



IN THE MATTER OF THE FATAL SHOOTING OF A MALE
WHILE BEING APPREHENDED BY MEMBERS OF THE
RCMP NEAR THE VILLAGE OF SLOCAN, BRITISH COLUMBIA
ON OCTOBER 13, 2014

DECISION OF THE CHIEF CIVILIAN DIRECTOR
OF THE INDEPENDENT INVESTIGATIONS OFFICE

Chief Civilian Director:

Ronald J. MacDonald, Q.C.

General Counsel:

Clinton J. Sadlemyer, Q.C.

IIO File Number:

2014-182

Date of Release:

March 29, 2018

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Facts

On October 9, 2014, three RCMP Officers from detachments in the Slocan area went to the residence of the Affected Person (AP) in the Slocan Valley to investigate an allegation of assault by AP upon one of his neighbours. During that attendance an exchange of gunfire between AP and one of those Officers, Officer 3, is alleged to have occurred. AP left his residence and police began to search for him.

On Monday, October 13, 2014, after four days of searching for (AP), Officer 1 (the Subject of this investigation) and Officer 2 traveled up a remote road to look for a piece of lost equipment and to exercise Officer 1's police service dog. That road accesses several cabins that had been previously searched, including the cabin where this incident took place (the Cabin). The officers entered the property where the Cabin was located and decided to check it. An interaction occurred and AP was shot by Officer 1. AP died from that wound.

The Independent Investigations Office (IIO) was notified by the RCMP at 2:32 p.m. by telephone that day, approximately one hour after the shooting.

The IIO commenced its investigation as AP had died and the death was related to the actions of an officer.

IIO investigators were deployed and arrived in Nelson at approximately midnight that night and attended the scene the next day.

Evidence collected during the investigation included the following:

- 1) Statements of five civilian witnesses including family of AP, two residents of Slocan Village and 2 members of British Columbia Emergency Health Services (BCEHS);
- 2) Statements of six officers including two statements and a diagram of Officer 2, a statement from Officer 3, and Officer 4 who wrote the initial reporting of the incident to the IIO;
- 3) Reports of firearms analysts;
- 4) Report of Blood Spatter analyst;
- 5) Report of DNA analyses;
- 6) Reports of 3 pathologists;

- 7) Report of a Biomechanical Engineer;
- 8) Recordings of police radio transmissions; and
- 9) Photographs of the scene.

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 or data to the IIO.

Officer 4, who initially reported the matter in writing to the IIO on behalf of the RCMP, related that Officer 1 told him, "*We had no choice.*"

After the encounter between AP and Officer 3 on October 9, members of the Emergency Response Team (ERT) searched for AP in the rural area behind AP's residence over the next two days. The search included the Cabin. AP was not found at this time. After that, one of the two ER teams was pulled from the search.

Officer 2 told the IIO that on October 13, 2014, when he and Officer 1 approached the Cabin they noticed one of its windows was open. They then moved toward the Cabin and stood at either side of its south door. Officer 2 said he was to the right of the door, the same side as the door knob. Officer 1 stood to the left of the door with his rifle up. Officer 2 said that he opened and pushed the door inward. He said he then saw a rifle come up. He believed it was about 60 cm above the floor. Although Officer 2 could not see AP, he believed that AP was lying on the Cabin floor.

Officer 2 said he thought, "*...it was an ambush, and it was planned by him [AP].*" He said he heard a shot and Officer 1 stumbled away from the door backwards and fell around the corner onto his back. Officer 2 said he did not see a muzzle flash.

Officer 2 said he did not know who had shot whom and was concerned that Officer 1 had been shot. He said he stepped back and tripped over something and then moved to the rear [northeast] corner of the Cabin. Shortly afterwards, Officer 1 appeared at the northwest corner. Officer 2 said he believed Officer 1's dog was running around the cabin.

Officer 2 said he heard a noise coming from within the Cabin that sounded like somebody dragging something around. He thought AP was barricading himself inside. Both Officers stayed at their positions at opposite rear corners of the Cabin and waited for AP to come out.

Officer 2 said the dog pushed the north door open and entered the Cabin. He said the dog went in and out of the Cabin a number of times. He said Officer 1 disappeared and he again heard movement in the Cabin. He said he saw the dog's tail against the white

of the north door. He said the dog was moving backwards in small jerking movements and was pulling something.

