



**IN THE MATTER OF THE FATAL SHOOTING OF A MALE
WHILE BEING APPREHENDED BY
MEMBERS OF THE RCMP IN
THE CITY OF NANAIMO, BRITISH COLUMBIA
ON MAY 8, 2018**

**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:

2018 - 054

Date of Release:

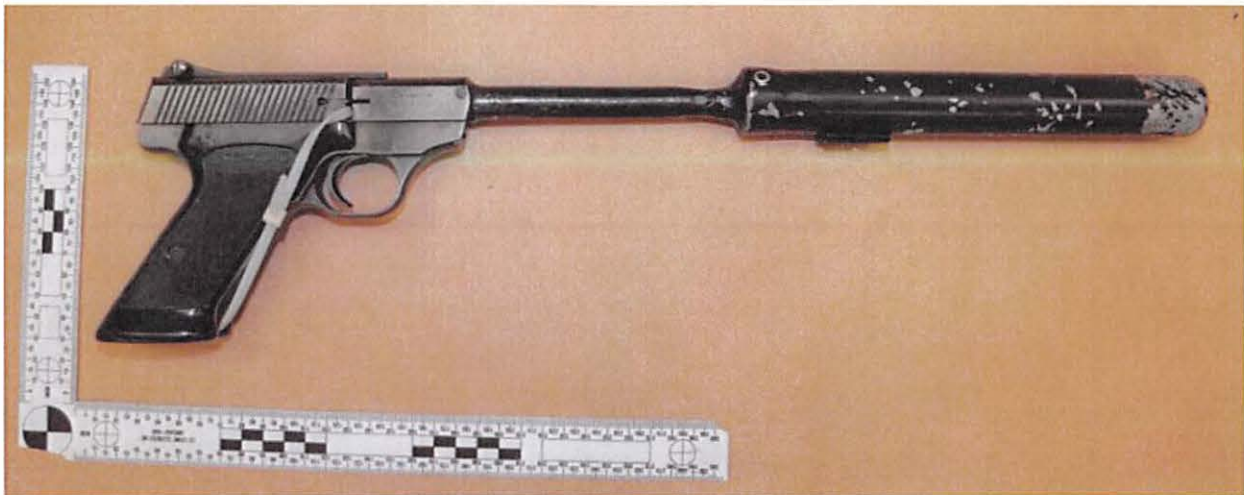
October 22, 2018

THIS PAGE INTENTIONALLY LEFT BLANK

Facts

On May 8, 2018, at approximately 10:15 a.m., the Affected Person (AP) disembarked in a car (the Car) from a BC Ferry at Departure Bay, Nanaimo. Police had been advised the Car had been reported stolen from its owner in a violent car-jacking in Penticton and had been located on the incoming ship. The suspect (AP) was believed to have earlier produced a firearm in another incident that occurred shortly before the car-jacking.

Police positioned themselves and, as it disembarked, the Car was separated from the driving public and forced to stop. AP reached to the passenger seat of the Car, raised a long barrelled handgun (the Pistol) and fatally shot himself in the head. At the same time that AP raised the Pistol, Officers 1 and 2 commenced firing their 9 mm police issue firearms and delivered what would have been fatal gunshot injuries to AP's chest.



The Pistol, a .22 caliber with a silencer welded to it, was seized from the Car (measuring square is 150 mm by 300 mm)

The Independent Investigations Office (IIO) was notified by the RCMP at 10:50 a.m. and commenced its investigation as AP was deceased and officers were involved.

Evidence collected during the investigation included the following:

- 1) Statements of 31 civilian witnesses (CWs);
- 2) Statements of 11 police officers;
- 3) British Columbia Emergency Health Services (BCEHS) records;
- 4) Recordings of police radio transmissions;
- 5) CCTV from BC Ferries;
- 6) Firearms analysis reports;
- 7) Toxicology report;
- 8) Cell phone video;
- 9) Photographs; and
- 10) Medical records.

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 Officers, Officers 1 and 2, declined to provide a statement, notes, reports or data.

