



**IN THE MATTER OF THE INJURY OF A MALE
WHILE BEING APPREHENDED BY MEMBERS OF THE RCMP
IN CHILLIWACK, BRITISH COLUMBIA
ON MARCH 11, 2021**

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

Chief Civilian Director:

Ronald J. MacDonald, Q.C.

IIO File Number:

2020-057

Date of Release:

November 2, 2021

THIS PAGE INTENTIONALLY LEFT BLANK

INTRODUCTION

On March 11, 2021, Emergency Response Team ('ERT') members responded to a report that a male had pointed a firearm at an RCMP officer and had then fled to a house. After a period of negotiations, the Affected Person ('AP') came out of the house. When he tried to return to the residence, officers used a Police Service Dog ('PSD') and a 40 mm 'less lethal' projectile launcher to stop him. AP was found to have sustained a dog bite and had a head injury, and was taken to hospital. 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 and one other civilian witness, and three police witness officers;
- police Computer-Aided Dispatch ('CAD') and Police Records Information Management Environment ('PRIME') records;
- 911 dispatch audio recordings;
- BC Emergency Health Services ('BCEHS') records;
- scene photographs; and
- medical evidence.

NARRATIVE

On the morning of March 11, 2021, Witness Officer 1 ('WO1') went to a cemetery in Chilliwack to investigate a report that a shotgun and an axe had been found there. When WO1 arrived at the cemetery, AP was pointed out to her as having just "tried to grab" the shotgun. WO1, who was still in her police vehicle, saw that AP was carrying a rifle. AP pointed the rifle at WO1 saying, "I'm going to shoot you", and she responded by driving at him, attempting to use the vehicle as a weapon. AP, however, jumped over a concrete barrier, and WO1's police vehicle became stuck on top of the barrier. When WO1 exited her vehicle and drew her pistol, AP threw the rifle on the ground and ran away to his nearby residence. He stood for a moment on a wooden ramp leading up to the front door, yelled something unintelligible, and then went inside the house. WO1 retrieved the rifle and took cover, calling for backup.

WO2, arriving in response to that call, first went to an elementary school nearby and ushered children and staff inside for their safety. He then moved to cover in front of AP's residence, together with another General Duty officer. WO2 saw AP come out onto the porch, and told him he was under arrest and should give himself up. WO2 later told IIO investigators that he noticed AP had blood on his shirt that did not look fresh, and said that AP was not making sense when he talked. WO2 noticed Civilian Witness 1 ('CW1') come out of a trailer that was parked beside the residence, and WO2 asked CW1 to talk with AP and convince him to surrender to police.

CW1 told IIO investigators that he was awakened that morning by the sounds of police outside calling to AP to come out of the house. He said he talked to AP for about twenty minutes, but knew that AP would not voluntarily go with police, so he gave up trying to convince him: “It just wasn’t going to happen”.

WO2 estimated that the conversation with AP continued for about forty minutes before other officers—two ERT members and a PSD handler with his dog—arrived on scene. One of the ERT officers was equipped with a Conducted Energy Weapon (‘CEW’, or ‘Taser’) and the other was carrying a 40 mm ‘less lethal’ weapon. WO3, another ERT member, then arrived and spoke with CW1, who told him that AP had been consuming crystal methamphetamine and was “pretty high”. WO3 told investigators that he saw AP standing at the top end of a long walkway leading to his front door, and said there was a large blood stain on the right front of AP’s shirt and some blood on his face.

WO3 said that at one point he heard a member offer AP a mint candy, and saw AP come down the walkway and take the mint, then move back up to the porch. WO3 said that, based on this interaction, the officers formed a plan to offer more mints and some tobacco, and then to arrest AP when he tried to return to the residence. Because of the potential threat from AP, who had already pointed a rifle at and threatened a police officer, and who might have access to other firearms, WO3 said the plan was to utilise both the 40 mm launcher and the PSD to apprehend AP.

WO2 described seeing an officer place more mints and some tobacco on the wooden railing at the bottom end of the walkway and, after a few minutes, seeing AP come down and grab the items. When he started to move back towards the house, WO2 saw officers move in to intercept him. WO2 said that both the CEW and the 40 mm weapon were used, at the same time as the PSD grabbed AP by his left arm.

Only one of the two CEW barbs made contact with AP, so the CEW was ineffective, and it is not clear from the evidence whether or not the 40 mm projectile struck AP. WO3 told investigators, though, that as the PSD pulled AP to the ground, it was the left side of his body that would have been exposed to the 40 mm weapon.

The dog dragged AP back to the bottom of the ramp, where he was taken into custody without any further application of force. He was seen to have a bleeding injury on his head, origin unknown, and had suffered dog bites on his arm. He was taken to hospital, where it was determined that he had a fractured skull and a brain bleed.

Interviewed later by IIO investigators, AP appeared to have a limited recollection of the morning in question. He said he remembered standing at his front door when several police officers appeared in his front yard. He said he was cooperative, initially lying down by the door and then walking down the ramp and lying down again. He said that a police

dog then bit him, and could not remember being taken to hospital afterwards. AP said he had no memory of the evening before, or of any events that may have brought police to his home. He said he had consumed some “crystal meth” and heroin in the evening, and felt he had been hit by something on top of his head near his left ear, because it felt sore.