Officer 2 said Officer 1 returned to his previous position at the northwest corner of the cabin and told him, "*The gun's at the other door.*" Officer 2 said they moved towards the north door and saw AP lying on his back, with his head towards and near the north door. He said the dog had moved away but was still inside the Cabin.

Officer 2 said he handcuffed AP as he was concerned for his safety. Officer 1 cleared the Cabin and went for help. Officer 2 said he was kneeling on AP and decided to "*hogtie*" him with some rope to ensure that AP did not move. He was unsure if there might be another person in the cabin and wanted to check behind the stove.

IIO investigators attended the Cabin on Tuesday, October 14. Photographs were taken and forensic examinations were performed. A single shell casing was located 3.35 metres outside the south door of the Cabin. Officer 1's RCMP-issue Colt M16 rifle was seized.

The Cabin was held and protected pending an autopsy of AP.

Autopsy

AP was taken to a hospital where an autopsy was performed on Friday, October 17, 2014. AP was still "*hogtied*" and still wearing the clothing he was in when he was shot. The clothing included a hooded top and a beach towel slung over his right shoulder against his skin and under the hooded top.

Pathologist 1 performed an autopsy on AP. Pathologist 1's opinion was that the cause of death was, "*...a single gunshot injury...*" It was also Pathologist 1's opinion that the bullet travelled from back to front, "*entering the right upper back and exiting the right anterior neck.*"

Pathologist 1 later told an IIO investigator that during the autopsy another pathologist, Pathologist 2, was requested to give an opinion about the wounds to AP. The investigator's notes of that conversation, made the same day as the autopsy, report that Pathologist 2 also believed that the path of travel of the bullet was from back to front.

It should be noted that Pathologist 1 did not include in the autopsy report a comment that Pathologist 2 was consulted and gave this opinion. The IIO investigator's notes indicated that Pathologist 1 told the investigator that Pathologist 1:

- *had 2nd pathologist [Pathologist 2] come down and look at wounds w/o being told what [strikeout in original notes] anything + [Pathologist 2] agreed that back wound entry + front wound exit*

...

- *feels small caliber bullet of low velocity; [and]*
- *only way back wound was exit is if shored exit which means leaning against something or having something tight against skin which was not the case.*

The information related in these three notes is not documented in the autopsy report.

The suggestion that the bullet was "low velocity" was inconsistent with the fact that the officer fired a carbine round, which is high velocity. What role, if any, this misinformation may have played in Pathologist 1's opinion is unclear.

Further Investigational Actions

These initial opinions suggested that AP had been shot in the back. This was at odds with what Officer 2 had told the IIO. The IIO determined that further investigation was necessary to resolve the conflict between the eyewitness testimony and the autopsy evidence.

As a result, the scene at the Cabin was held until October 21.