Civilian Witnesses

Six of the 31 Civilian Witnesses (CWs) interviewed were positioned closely to the incident or indirectly involved – this includes two BC Ferries employees, one paramedic, and three bystanders. In addition, three individuals who knew the AP personally but were not involved in the incident itself were interviewed and provided contextual information.

According to their accounts, the ship's captain was contacted and advised that the Car AP was known to be driving was in the first 20 vehicles that would disembark the vessel from the upper deck and the ship's crew would hold all traffic behind the suspect vehicle. Officers 1-7 arrived in four vehicles: a black unmarked SUV (the SUV), a white unmarked van (the Van) and two unmarked police pickup trucks (below referred to individually as the Truck and the Canopy Truck). These vehicles parked under the ramps used to load cars on the upper decks of the ferries.

When AP drove off the ship, the police vehicles followed and surrounded the Car with the Van pulling in front of AP. AP then tried to pass the Van on the right, at which time the front bumper on the passenger side of the Van hit the rear driver's side of the Car, which then spun in a counter clockwise direction. The other police vehicles moved to pin the Car to prevent any attempts to leave with the SUV (see the aerial photo on page five for the final placement of vehicles).

At this point, the SUV was nose to nose with the AP's Car and the other police vehicles were in close proximity. Witnesses reported seeing officers get out of their vehicles and draw their firearms; they also reported hearing a number of shots but could not identify who had fired.

Following the shots, paramedics (who had been staged in the area) were directed to travel to the scene with lights and siren on. Upon arrival, the paramedic observed AP lying on his back in a pool of blood with his hands cuffed behind his back. Officers were applying pressure to injuries.

AP had sustained a very serious head injury, three gunshot wounds to his abdomen, a gunshot wound to his collarbone, and one to the left bicep. The paramedic witness was told by an officer that the head wound was self-inflicted by AP, while the other wounds were inflicted by police. The paramedic told the IIO that AP had a pulse and ventilation was commenced; however, within minutes the monitor indicated that although AP's heart was still effectively firing, there was insufficient blood volume. Paramedics and

officers continued CPR as AP was transferred to the Nanaimo Regional Hospital, where resuscitation efforts persisted until AP was pronounced deceased 20-30 minutes later.

The three civilians who were interviewed that were not involved with the police incident advised that AP had previously stated via phone that he had *"wasted somebody"* and had stolen a car. AP had also said more than once, *"I'm not going to jail. The police are gonna have to shoot me..."* Another witness also described a firearm that AP had shown them about a month before the incident; the description matched the firearm located at the scene.

This background evidence demonstrated that AP had faced several significant recent life challenges, including injury that prevented him from working and a serious substance addiction. As well, it was later confirmed he had been involved in a recent shooting where he thought he had taken someone's life. (In actuality, that person did not die as a result of the shooting.) His conversations with persons known to him demonstrated he was feeling very desperate about his life.

Video

One witness saw the collision occur and began recording the incident with a cell phone.

The distance from which the video was recorded does not allow sufficient resolution for the viewer to discern identifying features; however, Officer 1 is known to have been the driver of the SUV and Officer 6 the driver of the Canopy Truck.

At the start of the video the passenger side of the Car is visible and the driver's door of the SUV can be seen opening. Officer 1 gets out. Officer 6 then appears at the back of the SUV. The Truck passes the officers and stops between the video camera and the Car in the position shown in the photograph on page five below, blocking the view of the Car. Officer 6 can then be seen following Officer 1 towards the Car and, as Officer 6 passes the open door of the SUV, shots can be heard on the audio. A total of eight shots are discernible from the recording.



Eight bullet holes are visible in the windshield of the Car

Several BC Ferries CCTV videos were reviewed.

The Car is seen coming down the ramp and the Van can be seen passing and moving to the lane ahead of the Car. As the vehicles continue along the exit lanes the Van stops momentarily and the Car moves to its right and attempts to get by the Van on the

right. The Van moves forward as the Car is seen passing the Van and both move out of the frame. At the corner of another CCTV video, the SUV can be seen colliding with the Car and the SUV driver's door opens. The Truck moves to the back of the Car. The distance, however, does not provide sufficient resolution to discern the movement of the officers nor does it show the incident itself.

