



**IN THE MATTER OF THE SERIOUS INJURY OF A MALE
WHILE BEING APPREHENDED BY MEMBERS OF THE
BURNABY RCMP IN
THE CITY OF BURNABY, BRITISH COLUMBIA
ON MARCH 20, 2015**

**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:	2015-050
Date of Release:	May 22, 2018

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Facts

At 7:20 p.m. on March 20, 2015, Civilian Witness 1 (CW 1) called 911 and reported that as CW 1 was about to enter an apartment building, the Affected Person (AP) had displayed a black handgun. CW 1 reported AP said he was going to shoot CW 1 but then said CW 1, "*was not in trouble.*" AP also told CW 1 to call the police as he (AP) departed towards a parking lot.

Officers were dispatched and as further information was received it was transmitted over the police radio. When members were advised that AP had told CW 1 to call the police concerns arose that AP wanted a confrontation with police and this elevated the threat level of the responding officers.

Officers attended to a parking area and located AP. AP was directed to drop the gun and to leave the vehicle he was in. AP pointed a gun at his own head and did not follow the directions of the police. It was reported that AP pointed a gun towards an officer and multiple shots were fired at AP. AP dropped the gun and left the vehicle he was in. AP was taken into custody and transported to hospital for treatment of gunshot wounds to the neck, chest and right arm.

The Independent Investigations Office (IIO) was notified of the incident by the Burnaby RCMP at 8:10 p.m. The IIO commenced its investigation as AP's injuries appeared to fall within the definition of serious harm as defined by the *Police Act* and were related to the actions of officers.

Evidence collected during the investigation included the following:

- 1) Statements of 29 civilians including AP, a relative of AP and numerous neighbours;
- 2) Numerous cell phone videos of portions of the interaction between AP and police;
- 3) CCTV from the apartment building;
- 4) Statements of four witness officers;
- 5) Recordings of police radio transmissions;
- 6) Photographs of the scene;
- 7) Full scene examination and forensic recovery of evidence;
- 8) Additional ballistic examination and reports;
- 9) A Use of Force Report; and
- 10) Medical records of AP.

Pursuant to section 17.4 of the Memorandum of Understanding between the IIO and BC Police Agencies, and consistent with the *Canadian Charter of Rights*, officers who are the subject of an investigation are not compelled to submit their notes, reports and data. In this case, the Subject Officers, Officers 1, 2 and 3 all declined to provide their statements, notes, reports or data to the IIO.

AP told the IIO that leading up to the incident, and as a result of considerable personal difficulties, he had been living in his vehicle. He said he had hung reflective vests in some of the windows of the vehicle to allow a modicum of privacy. On the evening of the incident, AP said that while he was near the door of a high-rise apartment building, he was speaking on his cell phone with a resident of the building. The call was an upsetting conversation for AP.

AP told RCMP and IIO investigators that as that call concluded he spoke with and showed CW 1 the toy gun that he had. AP denied threatening CW 1 with it and did not indicate that he had suggested to CW 1 to call the police.



Plastic BB gun seized at the scene

AP said that he returned to his vehicle, which was backed into a parking spot at the far corner of the parking lot. He said when police arrived he had the pistol in his right hand and put it to his own head. Police told him to, "*put the gun down,*" and he said back to them, "*toy gun, unarmed, toy gun,*" and moved the gun forward from his head but never pointed it forwards towards the police.

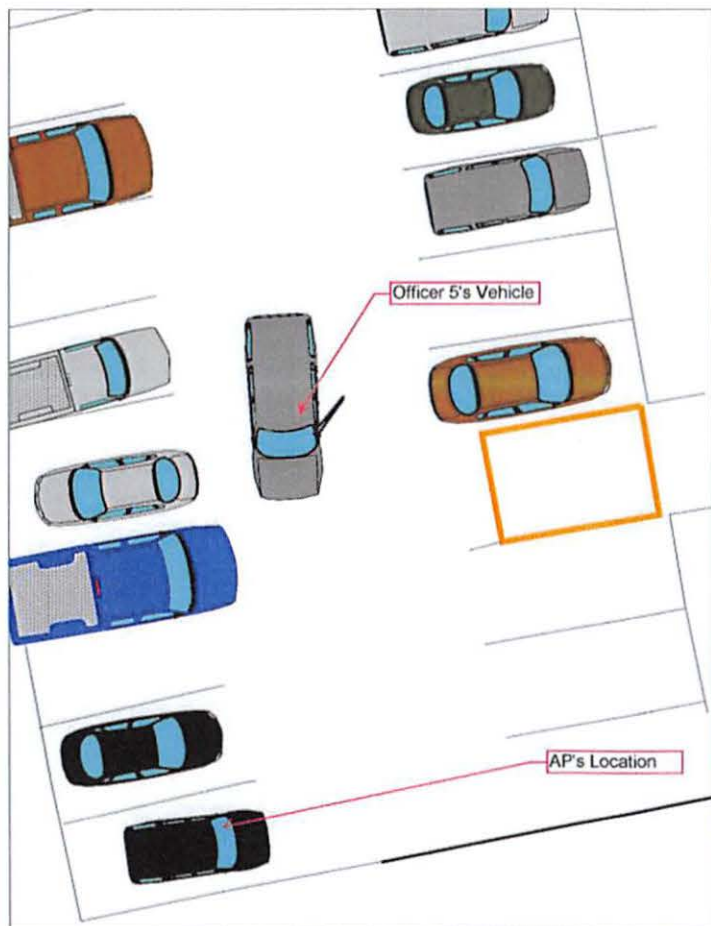
AP said that he was not suicidal; however, he told the IIO that his thoughts at the time were:

