



**IN THE MATTER OF THE INJURY OF A MALE
WHILE BEING APPREHENDED BY MEMBERS OF THE RCMP
IN NANAIMO, BRITISH COLUMBIA
ON SEPTEMBER 23, 2021**

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

Chief Civilian Director:

Ronald J. MacDonald, Q.C.

IIO File Number:

2021-263

Date of Release:

April 7, 2022

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INTRODUCTION

In the early morning hours of September 23, 2021, police were called to an address in Nanaimo to check on the Affected Person ('AP'), who was said to be in deteriorating mental health and was damaging property. When officers arrived, they saw that AP was inside his home, holding knives and refusing to exit. Emergency Response Team members subsequently attended and contained the residence. In the course of AP's eventual apprehension, which involved the deployment of gas, a Conducted Energy Weapon ('CEW' or 'Taser'), 40 mm 'less lethal' projectiles and a Police Service Dog ('PSD'), 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 and 21 witness police officers;
- police Computer-Aided Dispatch ('CAD') and Police Records Information Management Environment ('PRIME') records;
- audio recordings of a 911 call and police radio transmissions;
- scene photographs;
- download and analysis of data from a CEW;
- Closed-Circuit Television ('CCTV') recordings;
- medical reports and other 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, the Subject Officer ('SO') has not provided any evidence to the IIO.

NARRATIVE

At 1:53 a.m. on September 23, 2021, RCMP officers responded to a 911 call from an address in Nanaimo. Police were told that AP was suffering a "manic episode", had "lost it" and was "totally destroying the place". The caller indicated that AP might be "volatile" in his response to police. Asked whether AP was in possession of a weapon, the caller said that he had punched a hole in a wall with "something". Responding officers were told that AP had said that if police came, "everyone is going down".

When the first officers arrived on scene, they found that AP was inside a converted garage where he had been living for the past eighteen months. Witness Officer 1 ('WO1') told IIO investigators that he knocked on AP's door, announcing the police presence. He said that AP started yelling obscenities and there was the sound of things being thrown about inside. WO1 found that both the front and side doors into the garage were locked. When he then went to a rear door, which was also locked, he saw that the door was completely glass, providing a view into AP's living space. WO1 stated that he saw AP in a defensive stance, holding a box cutter and a knife with a curved blade. WO1 said that AP made threatening gestures with the knives, and told WO1 that if he entered AP would attack him.

Police took a picture of AP at one point through the glass back door. He is shown with a large knife in his right hand, down by his side. His left hand is mostly hidden by his body, but that hand is clenched as if it is holding something.

Speaking to IIO investigators after the incident, AP acknowledged having had two knives in his hands when police came to the door. He also remembered telling officers that they would have to kill him if they came in.

WO2 joined WO1 at the glass rear door, and told the IIO that he found it impossible to establish communication with AP. He said that AP responded to the police presence by swearing, threatening, stabbing at the wall and occasionally hitting the door with the hilt of a knife. WO3 also came to the rear door, and provided a similar account of AP's behaviour. WO3 requested the assistance of the Emergency Response Team ('ERT').

As ERT members arrived, several officers tried to talk to AP through the glass rear door, but said their efforts at de-escalation failed, only seeming to make AP more agitated. He was described as holding a knife in one hand, with another on his belt and others close by on the kitchen counter. At other times, officers said, AP was holding two knives, pacing and yelling. WO4 told IIO investigators that AP was "saying things like he was going to come out there and 'I'm going to come out and kill you, going to cut your fucking throat, I'm going to slash your face off'". Officers reported that AP was kicking or striking at the rear and side doors of the building. The audio track of CCTV video from a nearby camera recorded several loud bangs around 4:20 a.m. and banging can be heard in the background on recorded police radio transmissions.

At 3:30 a.m., crisis negotiator WO5 arrived on scene and tried unsuccessfully to contact AP via his cell phone. He then tried to converse with AP through the rear door. Two lengthy interactions were audio-recorded, and the recordings provide evidence of AP's obvious anger and aggressiveness towards the officers. In the second recording, an officer can be heard asking AP to back away from the door and to "put the knives down".

