



**IN THE MATTER OF THE DEATH OF A MALE
WHILE BEING TAKEN INTO THE CUSTODY OF THE RCMP
IN THE CITY OF NANAIMO, BRITISH COLUMBIA
ON JUNE 14, 2016**

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

Chief Civilian Director:	Ronald J. MacDonald, Q.C.
Director of Legal Services:	Clinton J. Sadlemyer, Q.C.
IIO File Number:	2016 - 120
Date of Decision:	December 19, 2017

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Introduction

On June 14, 2016 at 10:21 a.m. a 911 caller reported that a male, the Affected Person (AP), was seen outside a restaurant carrying a knife. Shortly thereafter, RCMP dispatch made a request for officers to respond. Officers 1, 2 and 3 responded.

Officer 2 located AP first and spoke to him briefly and he started to approach her. AP produced a knife and she told him to, "*Drop the knife.*"

During that exchange, Officer 1 arrived, opened his car door and remained partially within his car and partially behind the open door. Officer 1 called out to AP over the front of his vehicle to, "*drop the knife.*" AP turned his attention toward Officer 1 and began to walk towards him. Officer 1 repeated his commands to, "*drop the knife*"; however, AP did not drop the knife and continued towards him. When AP was at the front of Officer 1's vehicle, Officer 1 shot twice and AP fell to the ground. AP did not survive.

The Independent Investigations Office (IIO) was notified by the RCMP at 11:19 a.m. that morning. The IIO commenced its investigation as AP was deceased as a result of having been shot by an officer.

Facts

Evidence collected during the investigation included the following:

- 1) Statements of 18 civilians including: eyewitnesses who saw AP prior to and during the incident, EHS and other medical personnel;
- 2) Cell phone video of the incident;
- 3) Statements of Officer 2 and Officer 3;
- 4) Recordings of police radio transmissions;
- 5) Photographs and aerial video of the scene;
- 6) BCEHS related records;
- 7) Autopsy Report; and
- 8) Ballistics Report.

Pursuant to section 17.4 of the Memorandum of Understanding between the IIO and BC Police Agencies, Officers who are the subject of an investigation are not compelled to submit their notes, reports and data. In this case, Officer 1 declined to provide a statement or his notes, reports and data to the IIO.

AP was observed walking around near a restaurant carrying a knife but was not seen to be threatening anyone. A report to 911 was made and the caller used his vehicle to follow AP. The 911 caller stopped his vehicle at an intersection in a nearby residential area where he could see AP. When Officer 2 arrived the 911 caller attracted her attention and indicated to her where AP was located.

Officer 2 drove nearer to AP and stopped. She said AP did not appear threatening but did appear to be walking purposefully. She did not see a knife in his hands. Officer 2 said AP started, "...walking towards me when he saw the car."

She said other officers had yet to arrive and she said something to the effect of "*hey there*" to AP. AP continued walking towards her and when he was about 20 feet away he produced a knife. Officer 2 told the IIO that as that happened she heard Officer 1 over the radio indicating that he was on scene.

Officer 2 could not recall exactly when she got out of her vehicle but was out when she told AP that the police were, "...*here to help you*" and "*drop the knife.*" Officer 2 told the IIO that AP said to her, "*this is only going to end...*" and then either, "*...if I die or you die*" or "*...when I'm dead or you're dead.*"

As Officer 2 reached for her pistol, she heard Officer 1 arriving and she asked AP what his name was. She said he replied softly and she thought he answered with a first name only (which was not AP's name). She estimated AP was four or five feet from her and she moved away and around the rear of her police car. She said she heard Officer 1 loudly telling AP to, "*drop the knife, drop the knife*" and AP immediately started walking towards Officer 1.

Officer 1 transmitted over the police radio, "*dispatch, he won't drop the knife we need a CEW, [Taser] ASAP.*"

An occupant of a nearby home saw part of the exchange and heard the words, "*drop the knife*" and looked out the window. The occupant saw AP across the street near Officer 2's open car door holding a knife at waist level. The knife was pointed out. The occupant then locked the door to the house and went upstairs. The occupant looked out the upstairs window and saw AP was closer to the side of the road near the house.

Officer 3 arrived to a parking lot near the passenger side of Officer 2's vehicle. He said he saw AP with a knife near the front of Officer 1's vehicle and started around the front of Officer 2's car. Officer 3 said he was shouting at AP to drop the knife and AP was moving towards Officer 1.

The 911 caller told the IIO that AP, "*came at the officers with the knife in his hand, pointing it...*" He also said he could hear the officers yelling at AP to, "*drop the knife, drop the knife.*" He told the IIO that AP kept coming at the officers and he believed AP was going to stab one of the officers. He believed Officer 1 was in the most danger. He said AP was close enough to Officer 1 that had he lunged he could have stabbed the officer. Because the interaction was ongoing he began to video the incident with his cell phone. He also said he thought Officer 2 shot AP because of the direction AP fell.

The 911 caller's cell phone video shows AP moving toward Officer 1.



Crop from the cell phone video as the first shot was fired – Officer 2 is shown at the trunk of her car pointing her firearm. Officer 3 can be seen over the roof of, and to the front of Officer 2's car. Officer 1's left foot can be seen under his police car. AP's face can be seen above the roof-line of Officer 1's vehicle. Officer 1's brake lights are on.



Crop of aerial photo of the scene. Officer 1's car is to the left of and behind Officer 2's car.

