



**IN THE MATTER OF THE DEATH OF A MALE
WHILE BEING APPREHENDED BY MEMBERS OF THE
VANCOUVER POLICE DEPARTMENT IN
THE CITY OF VANCOUVER, BRITISH COLUMBIA
ON NOVEMBER 10, 2016**

**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:	2016 - 224
Date of Release:	February 1, 2019

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Facts

On November 10, 2016 at 3:12 p.m. members of the Vancouver Police Department (VPD) were called to a retail store (the Store) about a complaint of a stabbing during a robbery that also involved firearms. Police arrived at the Store and during their attempt to apprehend the Affected Person (AP) he was shot nine times and died from those wounds.

The Independent Investigations Office (IIO) was initially notified by the VPD at 3:32 p.m. and IIO personnel attended the scene as soon as was reasonably practical once the VPD advised that it was safe to do so. The IIO commenced its investigation as AP died from gunshot wounds that occurred during an interaction with VPD officers.

The completion of this investigation was delayed due to a court action that related to a difference of opinion that arose between VPD witness officers and the IIO. The main issue related to the interpretation of a clause in the *Police Act* which mandates that a witness officer must cooperate fully with the IIO during an investigation. The officers' position was that they should be entitled, among other things, to review 3rd party video of the incident prior to being required to give a statement. The IIO took the position that it was up to an investigative body, in this case the IIO, to determine when video would be shown to a witness, if at all. As the matter could not be resolved, the IIO commenced court proceedings in 2017 to require the witness officers to give statements without conditions. In October of 2018 the Supreme Court of British Columbia ruled in favour of the IIO, and ordered seven witness officers to attend for interviews. As a result, interviews were scheduled soon after the decision was rendered, and all were completed by December 11, 2018.

Evidence collected during the investigation included the following:

- 1) Statements of 68 Civilian Witnesses (CWs);
- 2) Statements of nine police officers;
- 3) 911 recordings;
- 4) Training records of police officers;
- 5) Computer Assisted Dispatch (CAD) records;
- 6) VPD policy;
- 7) Scene photographs;
- 8) CCTV from exterior and interior of the Store;
- 9) Witness cell phone video;
- 10) Emergency Health Services (EHS) records;
- 11) Ballistics reports;
- 12) Analysis of Officer 4's clothing;
- 13) Medical records; and
- 14) Autopsy Report.

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 and Freedoms*, officers who are the subject of an investigation are not compelled to provide a statement,

nor submit their notes, reports or data. In this case the Subject Officers, Officer 2 and Officer 4, declined to provide statements, notes, reports or data, as is their right.

CW 1 told the IIO that he saw AP enter the Store and as AP walked through the Store he pointed at random people and said “*you*” to them. CW 1 said AP went to the hunting desk and within seconds CW 1 heard someone calling out “*help, help, call the police.*” CW 1 said he saw AP spraying bear spray and then stabbing CW 2.

CW 2 told the IIO he was at the gun desk of the Store mounting a scope on a rifle for a customer and “*a very large fellow*” (AP was a large man and weighed over 195 kilograms (430lbs)) approached carrying a can of what CW 2 referred to as “*bear mace.*” CW 2 related that AP said, “*Give me the guns*” to which CW 2 asked “*Which one would you like?*” CW 2 said AP suddenly “*bear-maced me.*” CW 2 told the IIO he ran at AP with the rifle he was working on and AP sprayed him again. CW 2 said AP took hold of him and cut his face and head. CW 2 broke free and ran from AP.

This interaction was captured by the Store’s CCTV and after CW 2 escaped, AP is visible breaking open the glass gun case and trying to load a long gun. AP left the gun desk without a long gun and was carrying a cannister of bear mace. Other staff are seen fleeing from the gun desk area.

CW 1 telephoned 911 and reported the Store was being robbed and that AP was in the gun section and had “*stabbed a guy on his head and he’s taken a gun out.*” During the call CW 1 reported AP was with a “*...man [CW 3] he might be held...I don’t know what’s going to happen.*” Moments later, CW 1 reported to the 911 call taker that he was with the police (outside the Store).