Attempts at negotiation were concluded at 4:10 a.m. In his IIO interview, AP recounted what happened next.

AP recalled telling police to “fuck off”. He said he saw officers with shields and “rubber bullet guns”, and thought they were “fixing on killing me”. He got angry, he said, and starting kicking at the glass back door, causing the window to break out. He said he was then shot twice with rubber bullets, but was not injured by them. A gas cannister was thrown in through the broken door, and he threw it back. He told investigators, “I threw a knife or two at them, too”.

WO6 said that, seeing AP attempting to come out through the damaged door, in close proximity to ERT members in the porch area, he fired a CS (pepper gas) round from his ‘less lethal’ 40 mm launcher, which struck AP in the abdomen. WO7 threw a gas cannister in through the door, but AP threw it back out. WO8 recalled seeing that AP was also throwing what appeared to be knives at the ERT officers. He said that one hit a wall, another hit an officer’s shield, and one bounced off the ground and struck his shin. WO6 fired a second 40 mm round, which struck AP in the left shoulder or upper arm. Shortly afterwards, officers broke in the window of the side door and deployed gas through it into the residence. WO13 said that he saw AP, apparently affected by the gas, moving towards the front door with a large knife in his hand. Officers stationed at the front of the building were warned by radio.

Between 4:30 and 4:31, CCTV recorded yelling and a series of bangs, and at 4:31:25, AP can be seen on the video exiting through the front door. Because of distance, lighting and obstructions, and despite frame by frame analysis, it is not possible to determine from the video whether AP has anything in his hands. There is the sound of a shot, and a cloud of gas appears around AP’s upper body. AP falls, shouting, to his right along the front of the building, into a narrow space between the building and the hood of a parked vehicle. Several officers quickly move in, a dog can be heard barking and whining, and AP is crying out in apparent pain.

AP told investigators that he walked out with nothing in his hands and was hit with a ‘Taser’. He said he “did the dead sailor”, stiffening up and falling towards the house. As he hit the ground, he said, the police dog “ripped the top of my head off” and the police then “zapped me again”.

WO8 told IIO investigators that he was stationed close to the front door of the garage with a CEW, and saw AP come through the door with a knife in his right hand and a black hammer in his left. WO8 said he shouted something like “Police, stop!” and fired the CEW at AP. At the same time, WO9 fired a round from his 40 mm launcher, a ‘less lethal’ weapon that is intended to cause pain but not serious injury. As AP fell, the officers closed in on him, and WO8 said he activated the CEW again because he saw that the knife was

still in AP's hand. WO8 said he did not see the PSD contact AP, but heard SO give the dog a command to "out", and remove it from AP. At this point, WO8 could see that AP had a serious head injury, and later told IIO investigators:

The dog would have been a completely appropriate response. Unfortunately the taser hit him and he fell head first towards the dog coming. Normally this would have been a dog bite probably on that guy's butt or leg.

WO10 told the IIO that during the second cycle of WO8's CEW, he moved in and removed the knife from AP's hand. He described the knife as a chef-style kitchen knife (consistent with the type of knife shown in the picture taken earlier), and said he placed it on a nearby parked vehicle. He said he also saw a large mallet on the ground near AP. WO10 said that he saw the PSD bite while the CEW was still cycling.

WO11, in his own interview, stated that he saw AP come out in an aggressive manner with a large knife in his right hand. He said he saw the 40 mm deployment and saw WO8 fire his CEW almost immediately afterwards. He described the 40 mm round as apparently ineffective, but noted that the CEW appeared to be instantly effective. He said AP went rigid and started to fall to his right, just as SO released his PSD. He described the dog moving forward as AP was falling towards it, and said it was immediately pulled back after contact. WO11 said that he saw the knife still in AP's hand as he lay on the ground, and saw it removed by another member.

WO12 saw the events from a position on the driveway facing the front of the garage. He said he saw the front door open quickly and aggressively and saw AP coming out, screaming, with a knife in his right hand. He recalled the deployment of the 40 mm weapon and the CEW, and said, "I could see the dog is already going ... as [AP] hits the ground the dog arrives and nips him in the head".

