



**IN THE MATTER OF THE SHOOTING DEATH OF A MALE
WHILE BEING APPREHENDED BY
MEMBERS OF THE RCMP IN
THE CITY OF PORT COQUITLAM, BRITISH COLUMBIA
ON JUNE 18, 2017**

**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:

2017-064

Date of Release:

June 11, 2018

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Facts

On June 18, 2017, at approximately 7:25 p.m., the Affected Person (AP) was shot by Officer 1. AP died of a single gunshot wound.

The Independent Investigations Office (IIO) was notified by the RCMP at 7:45 p.m. The IIO commenced its investigation as the shooting of AP fell within the jurisdiction of the IIO as defined by the *Police Act*.

Evidence collected during the investigation included the following:

- 1) Statements of 39 Civilian Witnesses (CW) including family members, neighbours, guests of neighbours and paramedics;
- 2) Statements of eight police officers;
- 3) Recordings of police radio transmissions;
- 4) Recording of 911 calls;
- 5) Photographs of the scene;
- 6) Cell phone videos;
- 7) Firearms and ballistics reports; and
- 8) Autopsy report.

Pursuant to section 17.4 of the Memorandum of Understanding between the IIO and BC Police Agencies, and consistent with the *Canadian Charter of Rights and Freedoms*, officers who are the subject of an investigation are not compelled to provide a statement, nor submit their notes, reports and data. In this case, the Subject Officer, Officer 1 declined to provide statements, notes, reports or data to the IIO.

AP's spouse told the IIO that she and AP ate dinner and afterwards AP went to the garage. She said that shortly thereafter she heard a loud bang. When she went to see what it was the interior door to the garage was locked. She went outside and used the remote garage door opener and fully opened the garage door. She said AP "...had a big gun out and was trying to load it." She said she tried to take the gun but AP pushed her to the floor. She told him she was going to call the police and AP told her to "go ahead."

AP's spouse told the IIO she got her dog, drove away and called AP's parents. She said she was told AP had just spoken with his father who had then called the police. She told the IIO AP did not and had not previously expressed suicidal intentions to her.

At 7:11 p.m., AP's father called 911 and advised the call taker that his son had just told him he was going to commit suicide. He also told the call taker that AP had firearms and had told him (AP's father) that he (AP) had fired some shots in the air. AP's father later told Officer 4 that AP had said, "*I'm sorry Dad it's not your fault, but I'm done. Goodbye, I love you and goodbye.*"

Many of the neighbours told the IIO that shots were heard prior to police arrival.

Radio transmissions to Officers who were sent to the scene included the information that AP was suicidal, had access to guns and had fired shots in the air. Officer 2 was first to arrive. Officer 2 told the IIO that an electronic miscommunication had occurred and when he arrived at AP's residence he believed he was stopping some distance from AP. His purpose for stopping was to put on his body armour; however, on getting out of his police vehicle he saw AP:

...standing there with a rifle in my face...approximately eight to nine meters away...a hunting rifle [with a] big scope on it...he got the drop on me.



AP's firearm seized near where he was shot

Officer 2 told the IIO that AP told him to *"get the fuck outta here now."* Officer 2 said he backed away using his police vehicle as cover. Officer 2 directed AP to drop his weapon and when AP did not, Officer 2 got into his vehicle and reversed to a point of safety.

CW 1 was visiting a neighbour and recorded video of much of this interaction on his mobile phone. AP is clearly visible and pointing a rifle at Officer 2. AP can be heard telling Officer 2 to *"...get in your truck and fuck off."* Officer 2 backed away from AP and then got into his vehicle and reversed away from AP's location.

Several neighbours described the exchange between the two and said AP had *"...a gun,"* or was *"holding a black rifle across his body"* or was *"holding a black, long gun pointed upwards."* Neighbours also heard AP telling Officer 2 that he should get back in his vehicle and go away.

Police radio transmissions at that time include Officer 2 saying *"Okay, there's a guy pointing a gun. Guy pointing a gun"* and *"Okay, I'm going to back away. I'm going to back away."* The radio transmission continues and the shouts of other officers to *"Get back in the house"* are heard.

As Officer 2 is shown on the video reversing his vehicle, shouts of officers approaching CW 1 directing people to *"Get back in the house,"* are heard on CW 1's recording.

Arising from the same miscommunication that caused Officer 2 to stop right in front of AP's residence, Officers 1, 3, 4 and 5, had set up to contain a residence approximately 200 metres from where AP was.

