



**IN THE MATTER OF THE INJURY OF A MALE
WHILE BEING APPREHENDED BY MEMBERS OF THE
VANCOUVER POLICE DEPARTMENT IN
VANCOUVER, BRITISH COLUMBIA
ON OCTOBER 24, 2022**

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

Chief Civilian Director:

Ronald J. MacDonald, KC

IIO File Number:

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INTRODUCTION

In the early morning hours of October 24, 2022, police officers approached individuals they found trespassing in a covered parking area. A confrontation ensued when the Affected Person ('AP') produced knives and brandished them at the officers. After a lengthy stand-off in which a beanbag shotgun was fired at AP, and after continuing attempts by police to de-escalate, a member of the Emergency Response Team ('ERT') deployed two rounds from an ARWEN (Anti Riot Weapon, ENfield) launcher, and AP was taken into custody. AP was subsequently found to have suffered a broken leg, so 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 another civilian witness, one paramedic and six witness police officers;
- police Computer-Aided Dispatch ('CAD') and Police Records Information Management Environment ('PRIME') records;
- security camera video recordings from a nearby commercial building;
- photographic evidence and physical exhibits; 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, the Subject Officer ('SO') has not provided any account to the IIO.

NARRATIVE

At a little after 1:00 a.m. on October 24, 2022, Witness Officers 1 and 2 ('WO1' and 'WO2') were on routine patrol, checking for break-ins or other problems along back lanes in a commercial area of Southwest Marine Drive, Vancouver. They noticed a group of individuals camped in a covered parking area marked with 'no trespassing' signs. All but one of the group packed up as directed by the officers, but the Affected Person ('AP') remained where he was, lying under a blanket on pieces of cardboard, surrounded by personal possessions. When the officers tried to speak with him, AP told them to "fuck off". When AP continued to be non-compliant and began yelling at the officers, they called for back-up officers to attend.

WO1 told IIO investigators that she became nervous when she noticed AP moving around under the blanket, so she pulled it away. Seeing a folding knife beside him, she said, she told him not to pick it up, but said he “grabbed it, unfolded it and said, ‘fuck you, fuck off’”. Both witness officers backed away, drew their pistols and ordered AP to show his hands and drop the knife. WO1 said that AP refused, threatening to stab them, and telling them to shoot him. A radio dispatch from her to this effect was recorded at 1:25 a.m.

WO2 told the IIO that in response, other officers attended. First to arrive was WO3, an officer equipped with a beanbag shotgun. WO3 was familiar with AP, and knew him to be obstinate and aggressive, and to have resisted arrest in the past. Advised of AP’s identity, Dispatch informed officers on scene that AP was “flagged as a high-risk offender”.

WO3 said that he attempted to negotiate with AP, but AP then pulled out a second knife, and was brandishing both blades “outwards from his body very apparent in a threatening manner”. WO3 said he warned AP that if he did not drop the knives he would be shot with beanbags, but AP ignored the warnings. He said he fired one beanbag round, which struck AP in the lower abdomen. AP crouched over, but held onto the knives, so WO3 fired a second beanbag, which struck AP in the upper right thigh. When AP went down onto his knees, still holding the knives, WO3 fired two more rounds, hitting AP in the rear upper thigh and buttock areas. At this point, AP dropped the knives. Officers could see that one was now on the ground beside him and the other was out of sight amongst his belongings.

Asked later by IIO investigators about the possibility that one of his beanbag rounds could have caused the fracture to AP’s leg, WO3 said it was unlikely, as he had not been aiming at the point where that injury was located, and because he was firing at fairly close range, the rounds would not have “dropped” far from the point at which he was aiming.

Both WO1 and WO2 described AP now flailing around on the ground, searching for something as if trying to re-arm himself with the dropped knives. They said it was apparent to them that AP was still not willing to cooperate, and that he still posed a significant risk to police.

When WO4 arrived, he found several officers standing in a line, pointing various force options at AP, who was on the ground about ten metres from them with many personal items spread around him. WO4 said he tried to negotiate with AP, but found him to be generally uncooperative, apparently deliberately disobeying police directions.

After about fifteen minutes, WO4 was able to hand over responsibility for the verbal exchange to WO5, a trained police negotiator. WO5 told the IIO that she found AP

screaming and yelling, pacing back and forth, completely non-compliant with police. WO5 said that she was aware that a knife was involved and was worried because she did not know where it was. She said she told AP that he was under arrest and that he should focus on her, rather than the other officers, because he seemed to be repeatedly fixating on others and becoming angry at them. AP, she said, told her, "There's only one way this is going to end", but would not elaborate. At this time, officers said, they believed that AP still had access to at least one knife, either in his pocket or close by amongst his possessions.

Members of the Emergency Response Team now arrived. WO6, in command of ERT members, said that AP was sitting on the ground with approximately fifteen officers around him. He said he was prepared to give WO5 more time to attempt de-escalation, but was worried that AP might decide to "come at" police, which could provoke the use of lethal force against him. At 1:45 a.m., WO6 radioed that he was working on an action plan that would "probably involve a stinger ball and ARWEN if it comes to that". The plan would then involve using a Police Service Dog to assist with the arrest.

While WO6 was finalizing plans, though, he heard two ARWEN rounds fired, with a brief pause between them. He then saw that AP had dropped to the ground and saw ERT members move forward and place a shield over AP before taking him into custody.

WO5 told investigators that just before SO fired the ARWEN, she saw AP stand up and bend over his possessions saying, "I don't know where my shit is". In response, SO fired the ARWEN. She only recalled one shot, and said it hit AP in the shin.

