



**IN THE MATTER OF THE INJURY OF A MALE
WHILE BEING APPREHENDED BY MEMBERS OF THE
VICTORIA POLICE DEPARTMENT IN
THE CITY OF VICTORIA, BRITISH COLUMBIA
ON JULY 24, 2020**

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

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

IIO File Number: 2020-176

Date of Release: December 7, 2020

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INTRODUCTION

On the morning of July 24, 2020, Victoria police officers went to a facility close to downtown Victoria after receiving a report that a resident may have shot a pellet gun out through the window of his unit. When the Affected Person ('AP') refused to communicate with General Duty officers, Emergency Response Team ('ERT') members were deployed. AP then exited his suite and attempted to walk away. The Subject Officer ('SO') fired two rounds from an Anti-Riot Weapon Enfield ('ARWEN') less-lethal weapon, causing AP to suffer a broken finger. 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 from AP, another civilian witness and four witness police officers;
- police Computer-Aided Dispatch ('CAD') and Police Records Information Management Environment ('PRIME') records;
- Closed-Circuit Television ('CCTV') recordings and video coverage from news media;
- Greater Victoria ERT policy; and
- medical evidence.

The IIO does not compel officers who are the subject of an investigation to submit their notes, reports and data. In this case, SO provided access to his notes and reports about the incident.

NARRATIVE

At about 8:10 a.m. on July 24, 2020, Civilian Witness 1 ('CW1') called Victoria Police to pass on a complaint that AP may have fired a pellet gun through the window of his suite. AP was a resident of a converted motel that was being used to house homeless persons from downtown Victoria. There had been previous incidents involving AP, and his mental health was reported to be deteriorating.

Witness Officer 1 ('WO1'), who was familiar with AP, called into AP's suite by telephone and told him he would be arrested for an offence involving the pellet gun. WO1 told IIO investigators that in response AP became "irate" and hung up. She said that she had experienced an interaction with AP in the prior week over another complaint that he had broken a window, and felt that he appeared to have deteriorated mentally since then. At his own IIO interview, AP told investigators that he had done nothing wrong and felt the police had no authority to arrest him, which caused him to refuse to comply with their instructions throughout the incident.

WO2, who also responded to the call, told the IIO that as an experienced police officer he treated all firearms calls as involving a real firearm until confirmed otherwise. WO2 deployed outside AP's suite together with WO3 and WO4. He said that upon arrival he could see there was a hole in AP's window, with broken glass on the ground outside. He said that the hole had the appearance of having been caused by a round from a firearm.

WO2 said that after hanging up on WO1, AP came out of the suite and was ordered to put his hands up and to get down on the ground. WO2 said that AP responded "Fuck you, just go ahead and shoot me", and went back inside the unit, slamming the door behind him.

At about 9:10 a.m., as General Duty officers had been unable to resolve the situation, the decision was made to call for assistance from the ERT. Team leader WO3 told IIO investigators that the circumstances (potential presence of a firearm and a refusal to surrender to police) caused him to evaluate the call as "high risk". He said his objective was to negotiate AP's apprehension without the need for the use of force. The decision was made that AP would be permitted to come out of his room so that negotiators could de-escalate the situation. If AP were to move beyond a line six feet from his doorway, that would be considered an attempt by him to flee, and officers would use voice commands and, if necessary, a conducted-energy weapon ('CEW') or an impact weapon such as an ARWEN to stop him. If those techniques were not successful, then it was anticipated that a Police Service Dog ('PSD') would be used, and that a foot pursuit might be required, finally, to apprehend AP. WO3 made it clear in his statement to IIO investigators that there was no provision in the plan for the use of lethal force against AP. He said that any officer using lethal force would have to justify that decision and action under the provisions of the *Criminal Code*.

In accordance with the plan, SO was stationed in the parking lot outside AP's unit, armed with an ARWEN launcher. WO4, a dog handler, was also positioned nearby with his PSD. WO4 said he understood that in the event AP attempted to flee, SO would fire a maximum of two projectiles, and only if they appeared to be ineffective WO4 would deploy the PSD. In his IIO interview, WO4 described his observations of AP's behaviour:

I mean he... was just so far in the spectrum. He went from coming out and wanting to surrender to quickly changing his mind. So, we go from a subject who wants to surrender to a subject like relatively within thirty seconds or a minute who wants the police to kill him... It's behaviour like that it escalated so high so quickly and it would de-escalate to the point where we thought this guy's going to surrender... So very difficult on our part and being outside... Well what's he gonna do when he comes out? Is there fight or flight? You know is he gonna come out and is going to run right away when he's outside. The behaviour is just, so it was bizarre.

