



**IN THE MATTER OF THE DEATH OF A MALE
WHILE BEING APPREHENDED BY MEMBERS OF THE RCMP
AT BONNINGTON, BRITISH COLUMBIA
ON FEBRUARY 13, 2019**

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

Chief Civilian Director:

Ronald J. MacDonald, Q.C.

IIO File Number:

2019-034

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Introduction

In the early morning hours of February 13, 2019, RCMP received a report of shots fired in a residential area of Bonnington, B.C. Three officers responded and located a pick-up truck they believed to be associated to the call, parked in a snow-covered pull-out area. As they approached the truck and engaged with its occupants, the female passenger exited and walked away. As she did so, she told the officers that the driver, the Affected Person (“AP”) in this case, had a gun. AP reversed the truck, pulling the Subject Officer (“SO”) some distance before SO fell to the ground. The truck drove backwards into a snow bank and stopped, but AP was “revving” the engine. SO regained his feet and fired eleven rounds from his service firearm at the vehicle. One bullet struck AP in the head, and he was later pronounced deceased.

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:

- AP’s medical records from hospital admission and autopsy report;
- statements of three civilian witnesses, three witness police officers, three firefighters and four paramedics;
- BC Emergency Health Services records and 911 line audio recordings;
- SO’s duty pistol, magazines and reports into their functionality;
- A report on the functionality of AP’s rifle;
- police Computer-Aided Dispatch (“CAD”) and Police Records Information Management Environment (“PRIME”) records;
- police vehicle dashcam from SO’s vehicle;
- a Mobile Data Terminal (“MDT”) download;
- video of AP and his vehicle prior to the police incident;
- weather data;
- subject officers training records and RCMP policies;
- ICBC records; and
- forensic scene examination, scene video, 3D scan and photographs.

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, SO declined to permit access by investigators to his notes or reports, or to participate in an IIO interview. Following initial completion of this IIO public report, and “relying on” an assurance that the IIO did not intend to forward a report to Crown counsel for consideration of charges, SO provided a

written statement through his legal counsel. The contents of that statement have been considered, and are incorporated in this report, where indicated, below.

Narrative

Over an extended period on the evening of February 12, 2019, AP was involved in an emotional and occasionally physical interaction with his roommate, his girlfriend and his father. At one point, driving erratically, he crashed his pick-up truck into a utility pole, badly damaging the vehicle and causing the driver's side air bag to deploy. After the accident, AP drove back to his father's house. In the early morning hours of February 13, AP drove away from his father's house. He was in possession of a rifle that he had discharged twice outside his father's house, once accidentally and then again in anger in an apparently random direction. AP's girlfriend, Civilian Witness 1 ("CW1"), was riding in the passenger seat of the vehicle. AP drove for only about two blocks and pulled over into a small snow-covered gravel area at the side of a narrow rural road. He had placed the rifle behind the driver's seat.

By this time, several RCMP officers were responding to a 'shots fired' call and had been given a description of a white pick-up truck related to the complaint. Witness Officer 1 ("WO1") told investigators that he was the first to locate AP's truck, which matched the description police had been given. WO1 pulled in and illuminated the truck with his vehicle's spotlight, and then exited his vehicle and approached the passenger side door of the truck. At the same time, SO arrived and went to the driver's side door.

CW1 rolled down her window, and WO1 could see she was upset and crying. He could see an open liquor container in the truck, and was now concerned that he was dealing with a "domestic" situation involving alcohol and possibly violence. This elevated his risk assessment accordingly, he told investigators.

WO1 told CW1 to get out of the truck, and she complied. As she did, said WO1, "she said in a low voice, 'he's got a gun, he's got a gun in there'," and then walked towards the back of the truck. WO1's assessment of risk increased still further, and he loudly told SO, "he's got a gun in there," and told AP to put his hands on the dash.

AP, though, "brought his hands below the dash ... and then suddenly the vehicle was travelling in reverse, I mean he just pinned it in reverse." WO1 jumped back, and could see CW1 "running to get out of the way." The truck reversed out of the pull-out, across the road and into a parking area on the other side of the road.

WO2 was approaching on foot when she saw the truck reversing, its front end slewing sideways to the left, towards where SO was standing. She saw CW1 running and then slipping and falling in the snow. WO2 ran to CW1 and held her down. While WO2 was

telling CW1 she was being “detained for firearms offences,” she heard shots being fired. She said she did not see “what led up to” the discharge of SO’s firearm.

WO1 said that he could see SO being dragged at the other side of the truck, “travelling at a good rate of speed.” The truck drove backwards “with full acceleration” into a snow bank on the far side of the parking area. SO fell “at some point” during the truck’s movement across the road, said WO1, but “pretty quickly” got up from the roadway with his pistol drawn “and began firing at the driver ... it all happened extremely quickly.” Asked by investigators how far SO was from the front of the truck when he fired, WO1 estimated the distance as “well under ten metres.” He said that SO fired all the rounds from roughly that single position. Asked whether the truck was stopped when the rounds were fired, WO1 said “he was ramming into the bank, so wheels spinning, the whole bit, so he was no longer travelling distance but it’s not stopped.” WO1 said he was running to catch up to the truck as SO got to his feet and fired. The truck, at this point, was “stuck, with his wheels spinning, in the bank.”

WO1 ran up to the truck and found that several of SO’s rounds had passed through the windshield. AP was slumped in the driver’s seat, bleeding from a head wound above his right ear. The truck’s wheels, at this point, were no longer spinning. No weapon was visible in the truck initially, but WO1 subsequently noticed the butt of a long gun amongst items piled behind the front seats.