CW 3 told the IIO that he got off the Store’s elevator at the sporting goods floor and saw blood and a man on the floor. Someone yelled to “*get back down*” so CW 3 got back on the elevator and went down a floor where he saw AP coming down the escalator. CW 3 said, “*the next thing, he had his arm around me and he showed me his knife [and] said...’just do what I say, and you won’t get hurt.’*”

CW 3 said AP guided him towards the exit and “*the next thing he knew*” after going out the door, AP was face down on the ground and:

three...guys [CW 1, Officer 1 and Officer 2] were trying to hold him down... and then next thing I hear a pop, pop, pop, pop...and...[CW 1] said, ‘get back inside, get back inside.’ So, I went inside and that’s about all I saw.

In Store CCTV captured CW 3 being guided by AP, his hand (holding a knife) on CW 3’s shoulder, moving through the Store. Just prior to AP going out the Store’s exit door (the Door) AP removed his hand from CW 3’s shoulder and walked ahead of CW 3 and out the Door. The Store’s interior CCTV of the Door clearly shows both the knife in AP’s right hand and a large cannister of bear-mace in his left hand as he exited through the Door.

CW 1 said two police officers (Officer 1 and 2) were outside the Door and as AP exited they told AP that they were the police, that AP should “go down” and that if he had a weapon he should “drop it.” CW 1 said AP started to spray the officers and (Officer 2) used his “Taser gun” and AP “went down.”

CW 4 was approximately 10 metres away from the Door when AP emerged. He told the IIO that when AP came out the Door it was “...like he almost came out spraying...” CW 4 said Officer 2 “...with the yellow gun [a Taser] shot him...” and when AP went down Officers 1 and 2 got on top of him and tried to handcuff him. He said that one of the officers (Officer 1) had put his rifle down and it looked like AP was “...trying to get to that rifle...”

CW 4 said they couldn’t handcuff AP and CW 4 questioned “...how can anybody be that strong?” and said that it looked like AP was “...actually getting away.” CW 4 said Officer 1 rolled away from AP and “...all I could see was blood...” on Officer 1’s torso.

CW 1 told the IIO that he was trying to help by kicking AP. He said he tried to grab AP’s arm, but was unsuccessful. CW1 described AP’s arm as being the size of his own leg. He kicked in an effort to cause pain to AP, but stated “I don’t think he felt anything.”

Officer 1 screamed “help, help, I got stabbed, I got stabbed” and Officer 1 rolled off and away from AP. CW 1 said he and Officer 2 also moved back from AP who “...got up...and...tried to stab me too.”

CW 4 told the IIO that after Officer 1 rolled off AP, Officer 2 and CW 1 backed away. CW 4 said AP then started to get up. CW 4 said the officers were about eight feet or less away from AP who was “...so huge, he’s so massive...”

Police radio recordings of transmissions to responding officers included:

*...there’s a guy inside stealing guns and spraying people with mace...
Apparently now he’s got a knife and he’s hurt somebody behind the gun desk...
Sounds like now it’s a confirmed stabbing as well...
Not sure what kind of firearm he grabbed...*

CW 5 was outside, approximately 30 to 40 feet away from and facing towards the Door. CW 5 used a cellular telephone to capture video of AP as he left the Store and the interaction with police (Cell Video). An exterior CCTV camera mounted near to and above the Door also captured video of AP’s interaction with the police from an opposing angle (Door Video). In combination the two angles of video allowed for a detailed examination of the interaction and are the basis for the following description of that interaction.

Officer 1 approached the Door carrying a short rifle (the Rifle) and was putting his Police Jacket on as he moved. As Officer 1 neared the Door he passed by several traffic posts with only his right arm in the jacket (and unknown to anyone else until after the incident, he had not yet loaded the Rifle). Officer 2 approached to the right of Officer 1 with his Taser drawn. Officer 1 stopped approximately 2 metres past the posts and about the

same distance to the Door as AP came out the Door spraying bear mace. Officer 1 backed away and through the traffic posts as Officer 2 deployed his Taser.

AP fell face forward and Officers 1 and 2 moved quickly to each side of AP. Officer 1 set the Rifle on the ground to his right and started attempting to get AP's hands behind his back; however, AP began resisting and Officers 1 and 2 were unable to secure AP. The video makes it clear that AP could not be controlled, likely because of his size. It appeared as though the few body blows the police were using to control him had no effect at all. AP took hold of Officer 1 and started stabbing his face and shoulder. Officer 1 pushed the Rifle away slightly with his foot and AP rolled on top of him. As Officer 1 struggled to get free from AP's grasp, AP stabbed his stomach.