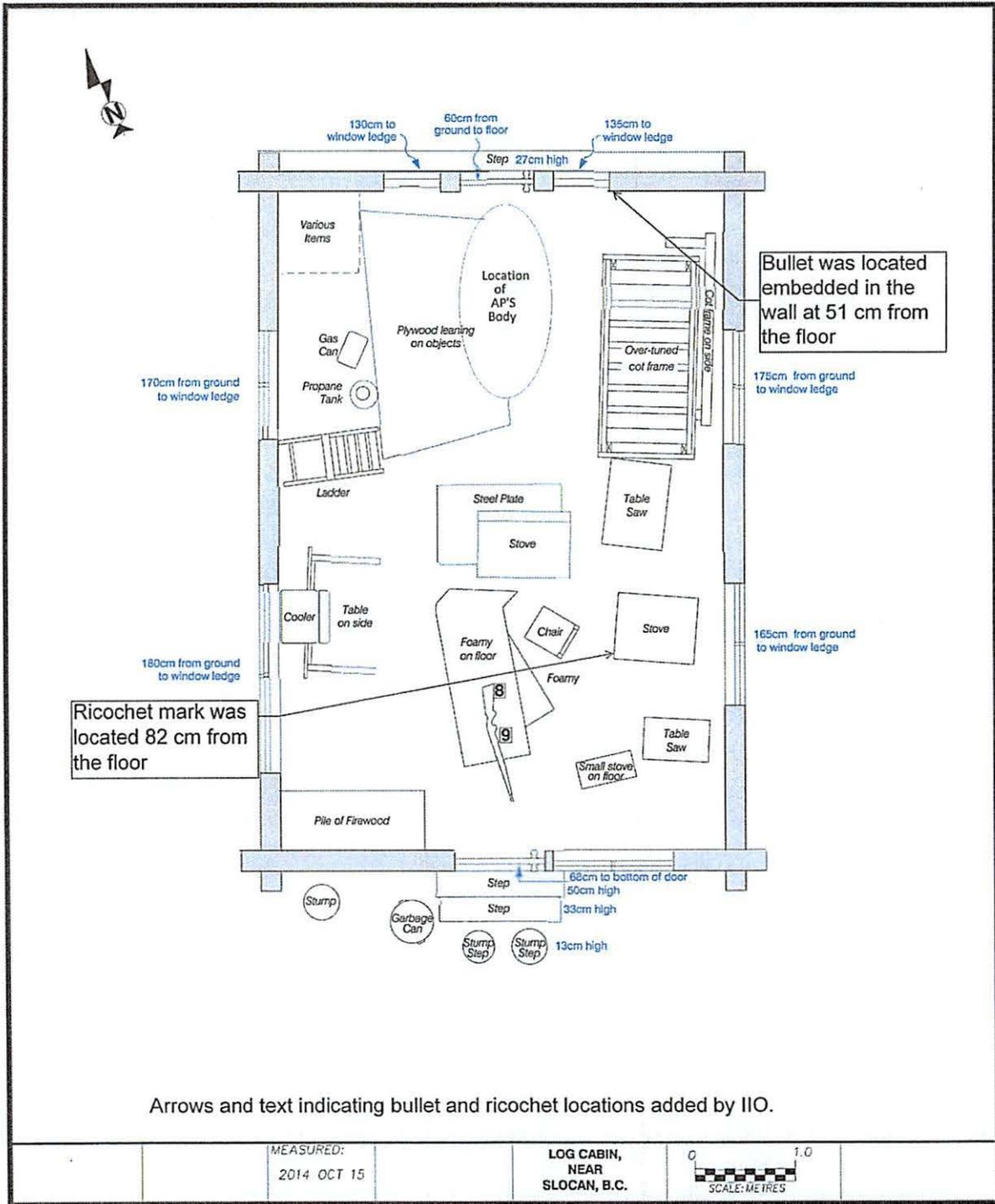
On Saturday, October 18, an IIO investigator re-examined the Cabin and located a ricochet mark on the west side of a wood stove nearest the south door of the Cabin at a height of 82 cm. A hole in a piece of cardboard that was on top of the stove was also located. Biological material was found on the cardboard near the hole which was later shown to be from AP by DNA testing.

A small hole in the north wall opposite the south door was located below the window at a height of 51 cm from the floor. A spent bullet was extracted from the interior of the north wall. Forensic testing later showed that bullet was fired from Officer 1's gun.

On October 20, Officer 2 re-attended the Cabin with IIO investigators to describe the events that had occurred on October 13. On October 21, 2014, a bullet impact damage expert examined the Cabin. The Cabin scene was released later that day.

During the visit to the Cabin, Officer 2 described where Officer 1 was standing when he shot at AP. The height from which the shot was fired is essentially the same height as the ricochet mark made by the fired bullet on the wood stove.

Below is a diagram of the Cabin:



The rifle shown in the diagram was seized from where it lay during the initial examination of the scene. It was later confirmed to belong to AP. It was loaded with ammunition, which on examination was found to be live. A shell casing found at the scene of the original interaction between AP and Officer 3 on October 9 was found to have been fired from this rifle.

The shell casing found outside the south door of the Cabin was analyzed and found to have been fired from Officer 1's rifle.

The bullet impact damage expert's report was received in March of 2015. The expert determined that the path of travel of the bullet found in the north wall was from the south towards the north and at a slight downward angle from the ricochet mark. The expert also found that the hole through the cardboard hanging over the edge of the woodstove was consistent with being made by a fragment of the deflected bullet.

Thus, the analysis confirms that Officer 1 took one shot at an approximately horizontal angle with the floor of the Cabin. This is consistent with what was observed by Officer 2.

