



**IN THE MATTER OF THE INJURY OF A FEMALE
WHILE BEING APPREHENDED BY MEMBERS OF THE
ABBOTSFORD POLICE DEPARTMENT IN
THE CITY OF ABBOTSFORD, BRITISH COLUMBIA
ON NOVEMBER 9, 2020**

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

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

IIO File Number: 2020-275

Date of Release: May 4, 2021

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INTRODUCTION

On November 9, 2020, Abbotsford police responded to a report by a male complainant that he had been stabbed by the Affected Person ('AP') in this case. When officers went to AP's home, she came outside the residence but was uncooperative and non-compliant with police commands. The Subject Officer ('SO') fired one round from an ARWEN bean-bag launcher and AP was taken into custody. Because the ARWEN round had seriously injured AP, 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 four witness police officers;
- police Computer-Aided Dispatch ('CAD') and Police Records Information Management Environment ('PRIME') records;
- recordings of 911 calls and police radio transmissions;
- police notes;
- police policies;
- scene photographs; 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 declined to provide any evidence to the IIO.

NARRATIVE

At a little after 3:00 a.m. on November 9, 2020, Abbotsford police received a number of calls from residents saying that a male was banging on their doors saying he had been stabbed and asking that police be called. The male, Civilian Witness 1 ('CW1'), was put on the phone to the operator by one caller, and said he had been stabbed in the hand, leg and jacket by his girlfriend, AP. AP subsequently acknowledged to IIO investigators that she had stabbed CW1, but said that it was only with a pair of eyebrow trimming scissors, and that she had stopped when the scissors broke.

CW2 lived in the basement of AP's residence with her husband and son. She told IIO investigators that in the early morning hours of November 9, 2020, she had been awakened by loud noises from upstairs. AP and CW1, she said, were having an argument, and she went up to tell them to "keep it down". A short time later, she continued, CW1 came down, told her he had been stabbed by AP, and then left. CW1 later told an Abbotsford police officer that he had been in an argument with AP over drugs and that AP had attacked him with some sort of knife, stabbing him in the hand and leg, and in the back of his jacket as he turned to leave.

Witness Officers 1 and 2 ('WO1' and 'WO2') responded and spoke with the neighbours who had called 911, and then with CW1. WO1 told IIO investigators that he noted a small cut on CW1's finger, another cut on his leg and what appeared to be a slash mark in the material on the back of his jacket. He said he also noted that CW1 appeared to be intoxicated, or "high". CW1 told the officers that AP had stabbed him with a paring knife, and that she was also in possession of a steak knife.

The officers called an ambulance and placed CW1 in the back of their police vehicle for safekeeping, then drove to AP's home, where other officers were taking up containment positions around the residence, having received the information that AP was arrestable for assault with a weapon. CW2 came out briefly, then returned indoors saying she would tell AP to come out.

SO was one of the attending officers, and at about 3:55 a.m. he took a position with his ARWEN weapon beside some parked cars on the driveway of the residence.

Speaking with IIO investigators, AP recalled being roused by CW2 and told the police were outside. She said she went out onto the porch and was told she was under arrest for stabbing CW1. She said that officers told her to come down off the porch or things "are going to get a little bit worse for you". She acknowledged refusing to comply with police commands, but said "If they said they were going to shoot me, I would have came".

WO3 said that he was with SO on the driveway, about twenty feet from the porch and the entry to the residence. He told investigators that WO1 was telling AP to come down off the porch and AP was refusing, saying she was "not under arrest".

WO1 told investigators that AP, while denying guilt, did state spontaneously "it was only small sewing scissors". He said he did not want to approach AP on the porch because of a concern that she might be in possession of a knife. He felt it would be safer if she came down onto the driveway. AP, meanwhile, was saying she felt cold and sick and wanted to go back inside to bed. AP is a small person, approximately 5'3" in height and weighing about one hundred pounds. She was dressed in pajamas and a vest at the time.

WO1 said that these exchanges continued for what he felt was about five minutes, without gaining her compliance. He then heard SO giving AP commands to come off the porch and walk towards police.

Finally, AP turned and moved as if to go back inside the house. SO discharged one ARWEN round, which struck AP in the leg. She screamed and fell to the porch floor. AP later recalled the pain of being struck by the round and falling to the ground, bleeding. She was taken first to hospital, then to the police station. Meanwhile, inside the residence, police found blood on the kitchen floor, apparently from the assault on CW1.

WO4 told IIO investigators that the use of other 'intermediate' weapons would not have been practicable in the circumstances. A baton would require an officer to get close to AP, who he said officers reasonably believed might be in possession of an edged weapon. The officers, he said, were too far away to use OC (pepper) spray or a Conducted Energy Weapon ('CEW' or 'Taser').

At the hospital, AP was found to have a significant laceration to her upper right leg, which required fifteen sutures 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 SO may have committed an offence in deploying an ARWEN round against AP in these circumstances.

Attending officers, including SO, had received allegations providing reasonable and probable grounds to believe AP was arrestable for a serious offence, assault with a weapon and/or assault causing bodily harm (AP had, in fact, essentially admitted the offence, merely minimizing its severity), and were authorized to use necessary force to effect that arrest. The question is whether the deployment of an ARWEN bean-bag round amounted to the use of excessive force in the circumstances.

In that regard, the statement AP made to IIO investigators has to be considered. She said, in effect, that she would have surrendered if she had been warned she would be shot otherwise. She did acknowledge that she was warned things would get "a little bit worse" for her, and the context for that warning was that she was being arrested for the offence of assault with a weapon by a group of armed police officers one of whom, on the evidence, was pointing a bright orange beanbag shotgun in her direction from about twenty feet away. AP was not asked specifically in what manner she expected things might get "a little bit worse", but it is hard to imagine that she would have been thinking of anything other than a weapon being deployed against her. She was given ample opportunity to comply and avoid that outcome, but failed to do so.

All the witnesses who were able to observe AP's actions at the moment SO fired stated that she made a move as if to turn and re-enter the house. She had been completely non-compliant with police instructions up to that point, and it was quite reasonable to conclude that she was about to go back inside and close the door. If she had done so, police would have been left with a suspect in possession of a weapon that she had already allegedly used against CW1, effectively 'barricaded' in a house and with other individuals now

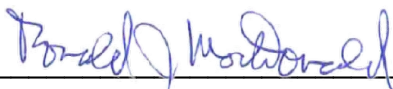
potentially in danger. It was reasonable for an officer to conclude force should be used to prevent that.

There would have been significant risk in any attempt by officers to rush AP and tackle her before she was able to shut herself inside the house. The risk would have been to the officers from AP's potential use of an edged weapon, and to AP herself from being taken down by force. While the fact that AP was physically quite small may have made it more feasible to take her quickly to the ground, it would also increase the risk that the action would injure her.

In the moments during which she was turning towards her front door, officers were too far from her to use batons, OC spray or a CEW. The ARWEN was the only intermediate force option available, and its use was not inappropriate. The projectile it fires typically causes no injury beyond a painful bruise, and the injury suffered by AP was both unfortunate and unusual.

Considering the situation facing SO when he fired, use of the ARWEN was both lawfully authorized and reasonable. The officer is entitled to the protection of *Criminal Code* provisions that state that a peace officer is justified in using as much force as is necessary to do what he is authorized to do, if he acts on reasonable grounds and does not use force that is excessive in the circumstances.

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

May 4, 2021

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