Officer 1 escaped AP's grip and rolled away, stood up and unholstered his pistol. CW 1, who had been kicking AP in an effort to assist the police moved away and Officer 2 also backed away and unholstered his pistol. Both officers shot at AP until AP again went down. Officer 2 fired four times and Officer 1 fired three times. Officer 1 staggered slightly and fell to his knees; seconds later Officer 1 collapsed onto his back.

At this time, AP's feet were approximately two metres from the Rifle. AP began repeatedly shouting "*finish me off*" as Officer 2 continued to point his pistol at AP and occasionally glanced at Officer 1.

Officer 3's vehicle entered the parking lot just as the shots finished. 12 seconds later, Officer 3 arrived to where AP and Officers 1 and 2 were and deployed a small canister of OC Spray (Oleoresin Capsicum) at AP.

Officer 3 later told the IIO that he had heard over the radio that AP had been trying to get guns and accordingly his risk assessment was "...*up to the highest level...*" Officer 3 said he saw the Rifle laying on the ground, AP yelling and with a knife in his hand, and Officer 3 felt AP was not yet under control and he "...*wanted to now take away his vision.*" The OC spray had no visible effect on AP.

Officer 2 knelt down at Officer 1's left side and Officer 3, with his firearm in one hand and radio microphone in the other, stood between Officer 1 and AP who remained laying on his back on the ground, only a few metres away.

Police radio recordings of further transmissions to responding officers included:

*[AP] has a knife on the ground and members have been pepper sprayed.
...a member's been stabbed, and pepper sprayed.
...suspect on his back, knife in right hand, not obeying directions.*

Officers 4, 5, 6 and 7 entered the parking lot 90 seconds later in two police vehicles. Officers 4, 5 and 6 stood shoulder to shoulder next to Officer 3 with their firearms trained on AP as AP repeatedly yelled out to "*finish me.*" Officer 7 went to Officer 1's right side. The Rifle was still laying on the ground between the line of officers and AP.

Approximately 40 seconds later, AP, who was laying on his back and still calling out to “*finish me,*” raised his left hand and sprayed a short burst of bear-mace into the air. Two seconds later, Officer 8 arrived with an ARWEN gun (which shoots ‘rubber bullets’) and stood next to Officer 6. Ten seconds later AP raised his left hand, still holding the bear-mace, and started to roll his body towards the line of officers. At that moment it appeared as though he was attempting to stand.

Officer 8 was already moving on a circular path around AP as AP rolled. Officers yelled at AP to “*stay down;*” however, AP continued to roll and sat up and at the same moment directed a stream of bear-mace towards the line of officers. Officers 2 and 7 took hold of Officer 1’s arms and, as Officer 1 pushed himself with his legs, they dragged him several metres further away from AP, leaving a trail of blood.

Examination of the video showed the following sequence of events:

- 3:14:33 AP sprayed pepper spray up in air
- 3:14:47 AP sprayed pepper spray towards the officers
- 3:14:47 Officer 4’s first shot
- 3:14:48 Officer 8 fired first less lethal
- 3:14:48 Officer 8 fired second less lethal
- 3:14:50 Officer 8 fired third less lethal
- 3:14:51 AP sprayed pepper spray towards the officers
- 3:14:51 Officer 4 fired second shot
- 3:14:51 Officer 4 fired third shot
- 3:14:52 Officer 8 fired fourth less lethal
- 3:14:54 Officer 8 fired fifth less lethal

When AP sprayed, towards the officers, Officer 4 fired his pistol at AP almost immediately. Officer 8 then shot three ARWEN rounds at AP. AP remained partially up and was on his right elbow and again sprayed bear mace at the line of officers. Officer 4 fired two more shots and Officer 8 shot two more ARWEN rounds at AP. AP rolled face down but continued to move his left arm. AP’s left leg came over his right leg and he was fully face down and motionless.

Officer 8, along with Officers 9 and 10, who had arrived during the later part of the incident, approached AP. Officer 10 used his Taser on AP and, with Officers 8 and 9, handcuffed AP.