AP's hooded top and the beach towel over his shoulder were submitted to the laboratory to determine the presence of gunshot damage, the direction of projectile travel and the distance from the muzzle to impact at the time of discharge. Two holes were located in the top, but due to the nature of the fabric no conclusions could be drawn in relation to the direction of the bullet that caused the hole. Similarly, a hole in the beach towel did not assist with this question. There was also no evidence to assist with muzzle to impact distance.

In May of 2015 the written report of Pathologist 1 was received by the IIO. At that time a decision was made to retain a biomechanical engineer to analyze the scene evidence and autopsy data to attempt to establish the position AP would have been in when he was shot.

Biomechanical Engineer

The IIO engaged the services of a biomechanical engineer in June of 2015 and he was provided relevant file materials. The initial estimate of the time to provide a report was one month.

In April of 2016 the report was still not completed and the biomechanical engineer requested to speak with and meet Pathologist 1. While Pathologist 1 did not meet or speak with the engineer, in May of 2016 Pathologist 1 provided answers to the engineer's questions through the IIO.

In August of 2016, IIO investigators returned to the Cabin to confirm the earlier measurements.

In October of 2016, IIO investigators attempted to re-create the shooting of AP based on a preliminary report from the biomechanical engineer that AP would likely have been kneeling and facing away from the door when he was shot. The positioning of AP's rifle and its movement as described by Officer 2 was taken into consideration and incorporated into the attempts at recreating the position of AP when Officer 1 shot him. Investigators found it difficult to recreate a scenario that satisfactorily explained a body position that would account for AP being shot in the back and that would be consistent with the facts described by Officer 2 and with other known facts.

The biomechanical report was delivered to the IIO in November of 2016. The engineer relied upon the physical evidence, measurements, photographs and the opinion of Pathologist 1. He concluded that the body could have been positioned in such a way that was supportive of Pathologist 1's opinion. He did not give an opinion about whether the body could also have been positioned in the opposite direction and did not rule that out in his report.

Further Steps

In August 2017, the IIO determined that the file presented contradictions that would benefit from a further expert consideration of the autopsy evidence. This was particularly important given the significance the direction of the shot played in determining whether the actions of Officer 1 were justified or not. It was therefore decided that an opinion would be sought from Pathologist 4.

The IIO was aware that shortly after the initial autopsy in October of 2014 and the release of AP's remains to his family, a third pathologist, Pathologist 3, was retained by AP's family. Pathologist 3 performed a physical examination of AP on October 24, 2014, 11 days after his death. Pathologist 3's findings had not yet been shared with the IIO in August of 2017.

Pathologists 3 and 4

Pathologist 4 was provided IIO file material and the initial autopsy report on August 25, 2017. Attempts were made to facilitate a meeting between Pathologist 4 and Pathologists 1 and 2. However, Pathologist 1 and Pathologist 2 did not agree to meet and review their findings.

Pathologist 4 provided an opinion to the IIO on November 1, 2017. The opinion included a consideration that AP was shot with a high powered rifle. Pathologist 4 found that:

The skin wound to the low front part of the neck appears to show micro-tears [small splits to the skin radiating out from the central perforation which are]

characteristic features of gunshot entrance wounds, with micro-tears being described in association with high velocity gunshot entrance wounds.

He also noted:

The appearances of the gunshot injury to [AP]...are in my opinion strongly suggestive of the entrance wound having been to the low right front part of the neck, and the exit wound being present over the right back.

In the meantime, and unknown to Pathologist 4, the notes of Pathologist 3, made when AP was examined in October of 2014, were obtained by the IIO. Those notes also suggested the bullet fired by Officer 1 entered AP's body in the front, had a downward path and exited AP's body out his back.

AP's family agreed to the IIO obtaining a written report from Pathologist 3. As a result, Pathologist 3 was provided with the relevant portions of the IIO file during the last week of November of 2017.

On March 12, 2018, Pathologist 3 provided a final report to the IIO and reported that on October 24, 2014, AP's as yet un-embalmed body was at a funeral home and he had been deceased for 11 days. Pathologist 3 measured the distance of the bullet wounds from the top of AP's head and found that the wound in the back was 7.5 cm lower than the wound on the front of the body. Pathologist 1 found it was only 4 cm lower. Pathologist 3 also noted that the pictures of the wounds corroborated the greater distance. This meant the bullet path through the body was longer than found by Pathologist 1.

