



**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 19, 2019**

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

Chief Civilian Director:

Ronald J. MacDonald, Q.C.

IIO File Number:

2019-156

Date of Release:

April 17, 2020

THIS PAGE INTENTIONALLY LEFT BLANK

Introduction

On the afternoon of August 19, 2019, RCMP members were called to the home of the Affected Person ('AP') in this case and were told he was smashing items in his bedroom and had "lunged" at a family member. After AP attacked an officer with a sword in his hand, Emergency Response Team ('ERT') members took over the scene. AP climbed out through his bedroom window onto the roof with swords in his hands, and refused to comply with police orders to put the weapons down. When AP started to re-enter the bedroom, where ERT members were securing his other weapons, he was injured by the use of non-lethal force options and was taken to hospital with leg injuries. Because the injuries had occurred in connection with police actions, 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, two other civilian witnesses and seven witness police officers;
- police Computer-Aided Dispatch ('CAD') and Police Records Information Management Environment ('PRIME') records;
- recordings of police radio dispatch transmissions;
- Conducted Energy Weapon ('CEW') data download; 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') has not provided any evidence to the IIO.

Narrative

At 4:36 p.m. on August 19, 2019, Surrey RCMP received a call complaining that AP was acting in a threatening manner, had gone to his bedroom with a number of swords and had slashed the walls with one of them.

Witness Officer 1 ('WO1') went to the door of AP's room and pushed the door open slightly. He told IIO investigators that he saw AP sitting on the bed with a long sword in his hand and a number of others laid out on the bed. WO1 said that AP initially ignored instructions from the officer to put the sword down, but then "with a blank stare, looks to his right at me and grabs one of the knives and throws it at the door, it slams through the door." AP acknowledged, in his interview with the IIO, that he repeatedly "lunged" and pointed swords at officers whenever they tried to open the door or enter the room. WO1 tried to engage AP in conversation by holding the door slightly ajar, intending to

apprehend him under the *Mental Health Act* ('MHA') but AP refused to engage with police or put his weapons down. Finally, WO1 said, AP jumped up and ran at the door, driving a blade through it. AP told investigators that he did this to make the officer "back away from the door."

WO2 told the IIO that when he arrived on scene and heard what AP had been doing, he decided to call for assistance from Emergency Response Team ('ERT') members and a crisis negotiator. ERT members told IIO investigators that their risk assessment was high, given that AP was arrestable for assault with a weapon and apprehendable under the *MHA*, was in possession of multiple edged weapons and had thrown one at police, and was now barricaded in a room. Two ERT members took up containment positions outside the house, with the other team members inside. Of the two members outside, WO3 was armed with a carbine, while SO carried a "less lethal 40 mm impact weapon" firing low velocity sponge rounds.

The next development was that AP climbed out through his bedroom window onto the roof. He sat down and laid two swords on the roof beside him. At this point he was approximately twelve to fifteen metres from the two ERT members facing him. WO3 tried to reason with AP, but AP refused to give up his swords. He told investigators "I promised that if I went with them that any swords that I had in my possession I would never harm them, but I could not and I would not trust them to not harm me with their guns."

When the ERT members in the house were made aware that AP was out on the roof, they decided to move quietly to the bedroom to take control of the room and the weapons within it. Despite their caution, though, AP heard something from inside the room and stood up. WO3 said he realized that the situation was now "putting our guys on the inside in a position of compromise. I started yelling at [AP] saying 'hey, you can't, don't go back into the house, just keep looking at us,' and he just ignored me ... and he picked up his two swords and he had them both in his hands and he started to move towards the open window." WO3 warned the members in the bedroom, and said he thought "this was probably gonna end not well for him ... he could get shot by the team on the inside."

Asked by investigators about the available force options, WO3 said "'Cause he's on a roof, if we tasered him he's going to lose the ability to kind of stand and we didn't want him to fall off the roof ... we knew that a 40 mm would have been the best option because it would hopefully change his behaviour but it still would have afforded him the ability to kind of move or control himself from falling." As AP approached the window, WO3 was yelling at him to stop and to drop the swords. "A 40 mm" in this context refers to a less than lethal weapon that shoots projectiles at a person that are intended to cause pain without serious injury.

AP stepped through the window with his right foot, and from inside the bedroom WO4 saw that “he had two weapons in his hands, and the first one I saw was like some kind of battle axe or something like that ... I see this battle axe come through the window a few inches, and then, then the samurai sword, and it’s like he’s holding onto them as he’s crawling ... and then he poked his head through and saw us ... [WO5] was shouting at him ‘drop your weapons, it’s the police!’ and he just kinda kept crawling through the window with these weapons in his hand.”

As AP straddled the windowsill, SO fired his 40 mm launcher, and the projectile struck AP on the lower left leg, with little apparent reaction. From inside the room, WO5 deployed a CEW at AP, the first discharge being ineffective because the barbs caught in AP’s clothing. Also from inside the room, WO6 fired a second 40 mm non-lethal round, and WO5 deployed the CEW again, this time causing AP to drop the swords and slump over.

Regarding the use of the 40 mm weapons, WO7 told investigators “it actually bought time for the second CEW deployment, because both of the 40 mm deployments caused a pause and to me what I believed to be a reassessment of what was happening in [AP’s] mind ... Had it not been for the CEW, I think, I think it likely would have ended much differently, and the 40 mm actually, for the, because that gave time for the CEWs to be deployed ... [AP] definitely did continue to move into the room after each use of force option.”

AP was taken into custody and transported to hospital where he was admitted under the *MHA*, and was found to have a fractured bone in his left leg, apparently caused by the low-impact round fired by SO.

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 any officer may have used unjustified or excessive force against AP in the course of his apprehension. 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.

The evidence makes it clear that AP put himself in a situation where officers had little choice regarding their use of force. Throughout the incident, AP was armed with particularly dangerous weapons and presented as non-compliant and ready to use the weapons against police. As WO3 noted, once AP had left his barricaded location and was out on the roof it would not have been prudent to use a Taser to bring him under control.

Then, when he returned to the window and started to climb in, he provoked an immediate confrontation with armed ERT members inside the room. It was necessary to disable and disarm him before it became necessary to use lethal force against him.

It is informative that three officers all reached the decision to use non-lethal force options at almost the same moment. In that regard too, WO7's stated opinion that the 40 mm rounds, in effect, complemented WO5's use of the CEW, appears to be correct. The combination of deployments permitted AP to be brought under control and disarmed without suffering anything more than a broken bone.

All three officers, acting in execution of their duties, were justified in using the force that was necessary to apprehend AP, and in the circumstances that force was not excessive. They were facing a determined male who was armed with very dangerous weapons. In these circumstances, the officers' exercise of restraint and good judgement was commendable. They properly considered and deployed their available use of force options. While AP did suffer a broken bone, the use of lethal force was avoided.

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

April 17, 2020

Date of Release