



**IN THE MATTER OF THE DEATH OF A FEMALE  
FOLLOWING APPREHENSION BY MEMBERS OF THE  
VICTORIA POLICE DEPARTMENT IN  
THE CITY OF VICTORIA, BRITISH COLUMBIA  
ON DECEMBER 25, 2019**

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

Chief Civilian Director:

Ronald J. MacDonald, Q.C.

IIO File Number:

2019-233

Date of Release:

October 16, 2020

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## Introduction

On December 25, 2019, Victoria Police Department ('VicPD') officers responded to a call from a housing facility in Victoria. The complaint concerned the Affected Person ('AP'), who was alleged to be intoxicated and to have been threatening residents. AP barricaded herself in one of the building's suites and refused to give herself up to police. Subsequently, a fire broke out in the suite, and Emergency Response Team members entered in the company of firefighters in response to what was now an urgent and dangerous situation. The Subject Officer ('SO') deployed three projectiles from an 'ARWEN' (Anti-Riot Weapon, ENfield) less-lethal launcher, which struck AP in the head and neck area, knocking her unconscious. AP was removed from the suite, given medical aid and transported to hospital. She was placed on a ventilator, but did not regain consciousness. On December 29, 2019, life support was removed and AP passed away.

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 one civilian witness, seven firefighters and six witness police officers;
- police Computer-Aided Dispatch ('CAD') and Police Records Information Management Environment ('PRIME') records;
- recordings of 911 calls and police radio transmissions;
- recorded police text communications;
- Closed-Circuit Television ('CCTV') recordings;
- examination of physical, documentary and photographic evidence;
- VicPD use of force policy;
- police training records;
- BC Emergency Health Services and other medical records;
- pathologist's report; and
- toxicology report.

The IIO does not compel officers who are the subject of an investigation to submit their notes, reports and data. In this case, SO did not provide any evidence to the IIO.

## Narrative

Police were called twice in response to AP's behaviour at supportive social housing premises in downtown Victoria. The first call came in the late evening of December 24, 2019. Staff at the facility told officers that AP was in the building uninvited and was acting aggressively and violently. AP was evidently intoxicated, and was arrested only with considerable difficulty. She was taken to VicPD cells, where she remained until she was released at approximately 6:30 a.m. on December 25, 2019, after she had become sober.

At 1:36 p.m. that afternoon, interior CCTV at the supportive housing building shows AP entering the suite of a Civilian Witness ('CW'), who later told IIO investigators that AP spent some time there, drinking and consuming drugs. When AP subsequently became "psychotic", angry and aggressive, CW left the suite. When she later tried to re-enter, she found the door locked. CW said that AP opened the door with a knife in her hand and threatened to kill CW. CW went to the building manager and asked him to call the police.

The call was made at 4:42 p.m., and police were told that AP had a knife, had threatened residents and had locked CW out of her suite. They were also told that AP was believed to be alone in the suite, and had started smashing CW's possessions. Attending officers were also aware that AP had been arrested the previous evening for causing a disturbance at the same building.

Witness officer 1 ('WO1') and two other officers went to the hallway outside CW's suite. WO1 told IIO investigators that AP could be heard screaming, yelling and smashing things inside. The officers tried calling out to AP and communicating with her, but there was no response. WO1 said he believed at that point that AP was arrestable for uttering threats, assault with a weapon and mischief. Officers began trying to evacuate residents on that floor, and tied a rope to the suite door, to alert them if AP tried to exit. They encountered difficulties in persuading people to leave, as it was Christmas Day, and many of the residents were suffering from mental health or substance abuse issues.

As the situation was now considered a criminal barricade, WO1 said, he asked for the Emergency Response Team ('ERT') to be called out. ERT members started to arrive, and regular duty officers rotated with officers coming on shift. At 5:40 p.m., WO1 passed command over to WO2.

At about 5:45 p.m., a fire alarm sounded inside the suite, and continued for about ten minutes. Victoria Firefighters responded, but were staged nearby, being told that police were dealing with a barricade situation. At about 5:50 p.m., WO3, stationed outside the building, saw AP open a window and look out. When she saw police, WO3 said, he heard her say "Oh shit!" and saw her pull her head back inside.

At approximately 6:16 p.m., dark-coloured smoke began to billow from the window, and water could be seen pouring down the side of the building from the suite's sprinklers.

WO4 told IIO investigators that he was now concerned for the safety of other building residents, and that both police and AP were at imminent risk from smoke inhalation. He said he asked for authority to break into the suite to allow AP to exit and firefighters to go in to suppress the fire. In response, ERT members were authorized to breach the door and, if needed, to use a “slow and deliberate” advance into the suite to locate and remove AP from the fire danger. This was due to AP’s violent actions and because she was understood to have previously threatened an assault with a knife.

At 6:17 p.m., the main building fire alarm activated and firefighters responded. Police officers cut the rope securing the suite door and used a master key to unlock it. They opened the door wide, and WO5 told investigators that he gave “multiple verbal commands” for AP to come out. The only response, he said, was nonsensical screaming and yelling by AP from inside the suite. Meanwhile, the CCTV system recorded smoke billowing from the suite into the hallway through the open door. Thick black smoke was also pouring from the suite’s exterior windows.