Following the police incident, CW1 told police that he and AP had been in a fight the night before and that he had “beat [AP] up”. Subsequently though, interviewed by the IIO, CW1 said that it had only been a mild altercation, and that AP had not been hurt at all. Despite this, CW1 agreed that when he saw AP the next morning, at the start of the police incident, there was blood on AP’s shirt, his face “was all bruised up”, and there was a gash on his head with dried blood. CW1 insisted that AP must have had another “altercation” at some point between when he and AP “tussled” the evening before and the next morning when the police arrived.

Describing what he had subsequently seen of the incident from his vantage point at a neighbour’s house, CW1 said the police first fired the 40 mm weapon, then discharged a CEW, and finally released the dog. CW1 said he thought the beanbag projectile had struck AP in the area of his shoulder or head. He also said that when he saw AP being walked to the ambulance after his arrest, there was a bandage round his head with fresh blood seeping through in the forehead area.

Hospital records show that upon admission, AP had pre-existing bruising around his eyes, nose, chin and forehead; lacerations on the left forearm; a laceration on his left temple; an older laceration on his right shoulder blade; and a laceration on the left back side of his head with an associated skull fracture and subdural hematoma. AP’s blood tested positive for opiates, fentanyl, amphetamines and benzodiazepines.

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.

While the only evidence regarding AP’s alleged pointing of a firearm and threatening to kill WO1 comes from the police, those allegations are consistent with the fact that a rifle was recovered at the scene, and the probability of a police officer driving her vehicle at an individual and crashing into a concrete barrier for no reason seems low. It is also worth noting that it is the information received by the arresting officers, and their reasonable belief in it, that provides justification for the arrest and their use of force to accomplish it.

The information the officers had at the time they used force against AP was that he had threatened to shoot a police officer while pointing a rifle at her, that he was “high” on

methamphetamine, and that his behaviour appeared to be erratic, irrational and non-compliant. It is also significant to some extent that he appeared to be injured. It was important to gain control over him and take him into custody, and in particular it was important to avoid a situation where he had gone inside the house, where he might have had access to other firearms, and locked police out.

The involved officers made considerable efforts to negotiate with AP and to de-escalate the situation, through their own communications as well as through the use of CW1 as a mediator. Both AP himself and CW1 made it plain to the officers that AP was not going to cooperate and surrender, leaving no realistic option other than the use of force to apprehend him.

The evidence available leaves some uncertainty regarding two aspects of that use of force: (1) the exact sequence of deployment of the force options; and (2) the extent to which they caused injury to AP.

As noted above, WO2 said that it was his impression that the CEW, the 40 mm projectile and the PSD were essentially deployed at the same time. CW1, on the other hand, told investigators that the CEW was fired first, followed by the 40 mm, after which the dog took AP to the ground. Given that the CEW was ineffective (because one of the barbs missed AP, so that the electrical circuit was not completed), it may well be that officers deployed the 40 mm next and then sent the dog. What is clear, ultimately, is that the three force options were necessarily used within a very short time to ensure that AP was not able to run back up to his house and go inside.

The ambiguity regarding AP's injuries results from the evidence that he had already been injured before police arrived. There is no doubt that he had pre-existing injuries to his face and head at the least. While CW1 told the IIO that the "tussle" between him and AP the evening before had only been mild, and had left AP unharmed, he told the police that he had "beaten [AP] up". If some unidentified nighttime assailant had actually been the cause of AP's head injuries, it seems unlikely that CW1, speaking to the police, would take the blame on himself and risk being charged criminally with assault causing bodily harm. In any event, the fact that AP was already suffering from a fairly serious head injury before the use of a beanbag launcher against him is undeniable.

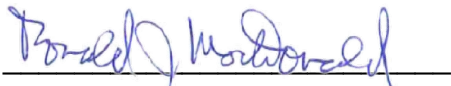
Considering the evidence as a whole, it appears that the blood initially visible on AP had come from the head wound that was described as being close to his hairline on the front of his head. There is no reason to conclude that the injury to the left side of the back of AP's head was pre-existing, though that remains at least a possibility. In particular, it seems unlikely that AP would have passed the night and been out walking around the next day with a fractured skull and subdural hematoma, although again that remains a possibility. Based on the evidence as a whole, it is more likely (though by no means

certain), that the 40 mm projectile struck the left side of AP's head as he was being taken down by the PSD and caused a new injury.

Officers are trained not to fire beanbag projectiles at the head area of targeted individuals, because of the risk of serious injury. In this case, as noted, it is by no means certain that the projectile struck AP in the head, and there is no reason to conclude that, if it did, that result was intended by the officer when he fired. It is worth noting that if the projectile was fired at approximately the same time as the dog pulled AP down, it might well have been aimed at AP's body and struck high unintentionally.

In summary, the force used against AP in this case was authorized by law, and the degree of force used was necessary, reasonable and proportionate to the apparent risk posed by AP. The dog bite injury to AP's arm was not serious, and it is not possible with any degree of certainty to attribute the fairly serious injury to AP's head to any intentional application of force by any officer.

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

November 2, 2021

Date of Release