Police Witnesses

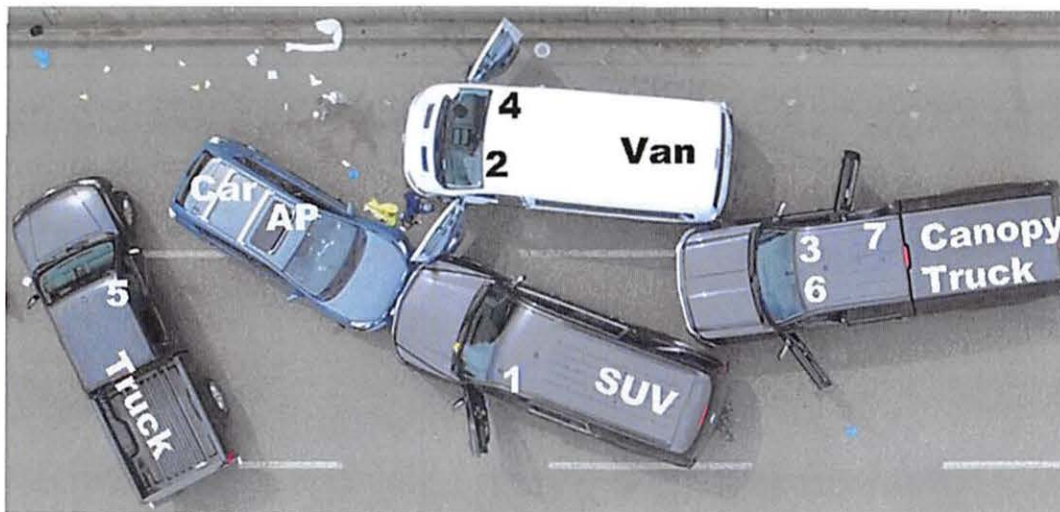
The five witness officers who were present during the incident were interviewed by the IIO.

Officer 3, who led the police operation to arrest and detain AP, told the IIO that information was received that the Car had been located aboard the BC Ferry expected to arrive in Nanaimo at 10:10 a.m.

Officer 3 believed the police had an obligation to stop AP as soon as possible to prevent any further violent incidents. Officer 3 also believed that because AP was thought to be armed, the safest way to stop and arrest AP was to isolate him from the public as he departed from the ship. As a result, all involved officers that were interviewed assessed the risk as high or very high.

These witness officers indicated that two uninvolved officers boarded the ship and advised the officers waiting in their vehicles when AP's Car disembarked. As planned, the police vehicles pulled out and surrounded the Car. The Van was in front of AP's Car and slowed in front, activating their emergency lights. The Car veered to the right to try to get around the Van; to prevent this, the Van moved right as well and made contact with the Car, causing it to spin 180 degrees. The other vehicles moved in as shown in the aerial photo below to block the Car in.

Once all vehicles were stopped, officers got out of their vehicles with weapons drawn due to the belief that AP was armed. At this point, AP reached to the passenger seat of the Car and raised the Pistol and shot himself in the head. Simultaneously, Officers 1 and 2 fired shots and AP slumped over to the right. Seeing this, Officer 3 yelled for officers to stop firing as AP had shot himself. The officer then opened the driver's side door of the Car, saw the Pistol on the passenger seat, and helped to remove AP from the car to begin first aid. (It should be noted that some media footage showed some actions of officers. It purported to record shots being fired. However, the sounds heard were actions taken by officers to break into and open the car door after the shots were fired.)



Aerial view of the final positions of the Car and four Police Vehicles and locations of AP and Officers 1 – 7.

Officer 3 said as AP raised the Pistol it pointed toward the windshield and Officer 2 who was on the other side of that windshield. Officer 5 also reported being in the line of fire as the Pistol was raised from his position in the passenger seat of the Truck, as did Officer 7 from his position as he had moved from the Canopy Truck to the front of the Van. Officer 7 said:

If I'd had my gun out, I would have shot him...[and]...until he put it to the side of his head I didn't know he was going to [shoot] himself.

Given that AP used the gun to immediately shoot himself it can be concluded he did not intend on shooting at the police. However, it is equally clear that it was very reasonable for the Officers present to believe their life was in danger as the gun was raised.