When Officer 3 later spoke with the IIO he said that AP did not appear to be affected when he was OC sprayed by Officer 3. Officer 3 told the IIO that when Officer 4 arrived next to and to the right of Officer 3, he told Officer 4 that “...*we have a member down on the left and this is the line. We have to hold the line.*”

Officer 3 said when AP sprayed toward the officers, “...*it wasn't like a straight stream that hit me, it was more like a mist...*” and the effect was that “...*I can't see.*”

Officer 3 said that his perception of the level of threat was:

...the highest ever [with AP] laying there with a knife in his hand. Now he's getting up. So he was rolling over and he deployed...a spray of some sort...now if our vision is taken away? To me it, it was a lethal threat. And I did make a conscious decision to shoot, but I can't shoot what I can't see and I, I couldn't see from that spray.

As noted above, Officer 4 was standing directly to Officer 3's right hand side, almost the same distance from AP. Officer 4's clothing and the spray canister (referred to above as bear-mace) used by AP were also tested. Both were found to contain compounds associated with oleoresin capsicum, commonly known as "pepper spray" or "OC spray." This confirms that Officer 4 was also struck with the spray. An analysis of the video also confirms this, showing Officer 4 reacting to the spray by moving his head to attempt to avoid its effects.

OC spray is capable of causing severe irritation of mucous membranes such as eyes, nose and mouth. Some of the effects of capsaicin include the immediate closure of eyes, significant tearing, uncontrollable coughing, gagging and gasping for breath. To better understand its potential impact, its "heat rating" is at least a thousand times greater than Tabasco sauce. When OC spray makes contact with the eyes and throat, it can incapacitate a person.

Officer 5, who stood to the right of Officer 4, later told the IIO that when AP sprayed them he moved his finger to his trigger but stopped short of firing because he felt that when AP *"...rolled back onto his back and stopped from standing up"* the threat had been stopped (by Officer 4's shot). Officer 5 said that if AP would have stood up he would have shot him. He said they are trained that if they shoot, they are to shoot until the threat stops.

Officer 5 also told the IIO he was focused on AP and did not notice the Rifle between AP and himself. He said his risk assessment was already at the highest level but that if he had seen the Rifle laying there during the incident, that *"...would've even increased it even more because at which point [AP] would've had access to the...rifle."* Officer 5 said AP's spray affected his eyesight and breathing.

Officer 6 later told the IIO that while on the way to the scene, when he heard that shots had been fired and the officer's partner has been stabbed *"...it's probably near the highest of threats that we could deal with. A suspect, not in control, not in custody, with a weapon, stabbed a police officer."*

Officer 6 told the IIO that if AP had stood up *"...I fully believe he would have been stabbing us, unless if we acted..."* Officer 6 implied that if AP had stood up he would have shot as *"...standing up was not an option that I would have allowed him to make based on his stabbing an officer already. He wouldn't have gotten that far."* Officer 6 also said that

although he felt the effects of AP's spray, "*I hadn't gotten to the stage yet where my eyes were watering. That's kind of one of the final stages.*"

Officer 8 later told the IIO if AP had gotten up quickly and charged with the knife it would have immediately been a lethal force encounter. He said the ARWEN rounds didn't appear to have any effect. Officer 8 said that if AP "...continued to get up in the fashion that he was getting up then in my mind the only other way to stop that threat would be to use lethal force."

At the autopsy AP was found to have nine gunshot wounds. Seven fired bullets were recovered from AP's body. Two others passed through AP and were recovered; one was located under AP and the other was located under a shed near to the Door. Four Taser barbs were also recovered from AP's body at the autopsy.

Officer 1's shots did not strike any vital organs and were not fatal. Officer 2's shots collectively may have resulted in AP's death and one of Officer 4's shots would have resulted in AP's death by itself.

Ballistic examinations were performed and four of the bullets recovered at the autopsy were identified as having been fired from Officer 2's pistol and three from Officer 4's pistol. Three further fired bullets were located and identified as having been fired from Officer 1's pistol; two that passed through AP and a third did not hit AP.

Ten fired cartridge cases located at the scene were also examined and found to have been fired in the same numbers and from the same pistols.

