



**IN THE MATTER OF THE DEATH OF A MALE
WHILE BEING APPREHENDED BY MEMBERS OF THE
DELTA POLICE DEPARTMENT IN
THE CITY OF DELTA, BRITISH COLUMBIA
ON MAY 29, 2020**

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

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

IIO File Number: 2020-108

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Introduction

On the night of May 29, 2020 Delta Police Officers ('Delta PD') officers were called to investigate the theft of a stolen taxi from the Tsawwassen Ferry Terminal. A 911 caller had witnessed the taxi being stolen and driven away from the ferry terminal by the Affected Person ('AP'). Shortly after the call came in, the subject officer ('SO') encountered AP driving the taxi near a parking area approximately four kilometers away.

An interaction between many officers and AP resulted over a space of approximately 15 minutes involving the deployment of multiple Conducted Energy Weapons (CEWs) and 40 mm 'less lethal' launchers. AP cut his own throat during the interaction and was transported to hospital where he was later pronounced deceased.

Because the death occurred in connection with the actions of police officers, 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 15 civilian witnesses and 12 witness police officers;
- statements from eight first responders;
- autopsy and toxicology reports;
- CCTV and Air 1 videos;
- police equipment from all involved officers;
- evidence from the scene;
- Police Computer-Aided Dispatch ('CAD') and Police Records Information Management Environment ('PRIME') records;
- Audio recordings of 911 calls and police radio transmissions;
- Delta PD policies and training records;
- CEW examination and reports;
- photographs of the scene; and
- medical records, autopsy and toxicology reports.

The IIO does not compel officers who are the subject of an investigation to submit their notes, reports and data. In this case, SO did not provide any evidence to the IIO.

Narrative

The Stolen Taxi

On May 29, 2020 at 11:06 p.m., the Affected Person ('AP') was dropped off by a car at the Tsawwassen Ferry Terminal. After walking around the terminal area for

approximately 25 minutes, AP stole a taxi that was parked nearby. A caller reported the stolen taxi to 911.

AP drove the taxi at a high rate of speed up the ferry causeway and into a parking area approximately four kilometres away. Coincidentally, a Delta Police Department ('Delta PD') member, the Subject Officer ('SO'), had his vehicle parked in the parking area to deal with an unrelated matter. SO saw the stolen taxi and broadcasted over the radio.

First Encounter with Police

As SO was in the parking area, he observed the taxi travelling at a high rate of speed with at least one door open. In front of two civilian witnesses ('CW1' and 'CW2'), the taxi narrowly missed hitting SO's vehicle and then narrowly missed SO, who was on foot and had to jump out of the way of the stolen taxi.

AP got out of the taxi and SO ran after AP on foot, calling on his radio for back-up. Less than a minute later, SO radioed *"have one at gunpoint"* and he deployed his Conducted Energy Weapon ('CEW'). During this interaction, SO said over the radio *"now he's got a knife"*. A short time later he radioed *"I need a 40 now, he's not dropping the knife"* [a "40" is a reference to a 40 mm launcher, which is a less lethal weapon that shoots projectile rounds]. SO deployed his CEW a total of three times, with only one successful electrical current connection prior to the arrival of any other police officers.

A civilian witness ('CW3') was nearby, but was not able to see the interaction between AP and SO. He heard commands like *"Freeze!" "Stop!"* and *"Get back!"* coming from the area where the SO and AP were engaged. A fourth civilian witness ('CW4') also heard sounds from the area, including something along the lines of *"I'm going to fucking shoot you"*.

