



**IN THE MATTER OF THE INJURY OF A MALE
WHILE BEING APPREHENDED BY MEMBERS OF THE
VANCOUVER POLICE DEPARTMENT IN
VANCOUVER, BRITISH COLUMBIA
ON AUGUST 22, 2021**

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

Chief Civilian Director:

Ronald J. MacDonald, Q.C.

IIO File Number:

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INTRODUCTION

In the early morning hours of August 22, 2021, police responded to a call from a fast-food restaurant at a Vancouver Skytrain station. The caller said that a man had come in carrying a hammer, and that after telling the staff to call 911, he had locked the entrance door. Three frightened employees were now barricaded in a back room with no available exit. A second 911 call was then made by a restaurant customer who had just left the premises, and who said the intruder was carrying an axe. Police attended and apprehended the Affected Person ('AP') outside the restaurant. In the course of the arrest, the Subject Officer ('SO') fired several rounds from a beanbag shot gun, and AP was seriously injured.

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, one other civilian witness, one paramedic and five witness police officers;
- police Computer-Aided Dispatch ('CAD') and Police Records Information Management Environment ('PRIME') records;
- audio recordings of 911 calls and police radio transmissions;
- Closed-Circuit Television ('CCTV') recordings;
- scene and exhibit 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 has not provided any evidence to the IIO.

NARRATIVE

CCTV footage from inside the restaurant shows the initial events. AP, who later told IIO investigators that he had believed he was being pursued by "men", is seen entering the small fast-food outlet carrying large bags containing what appear to be bedding or laundry. He is also carrying a medium-sized axe or hatchet with a wooden handle. He places the bags on the floor at the rear of the restaurant, walks back to the door carrying the hatchet, and locks the door from the inside. The video then shows him putting the hatchet down on the bags and gesturing with open hands to staff behind the counter.

Civilian witness 1 ('CW1') is the only patron in the restaurant at this point, sitting at a table in the corner. As AP takes up a position leaning against the counter, CW1 gets up and goes to the trash receptacle with the remains of his meal. When CW1 then goes to exit via the locked door, the video shows AP apparently indicating to him that he has to unlock it. CW1 unlocks the door and exits, and AP then locks the door again behind him and returns to stand beside his possessions, as if waiting for someone.

AP had told the staff to call 911, which they had done, and he was waiting for the police to arrive. CW1 had also called 911 after leaving the restaurant, and in addition there had been a call to Transit Police by a Skytrain attendant, saying that a man was inside the restaurant with an ax and that the staff were scared. Relaying information from 911 callers, Dispatch told responding officers that:

- A male was inside the restaurant with "a hammer" (amended shortly afterwards to "a big axe"), and had locked the front door. He had not threatened anyone.
- The staff were trapped in a back room behind a door with no lock and with no exit to the rear. They were scared and had armed themselves with "a stick".
- In a later update, the male was said to be believed to have three or four "other weapons".

The first Vancouver Police Department ('VPD') officers to arrive were SO and Witness Officer 1 ('WO1'). SO was trained as an operator of a 'less lethal' weapon, a beanbag shotgun. The officers decided that SO would approach with his beanbag shotgun and issue commands to AP while WO1, armed with a police carbine, took the role of 'lethal overwatch'. Both officers were in plain clothes, but had put on 'takedown jackets', marked across the back and on the sides of the sleeves with the word 'Police'. They positioned themselves by a large concrete pillar about twenty feet from the glass front doors of the restaurant.

A second pair of VPD officers, WO2 and WO3, then arrived, also wearing police takedown jackets over plain clothes. They too took positions from which they could see into the restaurant. WO2 later told IIO investigators that upon arrival he could see the wooden handle of what he believed to be a hammer on top of some bags on the restaurant floor, and a male (AP) standing against the counter near the bags.

SO was shouting to AP, identifying the officers as police and telling AP to "come out, you're under arrest". AP went to the door, unlocked it and exited. The video shows that his hands were held up and out, clearly empty, and WO1 acknowledged to IIO investigators that it was clear to police that AP was not displaying a weapon. The hatchet, said WO1, was approximately ten feet behind him on the floor, on top of the bags he had placed there earlier.

Unfortunately, though, when SO directed AP to get down on the ground, and WO1 aimed his police carbine at AP, AP turned away as if to re-enter the restaurant. AP later explained that, while he initially understood that the police had arrived, he did not recognize the officers as such because he did not hear them identify themselves and saw that they had arrived in plain clothes, driving unmarked cars:

There's no [police cars], there's no lights, there's nothing to indicate who these guys are except for their guns and what I guess are bullet proof vests. I don't see, like I'm sure you know, that maybe their vest had "police" or something on it... So I turned around to go back in, and that's why he started firing at me, so I started running.