For approximately five minutes, officers remained at the door, trying to see into the suite using flashlights through the smoke (no lights were on in the suite). Individual members transitioned away to get gas masks, although the masks available to police are effective only against particulates, and not against toxic fumes. They were unable to determine the location in the suite of either AP or the fire.

At 6:23 p.m., firefighters arrived on the floor, and were briefed that they would need to enter behind police shields to deal with the fire, as the person they were rescuing was believed armed and dangerous. The firefighters sprayed water into the room from the doorway, but the fire was not extinguished, and the resulting steam worsened visibility still further.

Meanwhile, ERT members were slowly advancing into the room. WO6 told investigators that the smoke was like “a wall” reflecting the police flashlights, but that he could see the glow of flames through it. WO6 said that the apparent ineffectiveness of the firefighters’ water caused him to fear that an accelerant had been used, and he was concerned that AP could be above the officers in a loft area, and could possibly drop more accelerant on them, putting their lives further at risk. He said he communicated his concerns to SO, who was carrying a less-lethal ARWEN weapon, designed for short-range control of a threatening individual, incapacitating the person by causing pain with a relatively low level of injury. It fires a large, rounded, hard plastic projectile, and is intended to be fired at the body of a person, preferably striking the large muscle areas of a leg or the abdomen.

In his interview with IIO investigators, WO6 described what happened next:

*At some point, I picked up some movement straight ahead of us. I don’t know if the smoke cleared a little bit for a moment or if she actually moved but what I thought I was looking at was her standing on the other side of the couch in an*

*open centre of the room. She was standing there with her arms at her sides facing us. I said 'contact' which is our short concise way of communicating that I see her and that she's there so that everybody around me knows what I've seen.*

*[SO] immediately fires one baton round and I think in my mind that he's targeting her hips or maybe even her stomach because that's what I can see. What's sort of black to me is her lower limbs because I think that's the back of the couch, so I'm sort of seeing this kind of whiteish shape which I think is the front of her body.*

SO fired three ARWEN rounds, and only after the third did AP react. She slumped forward, and WO6 realized that what he thought was her abdomen had been the back of her head. She had been sitting, facing away from the officers, on a couch. ERT members immediately moved forward and extracted the unconscious AP from the room as firefighters went in to suppress the flames.

WO6 described AP as wearing black clothing and having light-coloured hair. What he had thought was a light-coloured top above dark lower clothing had in fact been the back of her head as she sat facing away.

AP was quickly given medical attention by paramedics and was transported to hospital, where she was found to be suffering from massive bleeding in the brain. On December 29, 2019, life support was removed and AP passed away. At autopsy, the cause of death was reported to be blunt force head injuries, consistent with being caused by ARWEN rounds.

The toxicology report prepared with respect to AP found a blood alcohol concentration consistent with "heavy level of intoxication with alcohol"; methamphetamine "within a range associated with recreational use"; cocaine/benzoylecgonine within a range "associated with recreational use"; a combined level of venlafaxine and desmethylvenlafaxine "within a range which is consistent with therapeutic doses"; and trazodone in a concentration "below a typical therapeutic range".

## **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 the deployment of the ARWEN weapon against AP in these circumstances was an authorized, necessary and reasonable use of force.

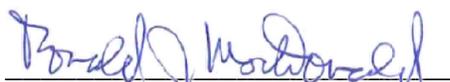
Officers were responding to a very serious and dangerous situation. A barricaded individual had started a fire in a multi-unit residential building, and there was resistance among some of the residents to being evacuated. It would not be realistic to expect police to send firefighters into the suite unprotected to deal with the fire, given that AP was

known to be armed with a knife, had been acting irrationally and aggressively, and had previously uttered death threats. It was reasonable for ERT members entering the suite to be very cautious about the danger AP might pose, but at the same time there was great urgency in the need to extract her from the burning room as quickly as possible. This was not a case where there was time for further negotiation or attempts at de-escalation. The police had to act right away. The lives of many people were at risk, including AP and other residents of the building as well as the police and firefighters. In those circumstances, deployment of usually non-lethal ARWEN rounds to disable AP and overcome potential resistance was proportional and reasonable.

The ARWEN operator, SO, would have had a very similar perspective as WO6, and very similar visual obstructions, given the darkness, smoke and steam that all witnesses describe confronting the officers as they entered (it appears from the evidence that SO and WO6 were in close proximity as they worked their way forward into the room trying to find and extract AP). WO6, as set out above, credibly describes his belief that what SO was firing at was AP's abdomen, and there is no reason to imagine that SO had a different belief. The evidence of WO6, in fact, permits one to put oneself in SO's place at the moment he made the decision to fire his weapon, and to understand that decision. Certainly, there is no reason to conclude that SO deliberately fired at AP's head. That he did so, on the evidence, was a tragic accident.

There is no indication of recklessness or negligence in the overall conduct of the involved officers in this incident. They were doing all they reasonably could to save an emotionally disturbed and intoxicated person from herself—and the other residents of the building from her actions—and needed to act swiftly with a relatively high level of force to try to resolve a very dangerous situation as quickly as possible. That use of force, in the circumstances, was necessary and reasonably proportional. The outcome was unintended.

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

October 16, 2020

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