AP's behaviour caused WO3 to re-classify the call from an arrest for mischief and a firearms offence to an apprehension under the *Mental Health Act*. That re-classification permitted officers to modify their demands of AP to take account of his perceived reduced capacity to understand their commands. WO3 said that he watched as a police negotiator, WO5, attempted to achieve a dialogue with AP, both over the telephone and face to face, without any meaningful success.

Speaking subsequently with IIO investigators, AP said that he saw police in the parking lot outside his room, and could not understand either why they were there or what they wanted from him. He acknowledged that he exited his room and did not comply with their directions to stop and get down on the ground, but instead started to walk away. He said that he did not lie down on the ground because of the broken glass from his window, but agreed that he did not communicate that concern to the police officers.

AP said he moved about ten feet from his doorway and was then shot twice in the thigh with "bean bag rounds". The second round hit him in the hand, he said, because he moved his hand to the thigh after the first shot.

SO described the conclusion of the incident in this way:

At one point [AP] opened his suite door suddenly and exited. [AP] immediately walked to his left and outside the six foot action line. [AP] was directed to stop and get down on the ground. [SO] observed [AP] continue to walk left and not comply with these directions and subsequently discharged one round from the ARWEN to [AP's] left thigh. [AP] stopped and bent over yelling at police and then continued to move left and away from his suite and police.

[SO] then discharged a second ARWEN round to [AP's] left thigh. The second strike caused a desired change in behaviour where [AP] stopped moving and knelt down on the ground. GVERT members approached [AP] and took him into custody. [AP] complained of pain to his hand at which time [SO] could see a laceration to one knuckle.

WO3 described seeing AP "jumping around" after SO's first shot, and then fall to his knees after the second. WO4 said that when he observed AP stop, he concluded he was no longer a flight risk, and decided that it was not necessary to release the PSD.

Officers moved in and immediately provided medical attention to AP's finger and thigh injuries. AP was then transported to hospital by a waiting ambulance. He was diagnosed as suffering a fractured finger, which was treated surgically. Hospital records indicate that AP was "recovering from [a] crystal meth induced state", and that he had acknowledged reacting inappropriately to police, and not following their instructions.

Video footage of the incident obtained by the IIO provides general corroboration for the accounts of both AP and the involved officers, though it does not show AP's actions at the time SO's rounds were fired. SO can be seen firing the first ARWEN round, and then pausing before firing the second. Shortly after this, AP can be seen being handled by police officers and being lifted into a seated position. He is handcuffed, and is placed onto a nearby chair without any overt use of force by officers.

In a subsequent search of AP's suite, no firearm or pellet gun was located.

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 SO may have committed an offence when he discharged ARWEN rounds at AP that caused him to be injured. If SO was acting as required or authorized by law, on reasonable grounds, he was justified in using as much force as was necessary. Use of unauthorized or excessive force, on the other hand, could result in criminal liability.

All the involved officers were acting in lawful execution of their duty when they responded to the scene in response to a complaint that AP had fired a weapon out through his window glass. In those circumstances it was prudent for them to treat the incident as involving a potential risk of firearm involvement, and to deploy intermediate force options (such as the ARWEN and the PSD) as components of the plan they put in place for AP's apprehension.

That plan was reasonable in the circumstances, and it was appropriately modified once it became apparent that AP was suffering from a mental health crisis and was likely to be unable to understand or respond appropriately to police directions. All that was required of AP was to come out of his room with no weapon in his hands, and to lie on the ground to be taken into custody.

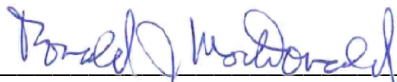
Given the understanding that AP appeared not to be acting rationally, and that he might be in possession of a firearm, he could not be permitted to move more than a short distance from the area the officers had contained, outside his doorway, because of the potential risk of harm he might then pose to others. Because of that same understanding, it would not have been appropriate for members to approach him and attempt to simply lay hands on him. It was both necessary and reasonable, in those circumstances, for his compliance to be obtained initially by the use of the ARWEN rounds to reduce the risk of

bodily harm that would otherwise have been faced by the arresting officers. AP himself acknowledged his lack of compliance with police directions.

ARWEN rounds fired at a major muscle group such as is found in the thigh will usually not cause injury beyond initial pain and a degree of bruising, and it is clear on the evidence that SO only fired a second round once it became clear to him that the first had not been effective. It is also clear that the shot was not aimed at AP's finger, which was only injured because AP reached for his thigh just before that shot was fired.

SO's use of force was necessary, reasonable and proportionate to the perceived risk of harm, the PSD was quite properly not deployed, and no other officer used any unnecessary or excessive force against AP during the course of the incident.

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

December 7, 2020

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