Expert Witnesses

Pathology and Toxicology

An autopsy was performed and an interim verbal report was provided confirming cause of death as being multiple gunshot wounds.

During the autopsy, gunshot wounds were located at or on the right knee and left bicep, as well as the right hand with two penetrating wounds. There were also two wounds in the right chest area, with one penetrating wound and one non-penetrating, the upper left chest area, and the upper chest near neck/collarbone area. Importantly, there was an entrance wound at the right side temple area of AP's head, with an exit wound at the left side near the top of head. Four bullets and numerous bullet fragments were recovered during the autopsy. Additionally, a section of AP's skull was retained.

The pathologist also confirmed that the wound to the upper left chest and to the right temple each would have been fatal on their own. It was not possible to determine which shot occurred first. It is clear they occurred very close in time to each other.

Toxicological testing reported that AP had Fentanyl in his body at a level that is within a range where lethal outcomes have been reported. However, toxicity is dependent on individual tolerance and how the drug was administered..

Firearms and Ballistics

A forensic firearms examiner was engaged and the following items were sent for examination:

- 1) Firearms and related magazines seized from Officers 1 and 2;
- 2) Eight 9 mm cartridge cases collected outside the vehicles at the scene;
- 3) The Pistol with silencer welded to the barrel seized from inside the Car;
- 4) One .22 cartridge case collected from inside the Car;
- 5) Fired bullets and bullet fragments recovered at the autopsy;
- 6) Fired bullet seized from inside the Car; and
- 7) A portion of the AP's skull seized at autopsy.

Three of the eight 9 mm cartridge cases were found to have been fired from Officer 1's firearm. The remaining five were found to have been fired from Officer 2's firearm. The number of rounds remaining in each of the officers' weapons were in accord with the number of cartridge cases that were attributed to each weapon. Two bullets from each weapon were recovered at the autopsy.

The .22 cartridge case was found to have been fired in the Pistol seized from the Car. The fired bullet recovered from the Car was found to be consistent with having been fired from the Pistol.

The section of skull included a bullet wound and was examined to determine the possible calibre of bullet that could create it. The size of the wound was found to be consistent with a .22 calibre bullet wound. It was determined that a larger bullet, such as a 9 mm round used by police, could not have created the wound.

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 was whether either or both Officer 1 and Officer 2 were justified in using lethal force against AP. If they were not, either or both may have committed a serious offence. .

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.

In this case, AP was reported to have violently stolen the Car he was driving. He was reportedly in possession of a firearm. Police had a duty to prevent him from continuing to commit these offences as well as a duty to prevent him from committing further offences. It was completely appropriate, for the police to arrange to arrest AP as he left the ferry in Nanaimo. They exercised satisfactory precautions to protect the public by ensuring AP's vehicle was separated from others. When AP refused to stop for the police, the use of force to cause his car to stop was amply justified given the risks posed by AP. The force used to stop his car was not significant, and carried out at relatively low speed. There was little damage caused to the vehicles by that manoeuvre, and no personal injury resulted. Thus the stopping of AP's car was justified and appropriate..

Once stopped, the evidence is clear that AP, while surrounded by police, raised his gun and shot himself in the head. That was his only intention. However, as he did this, the gun would have been pointed at several police officers.

In that moment it would be impossible for an objective observer to know that AP did not intend to shoot at the officers who had just participated in forcing him to stop. Officers 1 and 2 had to act quickly to protect themselves, their fellow officers and the public. Indeed, that was their duty at law. The fact that the gun had a particularly menacing appearance would only have heightened the concerns of the Officers.

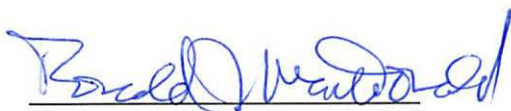
Following a review of all the evidence collected during the course of this investigation the facts demonstrate that AP appeared to be in a desperate state, and his actions presented a life threatening situation to the police present. Their actions were both justified and consistent with their duties as police officers. Thus there is no evidence that Officers 1 or 2 committed any offence.

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

October 22, 2018
Date of Release



Ronald J. MacDonald, Q.C.
Chief Civilian Director

October 22, 2018
Date of Release