Additional Officers Arrival

A second officer ('WO1') arrived approximately three minutes after AP almost hit SO with the taxi. WO1 ran towards SO and AP, who were in an area with shrubs and tall grass. CW1 described SO's voice as being distressed as he called out his location to WO1. WO1 said that when he arrived, AP had a knife in his right hand and appeared to be in a stand-off position with SO. WO1 tried to take over commands with AP, saying *"stop"* and *"put your hands in the air"*. AP's response was *"fuck you", "fuck off", "come and take it"* and *"you'll have to take it"*. At 11:39 p.m., WO1 radioed *"we have the male by gunpoint, he's refusing to put down the knife"* and *"two tasers, he still hasn't gone down."*

A third officer ('WO3') arrived and took over the commands to AP. WO3 stated that AP was stared at him, gritted his teeth, and repeatedly said *"let's do this"*. AP had a paring

knife in his right fist with the blade pointing out the top of his fist as if he was ready to stab someone. WO3 aimed his CEW at AP's arm and leg, but the CEW probe hit him in the cheek instead. AP responded to the taser by pulling out a cigarette from his bag. A short time later, AP moved towards the officers with his knife and was warned that he would get shot. WO3 then radioed: "*we've given...commands and now saying he wants to get shot*".

A CEW was deployed again by WO3, which AP blocked with his backpack. He then took a pipe out of his bag and said "*fuck this*" and walked up the fenceline. Officers followed him maintaining a distance of 15 to 20 feet.

Witness Officer 4 ('WO4') arrived, also observed the AP with a knife, and loaded a round into his 40 mm 'less lethal' launcher, yelling at AP to "*drop the knife*". WO4 assessed that AP was an imminent threat of bodily harm both toward himself and officers if he rushed the police with the knife. WO4 said "*impact impact impact*" before shooting the 40 mm round at AP's left thigh. AP responded with an "ow" but did not move. WO4 shot the 40 mm a second and third time, and again the AP was unresponsive and continued to hold the knife. WO4 transitioned and deployed his CEW, which did not make a successful connection and did not have any noticeable effect on AP either.

Throughout the encounter, WO4 heard SO giving commands and trying to verbally deescalate the situation, saying things like "*it doesn't have to end like this*", and that there was an ambulance waiting for him and they would get AP help. WO4 heard AP yelling "*just do it*" and "*fucking do it*" multiple times.

Witness Officer 5 ('WO5') arrived to the scene. Upon seeing AP holding a knife to his own throat, WO5 deployed his 40 mm 'less lethal' launcher at AP. As AP moved towards the officers with a pipe, WO5 deployed a second 40 mm 'less lethal' round at AP. The second round hit his buttocks and AP went down briefly, but then got back up again with both the knife and the pipe. AP then put the knife to his throat again, resulting in a third 40 mm 'less lethal' round being deployed by WO5. WO5 observed AP making a digging or sawing motion towards his neck with the knife during this encounter. In addition to WO5 seeing AP making a sawing or digging motion at his neck, SO reported over the radio "*male is bleeding from the neck, it may be a self-inflicted knife-wound*" and then four minutes later "*he's cutting his own throat*". All officers reported seeing a large amount of blood covering his neck and chest.

A total of nine witness officers arrived over a period of 15 minutes. Multiple officers reported on radio that AP was brandishing a knife, which was later seized from the scene of the incident. There were multiple CEWs used by officers, but the forensic evidence indicates the only successful electrical current connection was when the SO used the CEW prior to any other officers arriving. There were multiple reports of officers hearing and saying "*drop the knife*" and "*drop the pipe*". Multiple officers also heard

officers trying to deescalate the situation, saying things like “*what is your name*” to AP and “*we are here to help*”.

AP is Taken into Custody

WO6 arrived part way through the interactions with his police service dog. When he initially arrived, AP still had a knife in one hand and a pipe in the other. Once he observed that the knife was no longer in AP’s hand but AP was still holding a pipe, WO6 sent his dog in to assist in arresting AP. The police service dog bit AP on the right forearm and the other officers rushed in to handcuff AP and administer first aid. Several officers attempted to stop the bleeding from his neck, but AP lost consciousness and was later pronounced deceased at hospital.

