



**IN THE MATTER OF THE INJURY OF A MALE  
WHILE BEING APPREHENDED BY MEMBERS OF THE RCMP  
IN THE CITY OF SURREY, BRITISH COLUMBIA  
ON AUGUST 14, 2019**

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

Chief Civilian Director:

Ronald J. MacDonald, Q.C.

IIO File Number:

2019-146

Date of Release:

March 16, 2020

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## **Introduction**

In the early morning hours of August 14, 2019, RCMP officers were dispatched to a complaint of “a male chasing another male holding a machete” on 135A Street in Surrey. In the course of their interaction with him, two officers discharged their firearms and the Affected Person (‘AP’) suffered gunshot wounds. The Independent Investigations Office (‘IIO’) was notified and commenced an investigation.

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

- statements of AP, ten civilian witnesses and five witness police officers;
- police Computer-Aided Dispatch (‘CAD’) and Police Records Information Management Environment (‘PRIME’) records;
- scene and exhibit forensic examination, including firearms examinations and ballistic analysis;
- photographic evidence and video recordings from numerous Closed-Circuit Television (‘CCTV’) sources around the incident location;
- recordings of the emergency 911 line and police radio dispatch channel; and
- statements of five first responder and medical witnesses, and other fire department, BC Emergency Health Services (‘BC EHS’) and medical evidence.

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, neither Subject Officer 1 (‘SO1’) nor Subject Officer 2 (‘SO2’) have provided any evidence to the IIO.

## **Narrative**

In his interview with IIO investigators, AP gave his recollections of the very early morning of August 14, 2019. He said he had taken street drugs, had fallen unconscious and, after being revived by doses of Naloxone, had discovered that he had been “robbed.” Suspecting that the thief was an individual AP knew “hung out” on the “Surrey strip” along 135A Street, AP armed himself with a machete and went to that location. By now it was after 4:00 a.m.

CCTV recordings from buildings on 135A Street show a series of chases and altercations, verbal and physical, involving AP and a number of civilians. The video shows AP carrying and sometimes pointing a machete, but he does not appear to attack anyone directly with it. After he follows a female (the individual he accused of stealing from him) into an alley and momentarily confronts her, other individuals can be seen throwing rocks and other items at him, and he is pepper sprayed twice in the area of his face or upper body. He



can be seen retreating through a rear parking area, with other males following, throwing more rocks at him and striking him.

From the video evidence of his actions and movements it is clear that AP's vision by this point was significantly impaired: he later told IIO investigators that he could barely open his eyes. He said he was terrified and believed he was going to be beaten up. As he fled, running back several times to threaten the pursuing males before continuing his retreat, he made a loop around the buildings to the west of 135A Street, and came back to the street, now about half a block north of the point where the incident began.

Civilian Witness 1 ('CW1') had seen the initial disturbance, and had called the police. At 4:21 a.m. the first police vehicle arrived. SO1 parked on the street and walked into the alley, where the males chasing AP directed the officer around the back of the buildings. SO1 can be seen on CCTV video jogging after AP as AP rounds the buildings, comes back out onto 135A Street and turns south.

Meanwhile, four other officers had arrived on 135A Street, south of where AP was now located. The video evidence indicates that none of the attending police vehicles had their emergency lights or sirens activated (so AP received no notice that police were now in attendance). The video also shows several civilian bystanders, apparently including some who had been involved in the initial confrontation with AP, clustered along the front of a building on the west side of the street and north of the alley down which AP had retreated.

Witness Officers 1 and 2 ('WO1' and 'WO2') followed the path of AP and SO1 into the alley and toward the rear of the buildings. The other two newly arrived officers, WO3 and SO2, were still on the street when they saw AP coming towards them, followed by SO1 and one of the pursuing civilian males, CW2.

AP then reversed direction, running back northward on the west side of the street towards SO1, who took a number of steps back and drew and pointed his pistol. AP approached close to SO1 in a skipping motion, then swerved towards and almost collided with CW2, who later told investigators that AP was "swinging" the machete he was carrying and that all the officers were yelling at AP to drop it (the video shows that AP's left arm swung toward CW2, but he was carrying the machete in his right hand and did not swing it at CW2). CW2 fled to the east side of the street, then ran away some distance north. AP, apparently in distress and still almost blind, swerved again, this time back to the south. He told investigators that he had not heard any commands and was not even aware that police were present.

At this point the positions of the three officers on 135A Street made an approximately triangular shape, with AP between them. SO1 was to the north and west of AP, SO2 to the south on the east side of the street, and WO3 was in the middle of the street, a short

distance south and west of SO2. WO3 told investigators that she initially drew her firearm but re-holstered it when she realized, aiming at AP, that SO1 was roughly in line behind him. Instead, she drew her conducted energy weapon ('Taser'). She said that AP was now moving south towards SO2, who looked "terrified."

From behind the buildings to the west of 135A Street, WO2 said, he heard three gun shots. A civilian witness on the street ('CW3') said he heard five or six shots after a police command of "Get down!" The evidence demonstrates that the initial volley consisted of a total of five shots.

The forensic evidence shows that SO1 fired two shots at AP initially, and two expended cartridge cases were found close to SO1's initial shooting location. One round missed AP and the other passed through his right buttock, from right to left. Investigators were unable to recover either bullet for analysis, but the placement of individuals at the time (shown in video taken from several locations) meant that SO1 was firing approximately from northwest to southeast. AP was moving away from SO1 and turning to SO1's right, while CW2 was running away to SO1's left. SO1's line of fire was therefore clear of CW2, and was well away from the other officers or the civilian bystanders.