Officer 3 told the IIO he heard the interaction between Officer 2 and AP over the radio but didn't know where they were. When AP fired his rifle the officers realized they were at the wrong location and began running towards the direction of the gunshots in a diamond formation. Officer 4 said he was at the rear of the diamond, Officer 3 was at the front, Officer 1 was on the right and that Officer 5 was to the left.

Neighbours described four officers moving up the street towards AP and that two of the officers were carrying carbine rifles (Officers 1 and 3).

CW 2 could see AP pointing his rifle up the street (in the direction that Officers 1, 3, 4 and 5 were approaching from.) CW 2 said AP fired a shot in that direction and then lowered his firearm. AP raised it again and fired a second shot (again in the direction of the officers) and again lowered his firearm. CW 2 said AP raised his firearm a third time and he was shot. AP then collapsed face down onto the driveway.

Photographs taken by CW 2 show the short (approximately three feet high) retaining wall in front of AP and behind which he fell. The rifle was lying near AP's foot. CW 2 shouted for someone to help AP and was told to "get back in the house." CW 2 said AP was motionless until moved by police after the armoured vehicle arrived.

CW 3 was at the same vantage point as CW 2 and told the IIO that AP pointed a black assault rifle towards police officers and fired twice. CW 3 heard two shots fired in return and saw one of the shots hit the AP on his left hand side near his armpit. AP fell to the ground and remained there until the Emergency Response Team (ERT) arrived.

CW 4 was in a residence approximately 100 metres from where AP fired his rifle. Officers 1, 3, 4 and 5 were between CW 4 and AP. CW 4 heard the sound of two gunshots and then about 10 seconds later heard a third shot. CW 4 said a bullet came through the window of the residence and hit a printer, shattering it. Pieces of the printer hit CW 4.

Officer 3 said that when the four officers rounded a curve in the road he saw AP on a driveway looking towards them. The four officers were then near where CW 1 had recorded the video and approximately half way between AP and the residence where CW 2 was.

Officer 3 said he kept running towards AP. Officer 3 told the IIO that AP:

...just started to swing around towards us...and I just remember him saying "Get outta" and then, just as he said get outta, he- that's when his carbine turned and he just started to fire and I was standing in the middle of the street and I could see the splashes in the grass and the grass come chewing up as it's coming towards me and all up to my left hand side it was coming up from his driveway up the street, so I immediately planted and I raised my carbine up and I took him in my sights, that's when I got the snaps from the rounds coming past my head and...my risk assessment now is as high as it possibly could be and this

gentleman is shooting at me. I still have no idea what's happened to anybody around me. There's rounds going past me. I don't know if anyone's been shot. I still have no idea what's going on with [Officer 2]...

Officer 3 said he heard Officer 1, who was behind him and to his right, say "...I think I have a shot" and their team leader, Officer 5 who was on the left of the diamond formation, shouted "*active shooter, shoot, shoot, shoot.*" Officer 1 fired and when Officer 3 looked toward the last location where AP had been, Officer 3 caught a glimpse of some hair disappearing behind a retaining wall on the AP's driveway and near to the open garage door. Officer 3 told the IIO he was concerned that AP was going into the garage to get more ammunition or another firearm and so fired at AP as he was going down behind the retaining wall.

Officer 3 took cover and maintained containment until ERT members arrived and relieved him.

CW 5, a close relative of AP, approached the scene from the opposite direction of Officers 1, 3, 4 and 5. Officer 2 was nearby and directed CW 5 to get back and that AP had fired two shots at police. CW 5 was able to see AP lying on the driveway not moving and began yelling at AP stop. CW 5 saw CW 2 asking the police to go look at the AP as he was down. CW 5 told Officer 2 there was no one else in the residence.

Officer 2 moved slightly and could then see AP. He informed dispatch of the visual on AP and that AP was not moving; however, he was instructed to await the arrival of the ERT.

CW 3 said that sometime later AP got shot with what he described as a "*rubber bullet*" and did not respond. CW 3 saw AP being dragged by an officer from the garage door area to the middle of the driveway.

CW 5 saw two officers shooting something at AP and then more officers and a "*tank*" arrived. CW 5 was then moved away by officers.

AP remained on the ground of his driveway until the ERT arrived. Officer 6, the ERT leader arrived at 8:09 p.m. Officer 6 told the IIO he was advised that AP was lying on the ground behind a vehicle but it was unknown whether AP was deceased or was lying in wait. AP had not been seen to move but no blood was visible. Information had been relayed that another person had been seen in AP's residence and it was unknown whether the other person was injured or was an accomplice (this information was incorrect; the other person had been seen in another residence and there was, in fact, no other person in AP's residence.)

Officer 6 called for the Tactical Armoured Vehicle (TAV) to be brought to the scene to allow officers to safely approach AP and the residence.