WO1 reached into the truck and attempted to turn off the ignition, but was unable to do so. He pulled AP down into a prone position across the front seat. Officers commenced first aid and firefighters attended, followed by paramedics. AP was transported to hospital where, on February 16, 2019, he was declared deceased.

Forensic scene examination was hampered to some extent by the activities of fire and medical responders and their vehicles in the aftermath of the incident, and by newly fallen snow. However, investigators were able to make significant observations and to obtain evidence including the following:

- In its final resting position, the front of the truck had spun to the left so that it was almost parallel to the snow bank and the left side road wheels had sunk quite deeply into the snow.
- The front wheels of the truck were turned slightly to the right, away from the bank.
- The ignition key was in the ‘on’ position, the four wheel drive switch was in ‘4x4 high’ and the manual gearshift was in the ‘first gear’ position. Analysis showed it was highly unlikely that the removal of AP across the front seat and out through the passenger side door could have moved the gear shift from reverse into forward gear.

- A fully functional SKS 7.62 mm semi-automatic rifle was retrieved from the back seat of the truck. There were three unfired rounds in the magazine and one unfired round in the chamber.
- Eleven spent cartridge cases from SO's pistol were found, at distances of between 4.26 and 8.20 metres from the front of AP's truck.
- There were six bullet holes in the truck's windshield, and one in the passenger side front fender.
- SO was observed to have fairly significant bruising to the outside of his left leg and to his left elbow, evidently caused by his fall to the ground during the incident.
- Initial toxicological testing of AP's blood, upon hospital admission, showed a blood alcohol concentration more than three times the legal limit for driving in Canada, as well as positive tests for THC, cocaine and methamphetamine.
- The cause of death was found to be a single gunshot wound to the right side of the head.

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 the incident that led to the death of AP. In this case, if the discharge of SO's firearm at AP was not authorized, necessary and proportionate, it could lead to a charge of murder or manslaughter.

The attending officers, including SO, were acting in the execution of their duty when they responded to a 'shots fired' call prompted by the discharge of AP's rifle in a residential neighbourhood in the middle of the night. When they observed a truck matching the description of one said to be associated with the complaint, it was reasonable for them to approach and investigate it, and they were authorized to do so.

A number of elements then inevitably and rapidly heightened their concern and their risk assessment. The truck had clearly been in a fairly serious collision, the broken canopy sitting upside down in the rear box and the driver's airbag deployed and deflated. Adding to the troubling nature of the initial call was CW1's evident distress and her warning that AP had a gun, a warning that was immediately communicated to SO, who was closest to AP. The evidence indicates that SO then found himself pulled sideways and thrown to the ground as AP accelerated backwards in a potentially life-threatening manoeuvre.

Finally, just seconds later, as SO regained his feet, he would have seen and heard the truck just metres in front of him, its engine revving and its wheels turned towards him. A post-incident examination in the light of day shows that the truck was very likely immobile, stuck in the snow bank, but that would not necessarily have been apparent to SO, in the

darkness and in the brief moments he had to react. The driver had already exhibited reckless behaviour aimed at evading investigation by the police, and there was no reason to believe he would not continue in such behaviour, using the truck as a potentially lethal weapon against SO.

SO's response in firing his pistol through the windshield at AP, in those circumstances, is consistent with RCMP policy on discharging a firearm at a motor vehicle or its occupants. The policy acknowledges that the use of a firearm against a vehicle is an "ineffective method" of disabling the vehicle, and can present "a hazard to both the officer and to the public." However, firing at a vehicle is permissible, the policy goes on, where the vehicle is "being deliberately used as a weapon," where there are "no reasonable means of escape," and where there are "reasonable grounds to believe it necessary to protect any person, including yourself, from grievous bodily harm or death."

The policy reflects the statutory requirements for a self-defence justification under *Criminal Code* section 34, which requires that the force used against an assailant be reasonable and proportionate, and also takes into account the imminence of the danger and the availability of other means to respond to it.

As set out above, in these circumstances it was reasonable for SO, seeing the truck a short distance away, in forward gear with its engine revving, to fear that AP was about to drive back at him, using the truck as a weapon to escape arrest. Based on what AP had just done, in fact, that seems to be exactly what he was now trying to do. The threat was close, and the opportunity to evade it with any confidence on the slippery, snow-covered ground was minimal.


The Courts have told us that the test for reasonableness in the use of force by a police officer must be conducted through the lens of a reasonable person "standing in the shoes of" the officer. In this case, SO would have perceived that he was dealing with a desperate, armed individual who was implicated in an incident involving the use of a firearm, whose distressed companion had just fled from him, and who had just used his vehicle in a reckless attempt to escape that had put officers' lives in danger. SO was now standing in the potential path of that vehicle and had every reason to believe that it was about to be driven at him, with no realistic way to escape its approach.

That reasonably perceived lethal threat made the use of lethal force in response proportionate, and justified under *Criminal Code* section 34.

SO's statement, referred to earlier, is generally consistent with the evidence obtained in the course of the IIO investigation. Speaking of SO's subjective fears at the time he fired his pistol at AP, the statement says "I believed [AP] was moments away from running me over or shooting me. Fearing imminent death or bodily harm, I had no alternative options".

That expression of SO's subjective belief matches the objective evidence and circumstances set out above.

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.

A handwritten signature in blue ink, appearing to read "Ronald J. MacDonald".

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

October 24, 2019

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