4 said AP was almost within “*arms-reach*” of Officer 1 when Officer 1 fired his rifle three times in quick succession. He said AP fell to the ground.

Officer 2 said there were three shots. AP continued for three to four paces and then fell to the ground on the south sidewalk.

Officer 3 said that when AP came out from behind the SUV he was about 8 feet from Officer 1. He said AP closed that distance in about 3 steps and was “*right on top of [Officer 1].*” Officer 3 said AP came within two to three feet of Officer 1 who was trying to back up. He said AP’s momentum appeared to, “*carry him onto the grassy area.*”

Officer 5 said AP got to within five to ten feet of Officer 1 who then discharged his rifle approximately three times in very quick succession. Officer 5 estimated that given the length of the axe and the AP’s reach, if he got within three to four feet he would have been in striking range of Officer 1. Officer 5 said that although AP was, “*affected by the projectiles*” he did not fall instantaneously.

Officer 8 said he saw AP get “*alarmingly close...within two meters*” to Officer 1, who jumped back and sideways to avoid the axe before shooting AP.

Officer 7 heard a “*shots fired*” call over his the radio and saw AP fall down on the sidewalk on the south side of the street. He said AP was lying on his front, then turning over and looking like he was going to try to stand up and was yelling, “*ok, ok.*” As he tried to get up, officers were yelling commands to stay down. Officer 7 said AP was yelling, “*just fucking kill me.*”

At 4:30 p.m. Officer 5 transmitted: “*shots fired, EHS*”. At 4:31p.m. Officer 8 transmitted: “*he’s conscious and still breathing*” and 10 seconds later Officer 5 transmitted: “*handcuffed, in custody. EHS in here Code 3. Gunshots wounds to lower abdomen.*” Officer 3 handcuffed AP with the assistance of other officers.

Officer 5 said the officers who handcuffed AP had to wrestle with his arms to do so as he was still capable of fighting and resisted being handcuffed.

First aid was rendered by Officers 2, 9 and two qualified residents of the street.

Officer 9 said AP was moving around and he (Officer 9) had to help hold him still. Officer 9 helped AP onto a gurney when the paramedics arrived and rode in the ambulance. While in the ambulance, AP kept saying over and over to the paramedics, “*I want you to fucking kill me.*” Officer 9 stayed with AP at the hospital.

Paramedics that attended said AP was lying on the ground on his side with his shirt off. He was struggling and had handcuffs on behind his back. AP was heard by paramedics to say, *“just kill me, please let me die.”*

AP was transported to hospital and immediate surgery was performed. One bullet fragment was removed. AP sustained three gunshot wounds. Two entry wounds to his left abdomen and a third wound where one of the bullets exited his body.

Three shell casings were recovered from the scene. The bullet removed from AP, Officer 1's rifle and the casings were examined. The casings were found to have been fired in Officer 1's rifle. The bullet removed from AP was likewise identified as having been fired from Officer 1's rifle.

AP's shirt was also examined. Gun shot residue was used to estimate the distance from the muzzle of the gun to the shirt. At least one of the shots was taken from between 50 cm and 150 cm.

Relevant Legal Issues and Conclusion

The purpose of any IIO investigation is to determine whether an officer, through an action or inaction, may have committed any offence in relation to the incident that led to the injury to AP.

More specifically, the issue to be considered in this case is whether any of the officers may have used excessive force during the apprehension of AP. Had they done so, they may have committed assault with a weapon, assault causing bodily harm or aggravated assault. Firearms charges likewise may have been applicable.

In this case, police were summoned regarding the actions of AP in attempting to enter a residence by breaking a window. Officers witnessed AP attempting to do so.

A police officer who is acting as required or authorized by law 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. If a police officer uses unreasonable or excessive force, those actions may constitute a criminal offence.

In this case police witnessed AP committing an indictable offence. It was their duty to at least detain and question AP. AP, however, retreated into the garage and remained there for some time. When he emerged into the yard AP was carrying an axe and holding it in the air. Police could not permit him to leave the relative safety of the confines of the yard to where the axe could pose a significant risk to the general public.

When dealing with incidents police are trained to employ a variety of use of force options relevant to the situation. The police in this situation were coordinated in their

actions. Police communicated with AP and with each other. Initially they gave AP the space of the back yard and at the same time contained any threat he might pose.

Police positioned themselves so that as AP moved out of that containment towards the front of the residence Officer 2, an ARWEN operator was at the ready. Officer 2 was backed up by Officer 1 as lethal overwatch. When communication with AP was unsuccessful, first in the back with Officers 4 and 5 and then as AP moved along the west side of the residence towards the front and was challenged by Officer 2, the ARWEN gun was a measured and appropriate use of force to attempt to stop AP's progress.

When Officer 2 was unable to stop AP from going out the side gate by the use of communication and then the ARWEN, Officers 1, 3 and 4 retreated. Officer 2 continued to fire his last two ARWEN rounds at AP as he went out the side gate into the front yard. When AP got to the front gate leading to the street Officer 4 continued to retreat while at the same time Officer 5 leveled his weapon at AP. Officers 1, 2 and 5 likewise retreated across the street and paralleled AP's movement.

Officer 4 continued his retreat, while holding his rifle, as AP pursued him up the street with the axe. Officer 7 then was able to put himself in a position to attempt to disable AP with his CEW. Only after virtually all other options were unsuccessful and AP was somewhere within 50 and 150 cm of Officer 1, was lethal force resorted to.

The officers took a measured and scaleable approach. Considerable restraint was exercised in the use of force.

There is no evidence that any officer used excessive or unreasonable force and only when Officer 1 was in imminent risk of serious injury or death by the axe that AP was wielding was lethal force employed.

The evidence collected does not provide grounds to consider any charges against any officer. Indeed, the evidence shows that the officers acted as required by their duties and in accordance with the law. In particular, there is no evidence to show that any of the officers and specifically Officer 1 used excessive force at any time.

This is readily apparent from the 38 second video of AP's interaction with police that led up to his being shot and supports the conclusion that the officers acted entirely appropriately throughout. Indeed, the actions of police in this matter were commendable. A man swinging an axe running down the street is clearly a great risk to the public and the police. The Officers tried several other options at containment, and retreated as best they could, before Officer 1 was forced to shoot AP when he was on the verge of being struck by the axe. This is an example of the police trying the best they could to avoid lethal force, but in the end having no other option.

