



**IN THE MATTER OF THE INJURY OF A MALE
WHILE BEING APPREHENDED BY MEMBERS OF THE RCMP
IN THE MUNICIPALITY OF VIEW ROYAL, BRITISH COLUMBIA
ON APRIL 22, 2019**

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

Chief Civilian Director:

Ronald J. MacDonald, Q.C.

IIO File Number:

2019-085

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Introduction

In the early morning hours of April 22, 2019, West Shore RCMP received two calls about the Affected Person ('AP'). The first was from AP's mother, who told police that AP was suicidal and had said he was planning to jump from a bridge. The second, shortly after, was from AP himself, who said he was going to inject himself with a syringe filled with gasoline. Officers were able to locate AP, and in the course of apprehending him deployed a Conducted Energy Weapon ('CEW') and a Police Service Dog ('PSD'), causing injuries to AP. Because the injuries had occurred in connection with the actions of police, 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 five witness police officers;
- police Computer-Aided Dispatch ('CAD') and Police Records Information Management Environment ('PRIME') records;
- police vehicle Watchguard video and audio recordings;
- Conducted Energy Weapon ('CEW') data download;
- police radio channel audio recordings; 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, the Subject Officer ('SO') did not provide any evidence to the IIO.

Narrative

Shortly after 1:30 a.m. on April 22, 2019, police officers responded to 911 calls indicating that AP was suicidal and was in possession of a syringe filled with gasoline. Cell phone 'pings' directed the officers to an area of grass and shrubs off the Island Highway in View Royal where they located AP, who was holding a backpack with one hand inside it and told the officers to "back up." The first officers to approach AP were SO with his PSD and Witness Officer 1 ('WO1'), followed shortly after by WO2.

AP has not provided an account of what followed, but much of his interaction with the officers is audible on a recording made by a Watchguard dash camera system on WO2's police vehicle, which remotely registered audio from a handset carried by the officer. The audio recording corroborates statements provided by the witness officers to the IIO.

For several minutes after officers made contact with AP, they engaged in conversation with him. WO2 told investigators that AP's response to repeated attempts by police to de-escalate the situation and have AP accompany them to hospital was to say that he would not go with them, and that they would have to "shoot or tase" him. AP continued to hold his backpack in one hand with the other hand inserted in it, and was described by witness officers as "twitching" as if he was about to pull something from the bag. WO2 said he was concerned for officer safety and drew his firearm, as he did not know what AP had in the bag. An officer's voice can be heard on the Watchguard audio, saying "Look man, you know it doesn't have to be like this, right?" The AP responds "This is the way I want it, man. I've tried fucking doing it five times."

WO3, WO4 and WO5 arrived, and WO3 drew his CEW. WO4 took over the conversation with AP, and later told investigators that AP had walked towards the nearby Upper Gorge waterway, threatening to jump in. Meanwhile, WO3 was able to walk around behind AP. He said that it had become clear to him that AP was determined to have police use their weapons on him. On the audio, an officer can be heard saying "He's got his hand in his bag right now," and another officer says "Take your hand out of the bag." AP evidently heard WO3 moving behind him, saying "Who's sneaking up on me?" WO3 told investigators that AP challenged the officers, asking "which twitchy member was going to shoot him."

On the Watchguard audio, AP can be heard saying "Use your fucking Taser!", to which an officer replies "We're not doing it." The AP says "You wanna bet? How much you wanna bet that one of you guys gets jumpy if I jump...move my hand real quick? Bet you one of yous [sic] is gonna fucking launch something."

AP finally said "Alright, fine ... I'm gonna make one of you do something." As he said that, he stepped towards WO3 with what WO3 characterized as "purposeful strides", motioning as if he was going to withdraw his hand quickly from the backpack, and WO3 discharged his CEW at AP. WO3 said that AP "yelled out, 'Yes, Jesus Christ! There it is!' or something to that effect." WO3 then became aware that SO had also released the PSD.

WO2 described AP "charging" at WO3, and said he saw WO3 discharge the CEW simultaneously with the release of the PSD by SO. AP fell to the ground, WO2 said, and officers moved in to subdue and handcuff him. There is no evidence that any other use of force options were deployed during the arrest.

The PSD bit AP in the leg, and medical records indicate that the wound required 82 staples to close.

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 unauthorized or excessive force was used by any officer in the course of AP's apprehension.

The officers were acting lawfully in apprehending AP for his own protection under the *Mental Health Act*, in response to his threats to commit suicide. They were justified in using as much force as was reasonably necessary in the course of doing so. On the evidence, including in particular the audio recording of the incident, it is clear that all involved officers were faced with a situation that was bound to give rise to a very high risk assessment. Despite that, they exercised appropriate restraint, trying over an extended period to take AP into custody without harming him.

Witness officer evidence and the audio extracts set out above demonstrate that AP was determined to force the officers to deploy weapons against him. He deliberately presented a credible threat by his use of the backpack with his hand inserted, pretending that at any moment he would draw and use some sort of weapon. In that regard, the officers had been informed that AP claimed to have a syringe filled with gasoline in the bag. This made it reasonable for the officers to believe that AP posed the potential for serious bodily harm or worse.

Through his own quite deliberate actions, therefore, AP placed himself at risk of the use by police of lethal force. It was fortunate that less lethal options were available to the attending officers, in the form of a Taser and a police dog. The use of those options in the circumstances, and in the limited manner in which they were deployed, was both necessary and proportionate.

Accordingly, as the Chief Civilian Director of the IIO, I do not consider that there are reasonable grounds to believe 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.



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

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