Guys just shoot me like, I'm not causing a fight. I don't want you guys to get hurt. I don't having anything to hurt you guys. I just. I just don't want to suffer anymore.

AP performed a video demonstration of his actions at the time he moved the pistol away from the side of his own head and held it out to the officers. He was not able to use his right arm during the demonstration and he used his left hand; however, he made it clear that during the incident he had used his right hand. Although he demonstrated the gun was pointed to the right side of his head and then towards his right as he moved his hand and the gun straight forward when he held it out to the police, the gun would have

been pointed to the left side of his vehicle and in the direction of where the police officers were positioned.

AP said that after he was shot the first time he remained sitting up in the car and the next shot struck him in the elbow, causing his right arm to give out and drop. He said he then tried to change the gun over to his left hand and more shots were fired. AP concluded his statement to the IIO with, "Please tell the officers I'm sorry."



North is to the top of this diagram

Officers 1, 2, 3 and 4 arrived within minutes of the call; however, they did not initially engage with AP until Officer 5 arrived shortly thereafter with his police dog. Because of the number of officers present, Officer 5 did not take his dog out of the police SUV he was driving. Instead, he drove his vehicle slowly toward the corner of the parking lot where AP was located and Officers 1 and 2 walked alongside the SUV using it for cover as they advanced toward AP. Officer 4 was to the back of Officer 5's vehicle.

When Officer 5 arrived to the position shown in the diagram he stopped and stood behind the open door of his vehicle while he and the other officers attempted to convince AP drop the gun. Officer 5 shone his flashlight towards AP and lost his night vision because of the reflection of the light hitting the reflective vests in AP's vehicle. Once his eyes adjusted, Officer 5 could see AP with a gun pointed at his (AP's) head. Officer 5 radioed for more backup.

Officer 3 arrived and took up a position to the west side of Officer 5's vehicle.

After approximately two and one half minutes, Officer 5 moved around the back of his vehicle and came around the small car beside and then between the car and the pickup truck shown in the diagram. As he moved out from behind the cab of the truck and levelled his pistol towards the suspect's vehicle, he switched on his flashlight.

Officer 5 told the IIO that he was shocked to see that he was looking straight down the barrel of AP's pistol and he ducked back and radioed that AP had pointed a gun at him.

Shots were fired (two to three, virtually all at the same time) and then a pause of several seconds, during which time police again told AP to, "*drop the weapon.*" A few seconds later (and consistent with AP's statement as to when he switched hands on the gun) many more shots were fired.

AP dropped the gun out the driver side window and got out of his vehicle and fell on top of the gun he had just dropped. AP dragged himself towards the middle of the parking lot and away from the gun and put his arm straight out above his head.

Officers ran forward and dragged AP by his clothing further out into the parking lot where he was handcuffed. Officer 5 began first aid and gave reassurance to AP and, once AP had been searched and no other weapon found, Officer 5 had the hand cuffs removed to facilitate first aid.

Medical records obtained by the IIO report that AP sustained gunshot wounds to the neck, chest and right arm, as well as suffering an injury to his left side.

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.

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.

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 aggravated assault, assault with a weapon (firearm) or assault causing bodily harm.

In this case, police were summoned regarding the actions of AP displaying what appeared to be a handgun to CW 1. As police were responding, they were told that AP had told CW 1 to call the police. Whether he actually said that to CW 1 is irrelevant, for the purposes of the IIO investigation, as that is the information police were given.

The police were clearly acting within the scope of their duties. Officers believed that AP had said to call the police and the concern that they were facing someone with a gun who had asked for police to be called raised the threat to the highest level.

Although AP said he told police it was a toy, the police could not have known whether that was true, and in any event AP did not drop the gun despite repeated warnings by the police to do so. This further and significantly increased the threat level.

Finally, when AP moved his right arm forward and the gun was no longer pointed at his own head but still pointed to his left and directly to where Officer 5 was standing, the threat of grievous bodily harm or death to Officer 5 became immediate and police used necessary, reasonable and proportionate force to defend themselves and Officer 5.

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.

Accordingly, as the Chief Civilian Director of the IIO, I do not consider that an officer may have committed an offence under any enactment and therefore the matter will not be referred to Crown counsel for consideration of charges.



Clinton J. Sadlemyer, Q.C.
General Counsel

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