Other officers with a view of the front of the building gave similar accounts, describing AP coming rapidly through the door with a knife or knives in his hands and falling towards the oncoming PSD after the first deployment of the CEW. WO2 told investigators, "My reaction was 'Oh, crap, we might have to shoot him if he keeps coming 'cause he still had the knives in his hands'".

WO1 said he subsequently seized a large kitchen knife and a black mallet from the hoods of vehicles parked near to where AP fell to the ground. He said he also seized two knives from inside the garage and another two from beside the rear door.

AP was treated in hospital for a large scalp injury requiring a skin graft, a laceration on the right side of his chin that was closed with five sutures and a bruise on his left shoulder,

possibly caused by a 40 mm projectile. He was admitted involuntarily under the *Mental Health Act*.

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 of the involved officers may have used unjustified or excessive force against AP in the course of this incident.

The attending officers were acting in lawful exercise of their duty in responding to a 911 call about AP's behaviour. Upon arrival they were confronted with grounds to apprehend AP under the *Mental Health Act*, and they were authorized to use force if necessary for that purpose. It is apparent from the evidence, including AP's own account, that police (including ERT members) attempted over an extended period of a few hours to de-escalate and to have AP come out peacefully and surrender to them. It is also apparent that AP rebuffed all those attempts with threats, violence and general intransigence.

Properly, police did not attempt to enter to arrest AP during this time. AP would no doubt have posed a risk of grievous bodily harm or death to the officers which may have required the use of lethal force by police. Given that AP up to that point was contained, the better course was to wait and continue to hope discussions with AP would result in a peaceful conclusion. This is exactly what police were doing.

It could be said that police were aggravating AP and that it may have been better if they had left. However, given AP's mental state when police arrived and during their attendance, AP was reasonably seen as a risk to others. Police had a duty to protect the public, and thus they could not simply leave.

However, the situation changed significantly when AP began breaking out the rear door of the garage. AP now posed a direct risk to officers outside, and justified an escalation of the force applied, in the form of deployment of a 'less lethal' weapon and a gas canister.

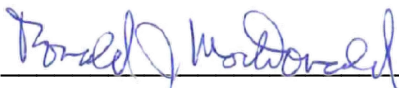
Unfortunately these did not have the intended effect of subduing or immobilizing AP. Instead, he moved aggressively out through the front door, clearly not surrendering and placing a second group of officers at risk. While AP's recollection is that his hands were empty at this point, there is a considerable body of evidence, detailed above, from which it must be concluded that he was still holding at least one knife, as he had been throughout the incident.

If ERT members had not been present, there would have been a very real possibility that AP would have been shot and killed. As mentioned above, this was a possibility alluded to by WO2 in his IIO interview. The ERT officers, however, were standing by with intermediate weapons capable of stopping and disabling an individual without killing him, and they used them. Those applications of force, in these circumstances, were justified and not excessive in response to an aggressive, armed subject.

It is important to note, in that regard, that these force options were used, essentially, simultaneously. That is understandable, given the risk that one option might fail (as the 40 mm projectile did, and we have seen many examples where CEW's are ineffective), leaving only enough time for lethal force to be deployed. Unintentionally, this also appears to have contributed to the severity of the injury suffered by AP. As WO8 noted, SO's PSD would normally have been expected to take hold of AP by his clothing or by a limb, but he fell directly towards it as it was ordered forward. While it is apparent that the 40 mm projectile fired by WO9 did not have immediate effect on AP, the discharge of WO8's CEW clearly did. The witness accounts, both from the officers and from AP, confirm what the CCTV video shows, that AP fell rapidly and directly in the direction from which the PSD was moving. The harm caused by the dog bite was severe, but there is no reason to conclude that the degree of harm was intended. Viewed in retrospect, it does not negate the justification for deploying the dog to assist in taking AP into custody.

There is no evidence that any further force was used against AP in his apprehension, and he was provided rapid and appropriate care by the attending officers.

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 7, 2022

Date of Release