



**IN THE MATTER OF THE SERIOUS INJURY OF A MALE
WHILE BEING APPREHENDED BY MEMBERS OF THE
VANCOUVER POLICE DEPARTMENT IN
THE CITY OF VANCOUVER, BRITISH COLUMBIA
ON MAY 24, 2016**

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

Chief Civilian Director:

Ronald J. MacDonald, Q.C.

IIO File Number:

2016-100

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Introduction

On May 24, 2016, two Vancouver Police Department (“VPD”) officers were across the street from a fast-food restaurant, on an unrelated call, when their attention was drawn to a burning car in the restaurant parking lot.

As they approached the car, a male, the Affected Person (“AP”), ran at the Subject Officer (“SO”) with a knife and was shot in the thigh by SO. When he attempted to rise from the ground, SO shot him again. As other officers arrived, AP was non-compliant with their commands, attempting to crawl away. He was eventually subdued and taken into custody with attempted use of a Conducted Energy Weapon (“CEW”), otherwise known as a Taser, and by physical force. AP was taken to hospital suffering from the gunshot injuries, and knife wounds he had previously inflicted on himself.

The narrative that follows is based on evidence collected and analyzed during the investigation, including the following:

- statements of 33 civilian witnesses, eight first responders and 13 witness police officers;
- civilian videos and photographs;
- closed-circuit television (“CCTV”) recordings from the restaurant;
- police Computer-Aided Dispatch (“CAD”) and PRIME records;
- 911 line and police radio audio recordings;
- police vehicle data terminal downloads;
- conducted energy weapon (Taser) records;
- officer training records;
- VPD policies;
- forensic scene and ballistics examinations;
- evidence from a concurrent VPD investigation; and
- medical and first responder reports.

Pursuant to section 17.4 of the Memorandum of Understanding between the IIO and BC Police Agencies, officers who are the subject of an investigation are not compelled to submit their notes, reports and data. In this case, SO declined to provide access to her notes or reports, or to participate in an interview.

IIO investigators were not able to interview AP until May 7, 2018, due to his health issues. Completion of witness officer interviews was delayed until November 14, 2018 by litigation before the B.C. Supreme Court at the time between the IIO and Vancouver Police Union

members, in connection with another IIO investigation that involved issues similar to those that arose in this case.

Narrative

Civilian Witnesses and Video

Civilian witnesses told IIO investigators that on May 24, 2016, shortly before 1:00 p.m., a car was seen burning in the parking lot of a fast-food restaurant in East Vancouver. A male (AP) accompanied by a dog was seen to walk out of the restaurant towards the burning car. AP had blood flowing down his chest, and had left blood stains in the restaurant washroom and lobby. In his hand he was carrying a blood-stained “hunting style” knife with a six-inch blade.

He went up to the burning car and started “banging” or “stabbing” at it. As police officers approached, loudly telling him to drop the knife and get down on the ground, he “ran,” “charged” or “lunged” towards a female police officer “in a very aggressive posture,” and she shot him. When AP tried to stand up, yelling and ignoring police commands, SO shot twice more and he fell again. Investigators were told by eyewitnesses either that the knife was still in AP’s hand as he rose, or he was reaching for it on the ground. Neither appears to be accurate. After AP fell the second time, SO was seen to kick the knife away from where it was lying on the ground about three metres behind AP.

Other officers subsequently “swarmed” AP as he tried to crawl away toward the burning car, struggling with, kicking and kneeing him. They then carried him away from the fire in handcuffs, and he was treated by paramedics at the edge of the parking lot.

The incident was videoed from various angles by several civilian witnesses. The videos are generally consistent with both civilian eyewitness and police witness accounts.

Based on the examination of the scene in conjunction with analysis of eyewitness videos and photographs, IIO forensic investigators estimated that AP was less than five metres from SO, running towards her, when he appeared from around parked vehicles including his own burning car. SO can be seen to back up several paces, but AP is running directly at her, a knife in his left hand and his mouth open in what appears to be a scream or yell. When he is approximately two metres from SO he is shot by her for the first time. The video is best described as depicting AP attempting to attack SO with a knife.