WO1 said she thought AP stepped forward with a knife in his hand just before the shot and said that AP then dropped the knife and fell to his knees and rolled over onto his side, holding his leg. She said that as ERT members were getting AP under control, one of them handed her a knife, and recalled that she found another knife on the ground close to the location where AP fell.

WO2 told investigators that AP stood up one or two seconds before the ARWEN shots, and then fell down, screaming in pain. After ERT members got AP into handcuffs, WO2 said, he found two folding knives on the ground nearby, both blades open.

WO4 also recalled finding two knives on the ground in the immediate area, while he was taking photographs of the scene after the incident.

AP told IIO investigators that he had little memory of the incident. He did acknowledge that he knew he was trespassing, and also that he "escalated the situation unnecessarily".

He recalled having two knives in his possession, and said that he thought he put them down, but could not clearly remember. He did remember that he was shot two separate times. Asked whether he had been attempting 'suicide by cop', AP admitted that he was challenging police to shoot him as he was fed up and sad, from living on the street. He said he believed that his leg was broken by one of the ARWEN rounds, but also complained that an officer had pulled on his broken leg during the arrest, further aggravating the injury.

Regarding his actions at the time he was shot with the ARWEN, AP said:

Ya, I had knives in my possession. They were on the ground around me so ya, I was picking them up, but [the police] were far enough away, they weren't in danger or anything.

Ap's medical records note an external injury on his leg, consistent with an impact from an ARWEN projectile, in close proximity to the fractured bone.

LEGAL ISSUES AND CONCLUSION

The Independent Investigations Office of British Columbia has been given the task of investigating any incident that occurs in the province in which an Affected Person has died or suffered serious physical harm and there appears to be a connection to the actions (or sometimes inaction) of police. The aim is to provide assurance to the public that when the investigation is complete, they can trust the IIO's conclusions, because the investigation was conducted by an independent, unbiased, civilian-led agency.

In the majority of cases, those conclusions are presented in a public report such as this one, which completes the IIO's mandate by explaining to the public what happened in the incident and how the Affected Person came to suffer harm. Such reports are generally intended to enhance public confidence in the police and in the justice system as a whole through a transparent and impartial evaluation of the incident and the police role in it.

In a smaller number of cases, the evidence gathered may give the Chief Civilian Director ('CCD') reasonable grounds to believe that an officer has committed an offence in connection with the incident. In such a case, the *Police Act* gives the CCD authority to refer the file to Crown counsel for consideration of charges.

In a case such as this one, involving the use of force by an officer, one of the threads of the IIO investigation will be the gathering of evidence about potential justifications for that use of force. The CCD will then apply legal tests such as necessity, proportionality and

reasonableness to reach conclusions as to whether the officer's actions were lawful, or whether the officer may have committed the offence of assault.

Considering those questions, the situation facing officers here is a good illustration of the fuzzy overlap between risk and actual threat, an amorphous zone in which tactical decisions often have to be made by police.

On the evidence as a whole, it appears that AP was not holding a knife when he stood up, moments before SO fired the two ARWEN rounds. He was described as bending over towards his possessions on the ground, and acknowledged to investigators that he was in the process of picking up the knives that had earlier fallen from his hands. In a sense, his assessment that police "weren't in danger" at that moment was accurate: they were standing a significant distance away, pointing a variety of weapons in his direction, and he could readily have been stopped in his tracks if he had decided to run at them with a knife. It would not be reasonable, then, to say that his action in standing up and bending to pick up a knife posed an immediate threat to the officers' safety. What it created was a risk that he might follow up with a move towards them that would lead to the use of potentially lethal force by police and a very unfortunate outcome for himself.

It should also be noted, in this respect, that if AP had made himself a moving target by running at the officers, the risk of harm would have been heightened by the likelihood that multiple officers would have responded by firing shots, including lethal rounds from firearms.

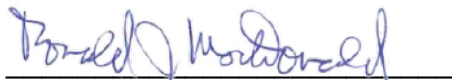
It could reasonably be argued that the police should have chosen other strategies rather than firing painful and dangerous projectiles at him from a distance. Perhaps they should have simply waited, giving more time for negotiation and de-escalation to produce results, or perhaps they should have done what they did immediately after the ARWEN shots: rush AP and pin him with a ballistic shield so he could be safely handcuffed. After all, his behaviour was closer to the non-compliant end of the spectrum than the assaultive end.

It would also be reasonable, on the other hand, to conclude that negotiations had gone on long enough to demonstrate that AP was completely intransigent and that no peaceful outcome was likely to be achieved, no matter how long the officers waited. He had also shown himself to be willing and able to arm himself with potentially lethal weapons (and had immediate access to an unknown range of other items that may have included more weapons) and had actually threatened officers with them earlier. He was known to have a violent history. Judging from his words and actions, he was prepared to act in ways that would put his own safety and that of anyone trying to tackle him in serious danger.

Those considerations, in these specific circumstances, lead to a conclusion that AP's behaviour had crystallized what had initially amounted to no more than a risk to officer safety into a more concrete threat. The level of threat was sufficient to justify deployment of a reasonably proportionate force against him, from a safe distance before officers went 'hands on'. It is likely that a Conducted Energy Weapon ('Taser') would have been ineffective, as AP was wearing thick outer clothing, and the beanbag shotgun had already been tried without success. Use of the ARWEN launcher was the logical next step.

AP was found trespassing on private property in a manner that gave police lawful authority to insist he leave. If he had responded as his companions had, rather than provoking a confrontation and lengthy stand-off with armed officers, he would not have been injured. While the incident might have been resolved in a number of other ways if different choices had been made on either side, it cannot be said that the force used against AP, in the circumstances, was unjustified or excessive.

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, KC
Chief Civilian Director

June 29, 2023

Date of Release