



**IN THE MATTER OF THE INJURY OF A MALE
WHILE BEING APPREHENDED BY A MEMBER OF THE
ABBOTSFORD POLICE DEPARTMENT IN THE CITY OF
ABBOTSFORD, BRITISH COLUMBIA
ON SEPTEMBER 11, 2020**

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

Chief Civilian Director:

Ronald J. MacDonald, Q.C.

IIO File Number:

2020-229

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INTRODUCTION

On September 11, 2020, Abbotsford Police received a 911 call from an outdoor and sporting goods store, reporting an active theft of ammunition. The Subject Officer ('SO') was the first officer to arrive on scene and was confronted by one of the two suspects, the Affected Person ('AP'), in the store's parking lot. The confrontation involved the use of bear spray and the production of a knife on AP's part, the firing of five pistol rounds by SO and the discharge of rounds from a 'less lethal' Anti-Riot Weapon Enfield ('ARWEN') by another police officer. AP suffered spinal injuries from two bullet wounds. 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 twenty civilian witnesses, six first responders and eight witness police officers;
- police Computer-Aided Dispatch ('CAD') and Police Records Information Management Environment ('PRIME') records;
- Closed-Circuit Television ('CCTV') video recordings from two locations;
- civilian cell phone video footage;
- after-the-event police drone video recordings and 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

On the afternoon of September 11, 2020, staff at an Abbotsford store that sells outdoor, sporting, and hunting equipment and supplies called 911 to report a shoplifting in progress. Two males were loading a shopping cart with ammunition, and one was recognized from a previous shoplifting incident. Several more 911 calls were then made by individuals as police attended and a violent confrontation occurred in the parking lot outside the store. Neither of the principal players in that confrontation has given any evidence to the IIO. The analysis below is drawn partly from eyewitness evidence and, to a very large extent, from video of the incident collected by IIO investigators.

SO was the first officer to arrive. She stopped her police vehicle in front of the store as the two suspects were leaving, and shouted "Stop!" AP and his companion initially started to run, but AP turned back and sprayed bear spray into SO's face, then returned again to grapple with her, possibly attempting to take her firearm. Eyewitness accounts vary in their descriptions of shots fired by SO in response to AP's actions, but there is general

agreement that she fired two volleys separated by several seconds, one during AP's first attack on her with bear spray, and the second as she pulled away from his second attack. AP fell to the ground, but then tried to crawl towards SO with a knife in his hand, and civilian bystanders stood close to SO, who was effectively blinded at this point, helping her maintain a safe distance while she covered the threat from AP with her pistol.

On video recorded from inside the store, two suspects can be seen running from the front entrance, and SO is seen pointing her firearm as she is sprayed in the face by AP, who continues running across the parking lot. SO is clearly affected by the bear spray, and holsters her weapon as she wipes at her face and eyes. AP then runs back at her, sprays her again and grapples with her from behind as she turns away from the spray. The positions and movements of AP's and SO's hands as they struggle give the impression that AP may have been attempting to take SO's sidearm. SO is able to disengage, draws and points her pistol at AP at close range, and AP falls backwards onto the ground. SO then backs away, apparently speaking into her radio microphone while she covers AP with her gun. AP can be seen to pull out a knife with his right hand and tries to crawl towards SO. Two male civilians take up positions on either side of SO, assisting her, and one of them picks up the bear spray canister used by AP and throws it at him. Very quickly, other police units arrive, and an officer fires two rounds from an ARWEN weapon at AP before he drops the knife and is placed under arrest.

Forensic examination of the scene and of SO's firearm determined that she fired five rounds in total, and AP was struck by two bullets (as well as two ARWEN projectiles). He was transported to hospital, and survived.

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 through the use of lethal force against AP in the course of the incident.

Because of the lack of evidence directly from either SO or AP, combined with quite understandable inconsistencies in the recollections of details by eyewitnesses and the fact that video of the incident does not include sound, it is not possible to determine exactly at which moments SO discharged the rounds at AP. On balance, though, it can be concluded that she shot at AP when he first ran at her firing bear spray into her face, and again when she was able to free herself from his grasp after their brief struggle, apparently for possession of her pistol. While one witness told the IIO that there were shots after AP fell to the ground, that recollection is not consistent with the account of any other witness.

In judging the use of deadly force by SO, it has to be borne in mind that she was responding to a call regarding a fairly serious criminal offence—theft of ammunition by two suspects—and at the time she was confronted by those suspects she was effectively alone, with other responding officers still minutes away.

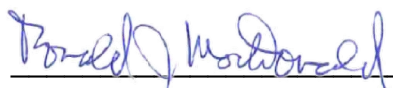
Regarding the first volley, fired when AP first came at SO spraying bear spray at her, it should be noted that an attack on a police officer with such a weapon, which has the capability to almost completely disable the officer and render her temporarily defenceless, can be considered a potentially lethal assault, one that puts the officer at risk of grievous bodily harm or death. Because of that, the officer was legally justified in using potentially lethal force in self-defence.

Shortly after AP's first attack on SO, AP quickly returned to spray the officer again with bear spray. It was reasonable for SO to believe that AP was intent on overpowering her. She was again disabled by bear spray in her eyes and at risk of having her firearm taken from her. The situation presented SO with a very significant risk, which justified the discharge of the officer's pistol at AP. At no point was SO's use of force either unjustified or excessive.

In the circumstances it should also be recognized that SO did not discharge her weapon again once AP was on the ground, even though she was evidently still almost blind from the effects of the bear spray, and AP was attempting to crawl to her with a knife in his hand.

The evidence shows that AP was only persuaded to drop the knife and surrender to police after being struck by two non-lethal projectiles fired by an ARWEN operator—a further use of force by police that was justified, necessary and proportionate to the risk AP posed.

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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