At the time of the second and third shots, AP can be seen to have risen almost to a fully standing position, though with his weight almost entirely on his left leg. There is nothing

visible in his hands, and the knife can be seen on the ground, three or four metres behind him. However, it appears he is again trying to move toward SO.

As AP crawls away after those shots, towards his burning vehicle, the van parked next to that vehicle can be seen smoking heavily and apparently about to burst into flame also. Police officers can be seen closing on AP and subduing him using attempted Taser deployments, blows and body weight, and then hurriedly carrying him clear.

AP and Police Witnesses

AP told investigators that in the days leading up to the incident he had consumed a quantity of hallucinogenic drugs, and on the day in question was in what he described as a state of “psychosis,” believing that people were trying to kidnap him.

He said he stopped outside a fast-food restaurant and went inside. In the washroom he stabbed himself twice with a knife, “to avoid the pain.” After he did that, he said, his mood changed from wanting to kill himself, to “a state of wanting to fight.” He said that going back outside, he saw his car in flames in the parking lot and heard a woman screaming.

Witness Officer 1 (“WO1”) told IIO investigators that she and her partner, SO, were across the street when a bystander drew their attention to a fire in the restaurant parking lot. As she crossed the street, she saw a dog standing close to a burning car, and a male on the other side of the car, making “stabbing” motions towards the car. The male came around the car in the direction of SO, and WO1 heard a gunshot and saw the male go to the ground. Despite being told by the officers to stay down and show his hands, she said, “I saw him stand up and then I heard two more gunshots, and he was back down on the ground.” WO1 said she was not carrying a Taser, and neither was SO.

AP saw the approaching police officers, he said, only as “people trying to take my life because they were carrying guns.” He knew he had a weapon in his hand, but “was just like, trying to get respect because I was holding a weapon so that they would let me go.” He also stated, though, that he had said, “‘Shoot me, shoot me,’ to put an end to the suffering”:

And then after that I received a first bullet, but I thought it wasn’t all that bad, because I didn’t feel that much pain. Then there was a second bullet in the same leg, and then again, I’m standing and it’s like I felt no pain. Next, there was a third bullet, but then my leg sort of shattered, or turned, or twisted completely, almost an entire revolution. Then I was on the ground, I fell to the ground, and I was crawling, I was trying to get away, but at the same time I knew I was dead. And then I was done.

WO2, a VPD officer in an administrative role that day, described the scene as he coincidentally drove into the parking lot during the encounter. He was in plain clothes and with no police equipment other than a cell phone. He told investigators that he saw a car on fire in the parking lot, and saw a male approach the car, "banging" on the window. He saw two police officers appear, calling to the male. Then he saw the male approaching the officers "very quickly", and saw them "backing up" and drawing their sidearms. Over the noise of the burning car, he heard "pop-pop," and saw the male falter and fall to the ground. At that point, he also saw a knife for the first time, lying on the ground.

WO2 took handcuffs and gloves from one of the uniformed officers, and talked to AP, who was "agitated" and non-compliant, trying to calm him and get him to stay down to be cuffed. Then, he said, he saw AP "reaching into his pocket" and trying to roll himself up onto his feet, and there were two more gunshots. AP fell back to the ground, but then turned and started to crawl away towards the burning car.

Other members were arriving, WO2 said, and moving to block AP's path. He saw a Taser deployed, but AP pulled the darts from his clothing and the device appeared to have no effect. Shortly after this, several officers were able to take hold of AP, his arms were physically pulled behind him, and he was handcuffed and taken into custody without further incident.

WO3 was the VPD Duty Officer at the time of the incident. He told investigators that he heard radio calls of "shots fired" and "man with a knife". When he arrived on scene, he saw two female police officers with guns at the low ready, talking to a man on the ground with blood on him. There was also a male officer in civilian clothes (WO2) putting on gloves. WO3 described AP as "rather agitated...quite elevated." One of AP's legs, he said, was twisted around in an unnatural position as if it was broken. WO3 stated that he saw two knives on the ground, one "just in front of" AP, the other "quite a distance" behind him (it should be noted that no other witness saw a second knife).