Meanwhile, WO3 saw SO2 raise and fire his pistol. Forensic evidence shows that SO2 fired three shots. All three were fired in the general direction of AP, SO1 and CW2, and investigators found one spent bullet in the pavement surface at AP's approximate location when the shots were fired, which provided a fairly reliable indication of SO2's exact line of fire. Video analysis shows that when the shots were fired, SO1 was clear of that line of fire, a little beyond the west sidewalk, and CW2 was running north on the east side of the street, also clear of SO2's line of fire. Three cartridge cases from SO2's firearm were located close to the location where SO2 was standing when he fired.

AP was now running southward towards SO2 and WO3, with SO1 running after him. AP told investigators he was running blind, eyes closed, in a "last ditch effort ... running straight home." SO2 ran across the street from his location on the east sidewalk towards WO3 who was retreating to the west side of the street to avoid SO1's line of fire, and AP ran toward and past them, yelling and screaming. He had been shot in the right buttock by SO1, but told investigators that he thought at the time that the shot had been fired by a civilian ("someone on the street"), not by a police officer.

As AP ran in the direction of WO3 and SO2, SO1 followed and fired twice more at AP. On CCTV video, one round can be seen impacting the side wall of a building on the east side of the street. The other bullet struck AP in the back of his right thigh. It is not possible to determine whether the round that visibly struck the wall was the first or the second of SO1's second volley, but at the time it was fired, the video shows that AP was running

almost directly towards SO2, as SO2 crossed the street in front of him. SO2, though, was not in SO1's line of fire at that moment, as SO1 was following AP at an angle.

Forensic evidence indicates that in total seven shots were fired: three from SO2 and four from SO1 in two volleys.

A short distance down the street, AP could no longer run and was taken to the ground. WO3 handcuffed him while other officers provided over-watch. WO4 arrived and provided first aid, EHS were called and AP was transported to hospital.

### **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 an incident resulting in serious harm or death.

More specifically, the issue to be considered in this case is whether either Subject Officer may have committed an offence by using lethal force against AP in these circumstances. 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. Of particular relevance to this case, a police officer is justified in using potentially lethal force while trying lawfully to arrest a person if the person takes flight and creates a risk of death or grievous bodily harm to anyone.

Use of unauthorized or excessive force, on the other hand, could result in criminal liability for offences such as aggravated assault or attempted murder. Consideration must also be given to whether either of the Subject Officers may have committed an offence by the careless use or reckless discharge of a firearm.

All the involved officers in this case were responding to a complaint of a male with a machete chasing another male on the street. They were clearly authorized to investigate and to apprehend that suspect if he could be located. When AP was pointed out to police and SO1 and SO2 observed him running with a very large knife or machete in one hand, they were acting in execution of their lawful duty in directing him to stop, to drop the weapon and to submit to detention by them.

By AP's account, he was not aware that he was receiving those directions from police officers. While this may seem somewhat unlikely since the police indicated they frequently called out their presence, in the circumstances it is possible. Although AP may have arrived on "the strip" that morning as an armed aggressor, he had quite quickly become the victim of a series of attacks and assaults. He had been effectively blinded by pepper spray and had been struck in the head and body a number of times by rocks and other



objects. By the time he encountered police officers he was in full flight. It was dark, and it does not appear that any of the several police vehicles parked on the street had their emergency lights turned on, which might otherwise have alerted AP to police presence. There were a number of civilians in the vicinity, some of whom had been acting in a clearly hostile manner towards AP, and on the evidence there had been—and likely still was—a great deal of shouting and yelling.

From the perspective of the officers, though, they were confronted with what appeared to be an angry and aggressive male, out of control, non-compliant and armed with a potentially lethal weapon. AP first ran at SO1, coming very close to him, and then at CW2, and finally back towards SO2. It is not possible to determine precisely when in this sequence SO1 fired his first two shots, but judging from the video evidence AP was at all relevant times ignoring police commands and charging at one potential victim or another, a large machete in his hand. In those circumstances, it was quite reasonable to conclude that AP posed a risk of death or grievous bodily harm to another person. Therefore both SO1 and SO2 were justified in firing their weapons at AP, and the use of this potentially lethal level of force was proportionate and reasonable.

As set out above, SO1's second volley of shots was fired at a time when AP was running in SO2's direction, the machete still clasped in his hand. Those shots were justifiable in the same manner as the initial volley from both officers.

Finally, there is the issue of whether other persons may have been placed in danger by the otherwise justifiable discharge of the officers' weapons. The narrative above includes considerable detail about the placement of individuals at the critical times so as to explain why those concerns do not give grounds for a criminal charge.

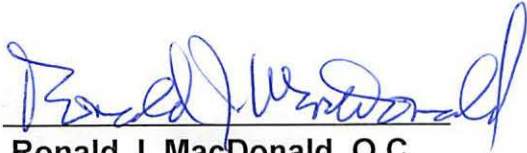
As explained, SO1's first two shots were well clear of all persons other than AP, and the backdrop for those shots was the front or side wall of a commercial building on the east side of the street, closed for the night.

SO2's three shots, fired at close to the same moment, were fired at a time when SO1 was to the left of the line of fire and CW2 was to the right. Again, the backdrop consisted of a line of closed commercial buildings, farther north and to the west of the street. There was no significant risk of harm to any officer or to bystanders.

Finally, SO1's second volley of two shots, one of which struck AP in the leg while the other impacted the side wall of a church to the east of the street, were both fired in a direction away from the area on the west side of the street where WO3 and the bystanders were located, and after SO2 had crossed SO1's line of fire from left to right and was clear of significant risk.

In all three cases, therefore, there are no grounds to justify a finding that an officer's use of a firearm was careless.

Accordingly, as the Chief Civilian Director of the IIO, I do not consider that there are reasonable grounds to believe that any officer may have 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, reading "Ronald J. MacDonald", is written over a horizontal line.

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

March 16, 2020

**Date of Release**