Another witness who was beyond where the 911 caller was parked and approximately 130 metres from the scene said he (the witness) came out to the street and saw AP running across the street. He said his view was partially blocked by the 911 caller's vehicle; however, he saw Officer 1 arrive and crouch behind his open car door. He said he saw AP make a movement that was:

...a little bit of a lunge as if maybe he went to throw something, as if he went to pull something. Maybe he went to run towards the cops. You couldn't tell what he was doing but it was a little bit of a jar. And that's when you hear pop, pop..."

Another witness at that same location said AP was about 10 feet or less from the police and she could hear, "put it down, put it down" and then, "bang, bang" and then silence. She said it did not look to her like AP was going to attack the police.

One other witness who was approximately 100 metres from the scene said he heard shouting and saw AP who he thought might, "...have taken one step towards the police car" and then the sound of two shots.

Approximately one and one half seconds of video were recorded by the 911 caller before the first shot can be heard. In the video AP can be seen near to and facing toward Officer 1 at the instant of the first shot. AP is then shown on the video spinning clockwise.

The second shot is heard and AP can be seen falling to the ground. The second shot was less than one second after the first. As the shots were fired Officer 2 is shown on the passenger side near the trunk of her vehicle and pointing her firearm towards AP. Officer 3 can be seen moving across the front of Officer 2's vehicle.

At three and one half seconds AP is shown falling to the ground and continuing to spin in the same direction as he rolls away and to the left of Officer 1's police car. At four and one half seconds, Officer 3's brake lights go off and almost immediately his right foot

can be seen under the vehicle. At five seconds Officer 1's head comes into view above the roofline of his car.

At five and one half seconds into the video, and as AP continues to roll away, the knife is clearly visible in AP's right hand. At six seconds, Officer 1 can be seen starting to move towards AP and Officer 3 is seen moving past the front of Officer 1's car. At just before nine and one half seconds the knife can be seen moving away from AP, having been kicked by Officer 3.

Photos were taken of the nearby occupant's two points of view and they showed that the driver's side of Officer 2's vehicle was easily visible; however, Officer 1's vehicle, although closer, was virtually invisible through the shrubbery. The nearby occupant also told the IIO that two shots were heard and saw AP fall to the ground after the second shot. The occupant said the shots came from directly in front of AP (which is where Officer 1 was located) although it was not clear who was shooting. The occupant said at least three officers immediately started performing CPR on AP.

Officer 3 said AP was, "...fairly close to the front of [Officer 1's] vehicle" when the shots were fired. Officer 3 said he went to where AP was lying on the ground and kicked the knife away and with Officers 1 and 2 commenced CPR.

An autopsy was performed and AP suffered two entrance and two exit bullet wounds, which caused his death.

Two bullet casings were located on the ground near the passenger side of Officer 1's vehicle. These casings were examined and confirmed to have been fired in Officer 1's firearm. The location of where they were found is consistent with having been ejected from Officer 1's pistol when he fired from his position behind his car door.

A paramedic who worked on AP told the IIO that a male police officer (Officer 1) informed him that he had been forced to use his gun and had fired twice. Officer 1 also told him that he could only find one bullet wound on AP and was concerned where the second shot may have gone. The paramedic examined AP and found a second gunshot wound.

Officers 1, 2 and 3 did not have a CEW with them as a use of force option.

Relevant Legal Issues and Conclusion

The purpose of any IIO investigation is to determine whether an officer, through an action or inaction, may have committed any offence in relation to the incident that led to the death of or injury to an affected person.

More specifically, the issue to be considered in this case was whether Officer 1 was justified in using lethal force against AP. If he was not, he may have committed an offence including manslaughter.

A police officer who is acting as required or authorized by law is, if he acts on reasonable grounds, justified in doing what he is required or authorized to do and in using as much force as is necessary for that purpose. Additionally, the law surrounding self-defence or the defence of others is also applicable to police officers.

The Courts have ruled that in the agony of the moment a person is not required to measure with exactitude the level of force used to defend themselves.

In this case, the evidence is clear that AP possessed a knife and brandished it first at Officer 2 and then at Officer 1 upon his arrival on scene. Civilian witnesses agree that AP was close to Officer 1 when he was shot and the video shows AP's approach to Officer 1. After AP was shot, the knife is clearly seen, still in his hand, as he rolls on the ground.

The officers directed AP to drop the knife in voices loud enough that witnesses that were 130 metres away could hear their shouts. AP, by all the evidence, did not drop the knife and both civilian and police witness evidence alike is confirmed by the cell phone video of AP approaching Officer 1 when he was shot.

On his arrival, Officer 1 had to have seen AP approaching Officer 2 with the knife as described by the occupant of the nearby residence. He stopped his vehicle, opened the door and while he kept one foot on the brake he called out to AP to drop the knife. He used his radio to call for a CEW when AP came towards him with the knife to quite a close distance. Indeed, the 911 caller believed if AP had lunged he could have stabbed the officer. At that moment Officer 1 had to act quickly to protect himself, and had little time to weigh his options. It was reasonable for him to shoot in defence of himself and in the defence of Officer 2.

Following a review of all the evidence collected during the course of this investigation there is no evidence that Officer 1 committed any offence and the evidence collected does not provide grounds to consider any charges against any Officer. Officer 1 shot AP to protect himself and Officer 2 from the actions of AP.

Accordingly, as the Chief Civilian Director of the IIO, I do not consider that an officer may have committed an offence under any enactment and therefore, the matter will not be referred to the Crown Counsel for consideration of charges.

Clinton J. Sadlemyer, Q.C.
Director of Legal Services

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Chief Civilian Director

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