WO1 discharged rounds from his beanbag gun. Three impact locations were later noted in the glass at the front of the restaurant, and at least one round struck AP, as he was seen to flinch and was heard to make a sound indicating pain. AP fled on foot, pursued by SO, WO1, WO2 and WO3. SO continued firing beanbag rounds at AP as he ran. The pursuit was recorded on video from an exterior location, in which AP can be seen to be refusing to comply with police commands to stop. In his IIO interview, WO2 summed up this development in the situation from the police perspective:

It's a dynamic event. We have somebody that has been involved in an event ... where he potentially had a weapon or multiple weapons, people felt unsafe, they had to hide, they had to call police, we've attended, verbal direction has been given to this individual that wasn't wholeheartedly complied with, and now a less-lethal force option has been deployed, and this individual is now evading the scene. So it's an extremely dynamic and potentially very dangerous event, because if this person still has weapons on them, and has clearly evaded police, I'm aware, from when we initially pulled up, that there are unrelated citizens to the east ... and he's now running eastbound ... potentially towards those people. There's all sorts of things going through my head. We can't allow this individual to keep running and potentially harm or put other people in harm's way.

The foot pursuit ended abruptly when AP was confronted by two Transit Police officers who pulled up in a marked police vehicle with its emergency lights and siren activated. The officers exited the vehicle and blocked AP's path, one pointing a Conducted Energy Weapon ('CEW' or 'Taser') and the other a police carbine. AP stopped and went down on his knees, and was arrested. He later told IIO investigators that in the course of the incident he had been hit "four or five times" by beanbag projectiles. He said he gave up when he encountered the Transit Police because they looked "more official" than the VPD officers.

Forensic investigation later showed that SO had discharged eight beanbag rounds in total.

AP was admitted to hospital, where he was diagnosed with stimulant-induced psychosis, an injury to his right index finger and a fracture of the ulnar bone in his right forearm. He also had a wound on his left thigh that may have been caused by a beanbag impact.

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 used unauthorized, unnecessary or excessive force in the course of the incident, by his deployment of beanbag rounds against AP.

There is no reason to conclude that AP intended any harm to anyone in the course of the incident, or in fact that he even intended to cause fear or alarm by his actions. Of particular note is the evidence that he had asked staff, himself, to call 911, and had permitted (even assisted) a customer to leave the restaurant unmolested. Nevertheless, it has to be borne in mind that, to the police, the situation appeared to be one in which a man with a large weapon was effectively holding people hostage. That interpretation was formed on the basis of dispatch information that, while he had not directly threatened anyone, AP was armed with “a large axe” and possibly other weapons, and was causing frightened people to be trapped in the back room of a restaurant.

Similarly, while it is true that AP initially left the hatchet lying with his other possessions in the back of the restaurant and exited calmly, holding out his empty hands, the officers still had two reasonable concerns, based on the information they had been given: that AP could be in possession of other weapons; and that if he were to go back inside he could pose an unpredictable risk of harm to the people still on the premises.

It is unfortunate, in the circumstances, that the responding VPD officers happened to be on duty in plain clothes, so that the appearance of their vehicles and outerwear was not sufficiently “official” looking to persuade AP that they were not the “men” he believed were pursuing him to do him harm. That misunderstanding on AP’s part, and the action it caused him to take, turning back to re-enter the restaurant, is clearly what led to the initial discharge of SO’s weapon.

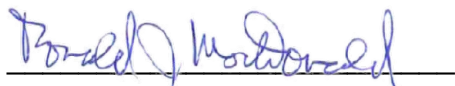
In the circumstances as they appeared to the police at that moment, the use of this ‘less lethal’ weapon was justified as reasonably necessary. It would, of course, have been

extremely useful in providing full transparency to this incident to have had an account from SO about his assessment and decisions. However, it is reasonable to conclude that he would have felt the potential risk involved in letting AP go back inside the restaurant was too high. As noted above, from the police perspective AP appeared to be an armed hostage-taker, and he could not be permitted to return inside and have the ability to barricade himself again with potential victims. That risk, balanced against the risk of harm to AP from beanbag impacts, justified the use of force by SO.

When AP took off running after the initial shots, similar concerns were evidently in the minds of the pursuing officers, as WO2's risk assessment, set out above, demonstrates. Again, while we do not have the subjective account of SO to provide insight into his thinking, it would be reasonable for him to conclude that the potential risk to other citizens outweighed the risk of harm to AP from being struck by a beanbag round. SO's actions during the incident, therefore, must be judged necessary, proportionate and reasonable.

There is no suggestion from AP or from any witness officer that any unnecessary or excessive force was used in the course of AP's subsequent apprehension. Likewise, there is no evidence that AP suffered any harm from police action, other than from the justifiable beanbag strikes.

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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