



**IN THE MATTER OF SERIOUS HARM TO A MALE
DURING AN INCIDENT INVOLVING THE
VANCOUVER POLICE DEPARTMENT IN
VANCOUVER, BRITISH COLUMBIA
ON JANUARY 2, 2021**

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

Chief Civilian Director:

Ronald J. MacDonald, K.C.

IIO File Number:

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Introduction

In the evening of January 2, 2021, Vancouver Police Department ('VPD') officers were called to a residential building after a member of the public reported that someone had a gun on the balcony. Officers arrived and arrested the Affected Person ('AP'), who was shot by the Subject Officer ('SO') during arrest, sustaining a serious injury.

Because the injury occurred as a result of the actions of police, 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:

- statement of AP;
- statement of six civilian witnesses;
- statement of nine witness police officers;
- statement of SO;
- statements of two responding paramedics;
- police Computer-Aided Dispatch ('CAD');
- Police Records Information Management Environment ('PRIME') records;
- police radio to radio transmissions;
- CCTV from inside building;
- evidence seized from scene; and
- medical records.

The IIO does not compel officers who are the subject of an investigation to submit their notes, reports and data. In this case, SO provided IIO investigators with a written statement.

Narrative

On January 2, 2021 at approximately 7:08 p.m., Civilian Witness 1 ('CW1') called the police to report that there was a male with a gun on the balcony outside of a residential building on Princess Avenue in Vancouver. VPD officers, including the Emergency Response Team, were dispatched to the call.

Upon arrival, officers reviewed the CCTV video surveillance footage from within the building and confirmed that a male had exited a unit on the second floor carrying what appeared to be an 'MP5' gun to the balcony. The male had then returned to the unit.

Officers believed there was a public safety risk and began evacuating the building. Officers approached the door of the unit where the Affected Person ('AP') was located. Officers knocked loudly and told him to come out with his hands up. Loud music was being played inside the unit, and a person came out with what appeared to be an MP5, pointing it at the ground with his finger off the trigger. The person appeared surprised to see the police, and quickly closed the door to the unit.

Officers continued their attempts to evacuate the building and communicate with AP. At 8:59 p.m., AP opened the door to the unit for the second time. It was this second encounter with police that resulted in AP being shot.

AP and the officers involved had different descriptions of what occurred in those moments.

AP said that he was visiting his neighbor in an adjacent unit when he discovered that his phone was low on battery, and he needed to charge it. AP said that he opened his neighbor's door to go get his phone charger. AP said that he had a phone in his hand when he opened the door, and heard officers yelling "*freeze, drop the gun*".

AP said that he was in the middle of explaining that he did not have a gun when he was shot by an officer. AP admitted that the neighbor he was with, Civilian Witness 2 ('CW2'), did have a toy gun and described that it "*looked like a black handgun*" but denied being in possession of the toy gun that day or even seeing it.

AP denied ever having a gun and speculated that the officers "*thought my phone was a gun or something. I don't know why they're still saying it's a gun*". CW2 also said that AP did not have a gun.

AP also admitted that he had been using illicit substances that day, which was confirmed by his medical records.

Subject Officer ('SO') provided IIO investigators with a written statement, in which he described the incident slightly differently from AP. He stated that he had been dispatched to the call and was informed that a person had pointed a gun at another person earlier that evening.

Radio transmissions also informed him that a person came out of the unit earlier and pointed a gun at police. SO had learned from the radio that police had challenged the person with the gun at that time, but the person had returned inside the unit. Witness Officer 1 ('WO1') confirmed this information in his interview with the IIO.

SO arrived to the incident and went upstairs to the hallway of the unit. SO is a member of the Emergency Response Team and assisted other officers to help clear other people

from the building so it was safe. SO then positioned himself approximately 18 metres from the door of the unit.

According to SO, at 8:59 p.m., he saw AP open the door to the unit and stand in the doorway. He yelled at AP that he was "*Vancouver Police*" and to "*show his hands*". Neither of AP's hands were visible initially, and then a firearm "*quickly became visible*". The firearm was pointed down the hall towards SO and Witness Officer 2 ('WO2'). SO described that he could "*clearly see the barrel pointed towards him*".

WO2 described the incident similarly to SO. He said that he saw the door open approximately ten inches and he could see a person holding what appeared to be a gun, pressing out from the stomach area and extending out of the unit. He could see the circle of the barrel pointed directly towards the officers, and he shouted "*gun, gun, gun*". He believed he was about to be shot.

Believing the gun to be an MP5 pointed towards the officers, SO feared for his life and fired a single shot at AP, hitting him in the chest. AP fell back into the unit and CW2 closed the door to the unit.

Witness Officer 3 ('WO3') was also present when AP was shot. He said that he saw the door open, heard SO1 say "*drop the gun*", "*don't point the gun at me*" and "*come out of your suite*" right before the shot was fired. He estimated the whole interaction took fewer than three seconds.

After AP was shot, the door was immediately closed and SO heard someone from within the unit say "*you missed*". That person then said that they wanted a million dollars and "*you are going to pay for this*". WO3 also heard a person say that there was no one shot.