Pathologist 3 also noted that the RCMP-issued ammunition produces a muzzle velocity of 3,000 feet per second, and is thus a high velocity projectile. The fact the ammunition was high velocity was important as it affects the tissue of the body differently that a low velocity projectile. Pathologist 3 also indicated, as did Pathologist 4, that this can cause micro tears to radiate outward from an entrance wound. Pathologist 1 did not appear to consider this in the initial report.

Pathologist 3 concluded that:

*The entrance wound is on the front of [AP] and the exit wound is on the back of the chest...The **exit wound** on the posterior chest was mistaken for an entrance wound by [Pathologist 1]... [Emphasis in original]*

The distance between these two wounds is significantly greater than the autopsy pathologist measured, this is plain to ones eye from photographs...[and AP]...in my opinion was both conscious and capable of movement for an unknown but very short period of time after being shot.

Pathologist 3 also makes the point that, given the considerably steeper angle which the bullet was found to have travelled, if AP had been shot in the back as described by Pathologist 1 in an upward direction toward the neck the bullet would have likely re-entered AP under his chin. This did not happen.

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 an offence in relation to the incident that led to the injury to AP.

More specifically, the issue to be considered in this case is whether Officer 1 may have used excessive force during the attempt to apprehend AP and whether Officer 2 was untruthful to IIO investigators. Had Officer 1 shot AP in the back he may have committed murder which is the intentional killing of another human without justification. Had Officer 2 lied to IIO investigators he may have committed obstruction of justice.

In this case, police had been searching for AP for four days and the search was winding down. When Officers 1 and 2 noticed the Cabin and decided to check it, they were acting within the course of their duties.

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. In addition, if he faces a threat of death or grievous bodily harm he is entitled to take reasonable steps to protect himself. However, if a police officer uses unreasonable or excessive force, those actions may constitute a criminal offence.

The evidence in this case initially suggested that Officer 1 acted in an unreasonable, disproportional and excessive manner by shooting AP in the back as Officer 2 opened the Cabin door. The initial conclusion that AP was shot in the back contributed to an unusually drawn-out investigation where the only eye-witness, Officer 2, provided contrary evidence.

When Pathologists 3 and 4 gave opinions that the bullet travelled from front to back, Officer 2's description of the events was corroborated by that scientific evidence. The photographs, suggested bullet path, and the scene evidence are also consistent with the version of events Officer 2 related.

Pathologist 3 also concluded that AP was likely conscious and able to move about for a short period of time after being shot. This further supports Officer 2's description that, prior to the dog entering the Cabin, he (Officer 2) heard noises that sounded like somebody dragging something around inside the Cabin, leading him to believe AP was barricading himself inside the Cabin.

That being the case, the evidence of Pathologists 3 and 4 corroborates Officer 2's evidence that when the Cabin's door was initially opened, AP raised and pointed his gun directly at Officer 1. Those facts justify the use of deadly force by Officer 1 to protect himself from death or grievous bodily harm.

This investigation has taken an unfortunate length of time. This resulted from operational pressures within the IIO, the complexity of the evidence, and the necessity of seeking and awaiting several expert reports. Overall the process took much longer than anticipated. Throughout, the emphasis was placed on attempting to uncover all relevant and reliable evidence before reaching a conclusion. In addition, this case required continual diligence to avoid a premature conclusion based on incomplete evidence.

In the end, the opinions of Pathologist 3 and 4 both provide significant corroboration for the version of events related by Officer 2. That evidence provides justification for Officer 1's actions. At the very least, these opinions make the proof that Officer 1 was not justified to be remote.

While it is unfortunate that the delays experienced during the course this matter left Officers 1 and 2 and the family of AP in a state of uncertainty for over three years, at the end of the day I consider that the final result herein is the correct one.

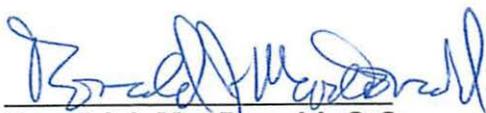
The evidence collected does not provide sufficient grounds to consider any charges against any officer. The evidence does offer support to the conclusion that the officers acted as required by their duties and in accordance with the law.

Accordingly, as the Chief Civilian Director of the IIO, I cannot conclude 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.



Clinton J. Sadlemyer, Q.C.
General Counsel

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