When the TAV arrived, Officer 6 authorized a "Test for Compliance," whereby Officer 7 fired a less lethal round at AP and, when AP did not react, a second round was deployed. ERT members used a megaphone requesting anyone in the residence to come out.

Distraction devices were deployed into the residence. No one was found inside and the information that had earlier been relayed was determined to be in error.

Paramedics attended to AP at 8:56 p.m. and reported that he was deceased.

An autopsy was performed and it was found that AP died from a single gunshot wound fired from an indeterminate range. The bullet entered AP and passed through his left arm and then entered his left chest. The injuries sustained by the gunshot wound were sufficient to account for death, which would have been relatively rapid. There was no exit wound on the body and during its travel the bullet separated into multiple parts, predominately into a copper jacket and lead core; both were recovered.

Toxicological examination revealed a blood alcohol concentration of 0.18% (greater than twice the legal limit to drive in Canada (0.08%) and more than three times the limit in BC (0.05%)). Prescription medications were also detected at levels considered therapeutic or sub-therapeutic.

The fragments of bullet and copper jacket taken from the AP's body during the autopsy were examined and the copper jacket was identified as being fired from Officer 1's rifle.

Six shell casings were located near AP; however, it is unknown if all six are related to this same incident as a bag containing over 30 spent shell casings was also located on the garage floor. All of the six located near AP were found to have been fired using the firearm the AP possessed.

A fired bullet was recovered from the residence that CW 2 was in. Although it could not be definitively determined whether or not it was fired from AP's firearm, the rifling class characteristics were found to be consistent with AP's rifle. In addition, the bullet construction was found to be consistent with the type of bullets typically associated with the shell casings found near AP.

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 injury to AP.

More specifically, the issue to be considered in this case is whether Officer 1 may have used excessive force when he fired his carbine rifle at AP. Had he done so, he may have committed a culpable homicide including murder or manslaughter.

In this case, police were summoned because AP was reported as suicidal and firing shots in the air.

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. This includes the defence of self or others. If a police officer uses unreasonable or excessive force, those actions may constitute a criminal offence.

When Officer 2 stopped to put on body armour he was acting within the course of his duty. AP raised a firearm towards him and told him to leave. Officer 2 used his radio to advise his fellow police officers of the danger he (and they) were facing from AP and quite appropriately backed off and away from AP. The video taken by CW 1 of that initial interaction clearly shows the risk Officer 2 faced.

CW 2 and CW 3 observed AP turn and shoot his rifle in the direction of where Officers 1, 3, 4 and 5 were approaching from. This is also the direction of where CW1 had been standing and recording the initial interaction between AP and Officer 2, and the direction that resulted in a bullet striking and entering the residence CW 4 was in.

The description by Officer 3 of how he and Officers 1, 4 and 5 ran towards the sound of gunfire and the sounds of the "*snaps from the rounds coming past my head*" illustrates the danger AP represented to not only the police but to the neighbours including CW 4.

Officer 1 advised his superior he had the ability to shoot AP, who at the time was actively shooting live ammunition at the Officers. Officer 5, the ranking officer on the scene, was said to have given an order to shoot. Officer 1 took one shot, Officer 3 also fired a shot; however that did not hit AP as he had fallen out of sight behind the retaining wall.

Because of the extreme level of risk that AP created, considerable caution was taken after AP had been shot. The delay in approaching AP after he was shot was lengthened as a result of the belief that another person was in the residence and that it was unknown whether that person was unable to come out on their own or was an accomplice to AP's actions.

Although paramedics were not able to approach AP until 91 minutes after he was shot, that delay was created in large part by AP's actions which endangered the lives of his neighbours, their guests and the police, and required the extreme cautionary measures that were taken. Even though a mistaken belief that another person was in the residence may have contributed to that delay, the injury to AP was determined at autopsy to have caused his death within a short period of time.

The physical evidence and the evidence of numerous civilian witnesses in this case conclusively demonstrates the following: police were properly responding to a call about

a person who had threatened to kill himself. As they did so, one officer first encountered AP who threatened the use of deadly force against him. AP then attempted to apply deadly force by firing twice in the direction of police. Those actions not only endangered the lives of police but also the lives of members of the public on the same street. The use of deadly force in response to AP's actions was amply justified in the circumstances, and appears to have been the only choice the officers had.

Therefore, the force used was not only reasonable but necessary and proportionate as well. The officers acted as required by their duties and in accordance with the law. The evidence collected does not provide grounds to consider any charges against any officer.

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 Crown counsel for consideration of charges.



Clinton J. Sadlemyer, Q.C.
General Counsel

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