WO3 saw WO2 trying to move in with handcuffs, but AP "tried to lunge at" WO2, and WO2 backed off. Another officer produced a Taser, but WO3 said he did not see if it was deployed. At about this time, SO radioed, "Car's gonna blow." AP was restrained by several officers going "hands on" and was quickly carried away from the burning vehicle.

Despite his wounds, AP was still resisting determinedly, and officers had to struggle to bring him under control, though AP did not suffer any further significant injuries. He was transported to hospital, where he was treated for gunshot wounds to his right leg and groin, and stab wounds to his torso.

Exhibits gathered from the scene included the knife AP was carrying, which had a blade slightly under four inches in length. The sheath for the knife was found in a garbage bin in the restaurant washroom.

Legal Issues and Conclusion

The purpose of any IIO investigation is to determine whether there are reasonable grounds to believe that 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 SO may have committed an offence in shooting AP, or whether any other officer may have used excessive force in the subsequent arrest. If the officers were acting as required or authorized by law, on reasonable grounds, they were justified in using as much force as was necessary. Use of unauthorized or excessive force, on the other hand, could result in criminal liability.

With respect to SO, there is no doubt that she was acting within her lawful authority when she went to investigate the circumstances that had caused a vehicle to be on fire in a public parking lot. Likewise, seeing AP beside the car, blood-stained and carrying a knife, she acted reasonably in ordering him to drop the weapon and go down to the ground. When he instead charged at her, screaming, knife in hand, she was justified in responding to a clear threat of death or serious harm by using potentially lethal force in self-defence. It appears from the evidence that her response was measured and restrained: a single shot to the leg that could reasonably be expected to disable AP and remove the threat he clearly posed.

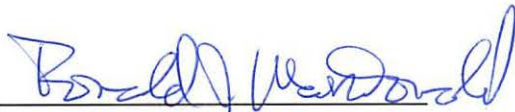
AP, though, remained non-compliant with directions from police. Moments before SO responded a second time with gunshots, he had gained his feet, albeit staggering, and there is evidence that he was motioning with his hand in a way that appeared to witnesses as if he was reaching into a pocket. Video and photographic evidence shows that at one point the side of AP's pants momentarily ballooned out in a way that could have made it appear that he had something fairly bulky in his front pants pocket, potentially a second weapon. Several civilian eyewitnesses believed he still had something in his hand, a misapprehension likely attributable to the fact that his hands were heavily bloodstained. SO and other attending officers were within a short distance, and had limited opportunity to retreat or otherwise manoeuvre due to the presence of parked cars behind and around them.

SO may not have realized that AP had dropped the knife, and thus it was reasonable for her to think he still had a knife or another weapon in his hand. In any event, as AP was again moving toward her, she had little time to react before he may have been able to

reach her. In those circumstances, where AP had clearly been intent on attacking her with a lethal weapon, it was reasonable for her to think he was still intent on causing her at least grievous bodily harm. Her choice was to either wait to be attacked to confirm whether he had a weapon, or act to protect herself as soon as possible. The second option was certainly a reasonable one. Thus, once again, the response of SO was justified and measured: of the second and third shots, the round that struck AP was again to his leg, though this time it appeared to be more damaging, likely the shot that impacted high in the groin area and broke the femur.

Faced at that point with an individual who still would not comply with commands, and who was crawling in the direction of a blaze that appeared to have the potential to spread to a second vehicle and/or lead to an explosion, the police officers close to AP had little choice but to use as much force as reasonably necessary to get him under control and remove him – and themselves – from the area of danger. The arrest was conducted with considerable force, but the overall circumstances, the fierce resistance still being presented by AP despite his wounds, and the evidence that the control techniques used did not cause any significant further injury, all lead to a conclusion that the force applied was necessary and not excessive.

Accordingly, as the Chief Civilian Director of the IIO, I find there are no reasonable grounds to believe that an officer committed an offence under any enactment, and therefore the matter will not be referred to Crown counsel for consideration of charges.

A handwritten signature in blue ink, appearing to read "Ronald J. MacDonald".

Ronald J. MacDonald, Q.C.
Chief Civilian Director

July 18, 2019

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