WO2 described that loud commands were being given to the unit for the AP to come out with nothing in his hands and he would be provided with medical treatment at any time.

After several more officer attempts to communicate with the AP, AP exited the unit unarmed and was taken into custody by police. A doctor that works with the ERT team was present, and able to provide medical treatment to AP immediately. It was confirmed by the doctor that AP was shot once to the chest, and AP was transported to hospital to receive medical treatment.

CCTV partially captured the events in the hallway. In the CCTV footage, a person is seen moving away and back to the unit with a firearm. It then shows officers clearing the building for safety and establishing surveillance on the unit. After that, it captures SO reacting to something at the unit door, shining his flashlight and then the door opening and SO firing his rifle. The CCTV did not capture exactly what happened at

the door. However, the video does show the door open only several centimetres, and remain that way for eight to nine seconds as if someone was peeking out, prior to any shot being fired, It does not show an individual beginning to exit as if to go to his room to get a phone charger, as AP suggests.

Several hours later, CW2 exited the unit without incident.

IIO investigators were deployed to the incident and searched the unit. From within the unit, they seized two replica guns. The guns seized were consistent with the MP5 alleged to be used by AP during the incident. Both guns were tested for DNA and fingerprints. The analysis did not show fingerprint or DNA evidence from AP on the firearms and captured mixed DNA on the firearm which was not identifiable to a single person.

AP survived the incident and was provided medical treatment which involved receiving staples to his left chest and arm.

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 an officer may have committed an offence by using unjustified, unnecessary or excessive force against AP.

Officers were acting lawfully, in execution of their duties, when they responded to the information that AP had a gun on the balcony of the residential building. This was clearly a public safety issue, and officers acted quickly to identify the unit where the gun was located and took action to clear the residential building for safety reasons.

After viewing the CCTV, and seeing an individual come out of the unit with what appeared to be a gun, officers had verified the information already received from the public. They had to ensure that no member of the public would be harmed by this individual, as he had been seen on two occasions within the building brandishing what appeared to be a gun. In accordance with their training, they took up surveillance to ensure that no member of the public would be injured, if the person came out from the unit armed again and tried communicating with the persons inside the unit.

The persons in the unit were unresponsive, and when the door opened for a second time in the presence of police, officers had reason to be concerned.

There are different accounts of what happened next. SO stated that AP came out of the doorway with what he believed to be a gun. WO2, who was the only witness that could

see the doorway, also believed that AP had a gun. Both officers said they saw the barrel pointed toward them.

In contrast, AP said that he never pointed a gun at the officers, and that he was holding a cell phone. CW2, who was inside the unit, also said that AP did not have a gun.

There can be no absolute certainty about what happened in those moments between AP and police. However, AP's account is not reliable. He claims he never saw the replica gun his friend had, which seems unlikely. In addition, he claims he was just leaving his friend's unit to go to his room to get a charger when he was shot. Were that the case, one would expect to see him beginning to exit the door as soon as it opened. Instead, it appears AP opens the door only slightly and has something poking out. It is not possible to determine what that object is.

While it is unfortunate that the CCTV angle did not capture exactly what took place inside the doorway, the video does corroborate the officers' accounts to the extent that the door opened and that there was something in the doorway. It does not support the version given by AP.

Although their accounts are different, both AP and officers' accounts were similar in that AP stated he had something in his hands and the police told him to "*freeze, drop the gun*".

It is also possible the officers were mistaken, and AP did not have a gun. However, the officers clearly believed it to be the case. The law does not require the officer's actions to be perfect, they just must be reasonable.

SO stated that AP had a gun and was pointing it at him. This belief was reasonable, given the prior two instances where the gun was seen in the building and the quick period that this interaction took place, a period of fewer than nine seconds. Although the gun later turned out to be fake, it was clear from the evidence that no officer was aware of this at the time and the gun, once examined, looked real.

It was unsafe for any officer to further attempt to speak to AP or use any less lethal force when he believed his life and others were being threatened. After issuing commands to which AP did not respond, SO had to take action quickly to protect the lives of the officers and potentially other members of the public if AP escaped.

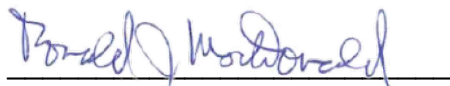
An officer is allowed to use force, provided that they are acting in the lawful execution of their duties and the amount of force used by an officer is necessary. The law requires that the use of force not be excessive, and the use of force is constrained by the principles of proportionality, necessity and reasonableness.

In this type of situation, there is little time for an officer to attempt to de-escalate. It was necessary and appropriate for SO to use lethal force on AP to protect himself and

others from serious bodily harm or death. There was a significant risk faced by the arresting officers.

It cannot be said that this use of force by SO was unreasonable in the circumstances. SO took one shot at AP and ceased firing after AP fell backwards and the threat to SO's life stopped. Officers provided AP with medical assistance as soon as it was sought, and a doctor was on-site to assist.

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, K.C.
Chief Civilian Director

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