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 an 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 Officers 1, 2 or 4 may have used excessive force when they shot AP. Had they done so, they may have committed murder or, in the case of Officer 1, attempted murder.

Section 25 (3) of the *Criminal Code of Canada* provides justification for the use of force that may cause death or serious injury where the person using such force believes on reasonable grounds that it is necessary for self-preservation or the preservation of any one under that person's protection from death or grievous bodily harm. Additionally, the

provisions of the *Criminal Code* that relate to self defence also apply to police officers. Those provisions are similar in effect to section 25(3).

In this case, AP sprayed a blinding agent towards Officer 1 as he approached the Door. Officer 2 used the less lethal option of a Taser which was momentarily effective in that AP immediately fell to the ground. Officer 1 and Officer 2 both attempted to take AP into custody by handcuffing him; however, AP fought their attempts. Given the information the police had about the robbery and stabbing the AP had committed within the store, these actions were a clearly justified attempt to take AP into custody.

Unfortunately, AP very much outweighed the officers and they could not control even his arms. AP began stabbing Officer 1 repeatedly and it was all he could do to get away from AP's grasp. As soon as Officer 1 did get away, Officer 2 repositioned and CW 1 retreated to the parking lot. AP started to get up and was still in possession of the knife. He tried to stab CW 1. Officers 1 and 2 could not let AP get up to continue the attack upon CW 1 or themselves. Given Officer 1 had been seriously injured, they had to take action quickly to end a further threat. In addition, the Rifle was dangerously close to AP. Officers 1 and 2 had no reasonable choice other than to use their firearms until the immediate threat AP posed was stopped.

After those initial shots were fired, AP was lying on his back, as was Officer 1, when Officer 3 arrived. Officer 3 struck a position of protection over Officer 1 and when Officer 4 arrived, Officer 3 told him that "*...we have a member down on the left and this is the line. We have to hold the line.*" All four of the officers that formed that line viewed AP as a lethal threat. Officer 3, who was standing at Officer 1's feet between Officer 1 and AP said that AP was the highest level of threat and when AP sat up and sprayed them he had decided to fire but the spray had blinded him, and he couldn't shoot blind.

Officer 5, who was on the other side of Officer 4 said that when AP sat up and started spraying he moved his finger to his trigger but Officer 4 had already shot by that time and had stopped AP's movement towards them. Officer 5 could feel the spray but was not blinded. Officer 5 said that he didn't notice the Rifle between the officers and AP and had he realized it was there his perception of the threat AP posed "*...would've even increased it even more because at which point [AP] would've had access to the...rifle.*"

Officer 6 said he "*fully believed*" AP would stab them if he got up and that he would not let that happen.

Officer 4 was focused on AP and as AP sat up and sprayed he shot AP. Officer 3 was blinded. The Rifle remained within a few feet of AP and AP was still armed with his knife and the spray.

Officer 4's reaction to AP coming towards him, assaulting his eyesight with the spray that had the potential result of blinding the officers and leaving them defenceless, his duty to protect his injured fellow officer and the fact that the Rifle was almost within AP's reach are all objective indicators of a reasonable belief on the part of Officer 4 that shooting AP

was necessary to protect not only himself but Officer 1 and the other officers tending to Officer 1.

AP did not go completely down even after Officer 4's first shot and three further ARWEN rounds shot by Officer 8. When AP again directed the canister, he held it toward the officers and then sprayed it towards Officer 4. Thus, even after Officer 4's first shot, and three ARWEN rounds, AP was still intent on taking aggressive actions toward the police. It was reasonable for Officer 4 to believe that AP could get up and come toward the police as he had no way to know how injured he was. It was clear AP wished to do that. In those circumstances, Officer 4 shot two more times until the threat was stopped. It was reasonable for him to do so to protect himself, the injured Officer 1, and the other officers and members of the public.

Therefore, the objective evidence demonstrates that AP posed a threat of deadly force to members of the public, who may have been in the Store and possibly coming out, and to the lives of the officers present who later gave statements regarding their individual threat assessments. All of that evidence supports the reasonableness and necessity of the decisions by Officers 1, 2 and 4 to shoot.

Officers 1, 2 and 4 acted as required by their duties and in accordance with the law. The evidence collected does not provide grounds to consider any charges against any officer.

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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Date of Release



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Chief Civilian Director

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