A police helicopter (‘Air 1’) recorded part of the incident from above, arriving at the same time as WO6. The Air 1 video was recorded with a forward-looking infrared camera, which picks up on heat only when it is dark outside. Over approximately seven minutes, the Air 1 video showed multiple figures standing in a line formation maintaining a distance and facing a figure who was moving around slightly (AP). At 11:51 p.m., WO6 deployed his police service dog and the eight other figures also moved in and surrounded AP.

Additional Witnesses

A canvass of the area was completed by IIO investigators and a total of 86 residences were contacted. Although no witnesses directly saw the incident as it was dark outside, many were able to hear what was happening as the incident unfolded. Many stated hearing commands such as “*get on the ground, drop the knife, and put your weapons away and get on the ground*”. Some also heard “*cracking sounds*” consistent with the CEWs that were being used by officers on AP. Some witnesses heard what they described as gunshots, but forensic evidence confirmed that no shots were fired by any officer and it was likely the sound of the 40 mm launchers.

Cause of Death

The autopsy report stated that AP’s cause of death was sharp force self-inflicted injuries of the neck, damaging carotid arteries and jugular veins. The injuries resulted in massive haemorrhage and AP’s death. The toxicology report indicated that AP had methamphetamine in his system. There were no other significant conditions that contributed to AP’s death, according to the autopsy report.

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 an officer may have used unauthorized, unnecessary or excessive force in their dealings with AP. If the officer was 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.

In these circumstances, SO was acting lawfully, in execution of his duty, when he attempted to arrest AP for stealing the taxi, among other offences. AP was observed by SO travelling in the stolen taxi at a high rate of speed, and committed further offences as he approached SO, including almost hitting SO and his vehicle with the stolen taxi. This 'near miss' was verified independently by two civilian witnesses.

As AP fled the taxi and SO chased AP to arrest him, circumstances escalated when AP pulled out a knife, and then a pipe. In addition to holding weapons, AP did not appear to be listening or responsive to police commands, based on the radio transmissions and the accounts from witness officers. The police commands were also heard by many civilian witnesses, who reported hearing things repeated such as "*get on the ground*", "*drop the knife*", and "*put your weapons away and get on the ground*".

It was unsafe for any officer to attempt to arrest AP until he dropped the weapons. Moreover, it became increasingly unsafe for AP to have the knife at all, as he was using it to harm himself. After issuing commands to which the AP did not listen, police officers appropriately took action by deploying their CEWs and 40 mm launchers in an attempt to disarm AP.

The evidence indicates that multiple officers deployed their 40 mm launchers and CEWs, with little to no effect. Officers reported that AP was unresponsive to pain, occasionally saying "*ow*" when struck by 40 mm rounds, but he was not following commands to drop the knife or pipe.

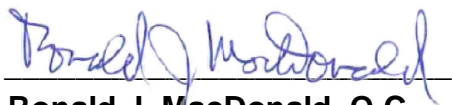
An officer is allowed to use force, provided that they are acting in the lawful execution of their duties and the amount of force used by an officer is necessary. The law requires that the use of force not be excessive, and the use of force is constrained by the principles of proportionality, necessity and reasonableness. In this case, AP was holding multiple weapons and was a threat to both the officers involved in the incident and himself. After many attempts to de-escalate, it was necessary and appropriate for

officers to use force in an effort to get AP to drop the weapons and also to prevent him from inflicting further harm to himself.

It would not have been appropriate for members to approach AP and attempt to simply lay hands on him. It was both necessary and reasonable, in these circumstances, for his compliance to be obtained initially by the use of the CEW and then by 40 mm rounds to reduce the risk of bodily harm that would otherwise have been faced by the arresting officers, AP, and potentially to the public if AP escaped.

It cannot be said that this use of force by any of the involved officers was unreasonable in the circumstances. Once officers could move in safely, they did so and administered first aid in an attempt to save AP. Tragically, despite all attempts to save his life, AP died of his own self-inflicted wounds.

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 11, 2020

Date of Release